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SENATE BILL NO. 42

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 17, 2022)

(Patron Prior to Substitute—Senator Marsden)

A BILL to amend and reenact § 38.2-3454 of the Code of Virginia, relating to health insurance wellness programs; COVID-19 vaccine.

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-3454 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-3454. Wellness programs.

A. A health carrier offering a health benefit plan providing group health insurance coverage may provide, *at the employer's discretion*, for a wellness program if such program is made available to all similarly situated individuals. A wellness program may include:

1. A program that reimburses all or part of the cost for membership to a fitness center;
2. A diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes;

3. A program that encourages preventive care related to a health condition through the waiver of the copayment or deductible requirement under a group health plan for the cost of certain items or services related to a health condition, such as prenatal care or well-baby visits;

4. A program that reimburses individuals for the cost of smoking cessation programs without regard to whether the individual quits smoking; or

5. A program that provides a reward to individuals for attending a periodic health education seminar;

or
6. A program that provides a reward to encourage individuals to receive a vaccine for the prevention of COVID-19.

B. Notwithstanding any provision of § 38.2-3449, 38.2-3540.2, or any other section of this title to the contrary, a health carrier offering a health benefit plan providing group health insurance coverage shall not create conditions for obtaining a premium discount or rebate or other reward for participation in a wellness program that is based on an individual satisfying a standard related to a health status factor, except in instances where the following requirements are satisfied:

1. The reward for the wellness program, together with the reward for other wellness programs with respect to the plan that requires satisfaction of a standard related to a health status factor, does not exceed 30 percent of the cost of employee-only coverage. If, in addition to employees or individuals, any class of dependents may participate fully in the wellness program, such reward shall not exceed 30 percent of the cost of the coverage in which any employee or individual and any dependents are enrolled;

2. The wellness program is reasonably designed to promote health or prevent disease;

3. The health carrier gives individuals eligible for the program the opportunity to qualify for the reward under the program at least once each year;

4. The full reward under the wellness program is made available to all similarly situated individuals. The reward is not available to all similarly situated individuals for a period unless the wellness program allows for a reasonable alternative standard or waiver of the otherwise applicable standard for obtaining the reward for any individual for whom, for that period, (i) it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard or (ii) it is medically inadvisable to attempt to satisfy the otherwise applicable standard. The health carrier may seek verification, such as a statement from an individual's physician, that a health status factor makes it unreasonably difficult or medically inadvisable for the individual to satisfy or attempt to satisfy the otherwise applicable standard; and

5. The health carrier discloses, in all health benefit plan materials describing the terms of the wellness program, the availability of a reasonable alternative standard or the possibility of waiver of the otherwise applicable standard required under subdivision 4. If plan materials disclose that such a program is available without describing its terms, the disclosure under this subdivision shall not be required.

C. A used in this section, except where expressly provided otherwise:

1. For an individual obtaining a reward, "reward" includes (i) obtaining a reward, such as a discount or rebate of a premium or contribution, a waiver of all or part of a cost-sharing mechanism, an additional benefit, or any financial or other incentive and (ii) avoiding a penalty, such as the absence of a surcharge or other financial or nonfinancial disincentive; and

2. For a plan providing a reward, "reward" includes (i) providing a reward, such as a discount or rebate of a premium or contribution, a waiver of all or part of a cost-sharing mechanism, an additional

60 *benefit, or any financial or other incentive and (ii) imposing a penalty, such as a surcharge or other*
61 *financial or nonfinancial disincentive.*