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HOUSE BILL NO. 1387

Offered January 25, 1994

A BILL to amend and reenact § 38.2-4319 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 34 of Title 38.2 a section numbered 38.2-3411.3, relating to accident and sickness insurance and coverage for infertility treatment.

Patron—Jones, J.C.

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-4319 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 34 of Title 38.2 a section numbered 38.2-3411.3 as follows:

§ 38.2-3411.3. Coverage for infertility diagnosis and treatment.

A. Notwithstanding the provisions of § 38.2-3419, every individual or group accident and sickness insurance policy, subscription contract providing coverage under a health services plan, or evidence of coverage of a health care plan (i) delivered or issued for delivery in the Commonwealth or renewed, reissued, or extended if already issued, and (ii) providing coverage to family members of the insured, subscriber, or enrollee, shall provide coverage for medically necessary expenses of diagnosis and treatment of infertility, including, but not limited to, in vitro fertilization, embryo transfer, artificial insemination, gamete intrafallopian tube transfer, zygote intrafallopian tube transfer and low tubal ovum transfer; provided that:

1. Such expenses shall only be covered for procedures for in vitro fertilization, gamete intrafallopian tube transfer or zygote intrafallopian tube transfer if:

a. The covered individual has been unable to attain a successful pregnancy through reasonably, less costly, medically appropriate infertility treatments for which coverage is available under the policy, plan or contract;

b. The covered individual has not undergone three completed oocyte retrievals or given birth to a living baby as a result thereof;

c. Such procedures are performed at medical facilities that conform to the American College of Obstetricians and Gynecologists guidelines for in vitro fertilization clinics or to the American Fertility Society minimal standards for programs of in vitro fertilization; and

d. One year shall have passed since the covered individual was determined to be infertile under this section.

2. The coverage described in this section shall not be required to be contained in any individual or group accident and sickness insurance policy, health services plan or health maintenance organization subscription contract if the subscriber to whom the policy, plan or contract is issued is either of the following:

a. A religious institution or organization that finds the coverage to violate its religious and moral teachings or beliefs; or

b. An institution or organization that is under the sponsorship of a religious institution or organization that finds the coverage to violate its religious and moral teachings or beliefs.

3. This section shall not apply to short-term travel, accident only, limited or specified disease, or individual conversion policies or contracts, nor to policies or 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 government plans.

B. For the purposes of this section, "infertility" or "infertile" means the inability to conceive after one year of unprotected sexual intercourse.

§ 38.2-4319. Statutory construction and relationship to other laws.

A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-200, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.) of this title, 38.2-1057, 38.2-1306.2 through 38.2-1310, Article 4 (§ 38.2-1317 et seq.) of Chapter 13, 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3411.2, 38.2-3411.3, 38.2-3418.1, 38.2-3419.1, 38.2-3431, 38.2-3432, 38.2-3500, 38.2-3525, 38.2-3542, and Chapter 53 (§ 38.2-5300 et seq.) of this title shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42

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60 (§ 38.2-4200) of this title except with respect to the activities of its health maintenance organization.

61 B. Solicitation of enrollees by a licensed health maintenance organization or by its representatives
62 shall not be construed to violate any provisions of law relating to solicitation or advertising by health
63 professionals.

64 C. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful
65 practice of medicine. All health care providers associated with a health maintenance organization shall
66 be subject to all provisions of law.

67 D. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health
68 maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to
69 offer coverage to or accept applications from an employee who does not reside within the health
70 maintenance organization's service area.