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SENATE BILL NO. 1281

Offered January 21, 1999

A *BILL to amend and reenact §§ 2.1-20.1 and 38.2-3407.5 of the Code of Virginia, relating to coverage of certain cancer treatments.*

Patrons—Woods, Barry, Colgan, Miller, Y.B. and Puckett

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.1-20.1 and 38.2-3407.5 of the Code of Virginia are amended and reenacted as follows:**

§ 2.1-20.1. Health and related insurance for state employees.

A. 1. The Governor shall establish a plan for providing health insurance coverage, including chiropractic treatment, hospitalization, medical, surgical and major medical coverage, for state employees and retired state employees with the Commonwealth paying the cost thereof to the extent of the coverage included in such plan. The Department of Personnel and Training shall administer this section. The plan chosen shall provide means whereby coverage for the families or dependents of state employees may be purchased. The Commonwealth may pay all or a portion of the cost thereof, and for such portion as the Commonwealth does not pay, the employee may purchase the coverage by paying the additional cost over the cost of coverage for an employee.

2. Such contribution shall be financed through appropriations provided by law.

B. The plan shall:

1. a. Include coverage for low-dose screening mammograms for determining the presence of occult breast cancer. Such coverage shall make available one screening mammogram to persons age thirty-five through thirty-nine, one such mammogram biennially to persons age forty through forty-nine, and one such mammogram annually to persons age fifty and over and may be limited to a benefit of fifty dollars per mammogram subject to such dollar limits, deductibles, and coinsurance factors as are no less favorable than for physical illness generally. The term "mammogram" shall mean an X-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the X-ray tube, filter, compression device, screens, film, and cassettes, with an average radiation exposure of less than one rad mid-breast, two views of each breast.

b. In order to be considered a screening mammogram for which coverage shall be made available under this section:

(1) The mammogram must be (i) ordered by a health care practitioner acting within the scope of his licensure and, in the case of an enrollee of a health maintenance organization, by the health maintenance organization physician, (ii) performed by a registered technologist, (iii) interpreted by a qualified radiologist, and (iv) performed under the direction of a person licensed to practice medicine and surgery and certified by the American Board of Radiology or an equivalent examining body. A copy of the mammogram report must be sent or delivered to the health care practitioner who ordered it;

(2) The equipment used to perform the mammogram shall meet the standards set forth by the Virginia Department of Health in its radiation protection regulations; and

(3) The mammography film shall be retained by the radiologic facility performing the examination in accordance with the American College of Radiology guidelines or state law.

2. Include coverage for the treatment of breast cancer by dose-intensive chemotherapy with autologous bone marrow transplants or stem cell support when performed at a clinical program authorized to provide such therapies as a part of clinical trials sponsored by the National Cancer Institute. For persons previously covered under the plan, there shall be no denial of coverage due to the existence of a preexisting condition.

3. Include coverage for postpartum services providing inpatient care and a home visit or visits which shall be in accordance with the medical criteria, outlined in the most current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards for Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and Gynecologists. Such coverage shall be provided incorporating any changes in such Guidelines or Standards within six months of the publication of such Guidelines or Standards or any official amendment thereto.

4. Include an appeals process for resolution of written complaints concerning denials or partial denials of claims that shall provide reasonable procedures for resolution of such written complaints and shall be published and disseminated to all covered state employees. Such appeals process shall include a separate expedited emergency appeals procedure which shall provide resolution within one business day

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60 of receipt of a complaint concerning situations requiring immediate medical care.

61 5. Include coverage for early intervention services. For purposes of this section, "early intervention
62 services" means medically necessary speech and language therapy, occupational therapy, physical therapy
63 and assistive technology services and devices for dependents from birth to age three who are certified by
64 the Department of Mental Health, Mental Retardation, and Substance Abuse Services as eligible for
65 services under Part H of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.).
66 Medically necessary early intervention services for the population certified by the Department of Mental
67 Health, Mental Retardation, and Substance Abuse Services shall mean those services designed to help an
68 individual attain or retain the capability to function age-appropriately within his environment, and shall
69 include services which enhance functional ability without effecting a cure.

