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SENATE BILL NO. 1399

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 30, 2023)

(Patron Prior to Substitute—Senator Surovell)

A BILL to amend and reenact § 38.2-3418.18 of the Code of Virginia, relating to requiring the Bureau of Insurance to select a new essential health benefits benchmark plan; emergency.

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-3418.18 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-3418.18. Coverage for formula and enteral nutrition products as medicine.

A. Notwithstanding the provisions of § 38.2-3419, each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each corporation providing individual or group accident and sickness subscription contracts; and each health maintenance organization providing a health care plan for health care services, whose policy, contract, or plan, including any certificate or evidence of coverage issued in connection with such policy, contract, or plan, includes coverage for medicines shall:

1. Classify medically necessary formula and enteral nutrition products as medicine; and

2. Include coverage for medically necessary formula and enteral nutrition products on the same terms and subject to the same conditions imposed on other medicines covered under the policy, contract, or plan.

B. As used in this section:

"Inherited metabolic disorder" means an inherited enzymatic disorder caused by single gene defects involved in the metabolism of amino, organic, or fatty acids.

"Medically necessary formula and enteral nutrition products" means any liquid or solid formulation of formula and enteral nutrition products for covered individuals requiring treatment for an inherited metabolic disorder and for which the covered individual's physician has issued a written order stating that the formula or enteral nutrition product is medically necessary and has been proven effective as a treatment regimen for the covered individual and that the formula or enteral nutrition product is a critical source of nutrition as certified by the physician by diagnosis. The medically necessary formula or enteral products do not need to be the covered individual's primary source of nutrition.

C. The coverage required by this section shall:

1. Apply to the partial or exclusive feeding of a covered individual by means of oral intake or enteral feeding by tube;

2. Include coverage for any medical equipment, supplies, and services that are required to administer the covered formula or enteral nutrition products;

3. Apply only when the formula and enteral nutrition products are (i) furnished pursuant to the prescription or order of a physician or other health care professional qualified to make such prescription or order for the management of an inherited metabolic disorder and (ii) used under medical supervision, which may include a home setting; and

4. Not apply to nutritional supplements taken electively.

D. No insurer, corporation, or health maintenance organization shall impose upon any person receiving benefits for any formula and enteral nutrition products pursuant to this section any (i) copayment, coinsurance payment, or fee that is not equally imposed upon all individuals in the same benefit category, class, coinsurance level, or copayment level receiving benefits for medicines or (ii) reduction in allowable reimbursement for medicine.

E. The provisions of this section shall apply to any policy, contract, or plan delivered, issued for delivery, or renewed in the Commonwealth on and after January 1, 2021.

F. The provisions of this section shall not apply to short-term travel, accident-only, or limited or specified disease policies, contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans, or short-term nonrenewable policies of not more than six months' duration. *The provisions of this section shall not apply to a qualified health plan as defined in § 38.2-6500.*

2. That the provisions of the first enactment of this act shall become effective January 1, 2025, if the federal Centers for Medicare and Medicaid Services approves a new essential health benefits benchmark plan for the 2025 plan year selected by the State Corporation Commission's Bureau of Insurance that includes the coverage described in the third enactment of this act.

3. That the State Corporation Commission's Bureau of Insurance shall select a new essential health benefits benchmark plan for the 2025 plan year that includes, in addition to the essential health benefits package included in the existing benchmark plan, coverage for (i) prosthetic devices

60 and components under the same terms and conditions provided in § 38.2-3418.15:1 of the Code of
61 Virginia and (ii) formula and enteral nutrition products as medicine under the same terms and
62 conditions provided in § 38.2-3418.18 of the Code of Virginia, as amended by this act.
63 4. That, except as provided in the second enactment of this act, an emergency exists and the
64 provisions of this act are in force from its passage.