70 For persons previously covered under the plan, there shall be no denial of coverage due to the
71 existence of a preexisting condition. The cost of early intervention services shall not be applied to any
72 contractual provision limiting the total amount of coverage paid by the insurer to or on behalf of the
73 insured during the insured's lifetime.

74 6. Include coverage for prescription drugs and devices approved by the United States Food and Drug
75 Administration for use as contraceptives.

76 7. Not deny coverage for any drug, *surgical procedure, radiation, other therapy or supportive care*
77 *prescribed for the treatment of the cancer and* approved by the United States Food and Drug
78 Administration for use in the treatment of cancer on the basis that the drug, *surgical procedure,*
79 *radiation, other therapy or supportive care* has not been approved by the United States Food and Drug
80 Administration for the treatment of the specific type of cancer for which the drug, *surgical procedure,*
81 *radiation, other therapy or supportive care* has been prescribed, if (i) the drug, *surgical procedure,*
82 *radiation, other therapy or supportive care* has been recognized as safe and effective for treatment of
83 that specific type of cancer in one of the standard reference compendia or (ii) *such drug, surgical*
84 *procedure, radiation, other therapy or supportive care has been approved for clinical use by one of the*
85 *National Institutes of Health, regardless of whether approved by the United States Food and Drug*
86 *Administration for the treatment of any disease or condition or for any cancer.*

87 8. Not deny coverage for any drug prescribed to treat a covered indication so long as the drug has
88 been approved by the United States Food and Drug Administration for at least one indication and the
89 drug is recognized for treatment of the covered indication in one of the standard reference compendia or
90 in substantially accepted peer-reviewed medical literature.

91 9. Include coverage for equipment, supplies and outpatient self-management training and education,
92 including medical nutrition therapy, for the treatment of insulin-dependent diabetes, insulin-using
93 diabetes, gestational diabetes and noninsulin-using diabetes if prescribed by a healthcare professional
94 legally authorized to prescribe such items under law. To qualify for coverage under this subdivision,
95 diabetes outpatient self-management training and education shall be provided by a certified, registered or
96 licensed health care professional.

97 10. Include coverage for reconstructive breast surgery. For purposes of this section, "reconstructive
98 breast surgery" means surgery performed on and after July 1, 1998, (i) coincident with a mastectomy
99 performed for breast cancer or (ii) following a mastectomy performed for breast cancer to reestablish
100 symmetry between the two breasts. For persons previously covered under the plan, there may be no
101 denial of coverage due to preexisting conditions.

102 11. Include coverage for annual pap smears.

103 12. Include coverage providing a minimum stay in the hospital of not less than forty-eight hours for
104 a patient following a radical or modified radical mastectomy and twenty-four hours of inpatient care
105 following a total mastectomy or a partial mastectomy with lymph node dissection for treatment of breast
106 cancer. Nothing in this subdivision shall be construed as requiring the provision of inpatient coverage
107 where the attending physician in consultation with the patient determines that a shorter period of
108 hospital stay is appropriate.

109 13. Include coverage (i) to persons age fifty and over and (ii) to persons age forty and over who are
110 at high risk for prostate cancer, according to the most recent published guidelines of the American
111 Cancer Society, for one PSA test in a twelve-month period and digital rectal examinations, all in
112 accordance with American Cancer Society guidelines. For the purpose of this subdivision, "PSA testing"
113 means the analysis of a blood sample to determine the level of prostate specific antigen.

114 C. Claims incurred during a fiscal year but not reported during that fiscal year shall be paid from
115 such funds as shall be appropriated by law. Appropriations, premiums and other payments shall be
116 deposited in the employee health insurance fund, from which payments for claims, premiums, cost
117 containment programs and administrative expenses shall be withdrawn from time to time. The funds of
118 the health insurance fund shall be deemed separate and independent trust funds, shall be segregated from
119 all other funds of the Commonwealth, and shall be invested and administered solely in the interests of
120 the employees and beneficiaries thereof. Neither the General Assembly nor any public officer, employee,
121 or agency shall use or authorize the use of such trust funds for any purpose other than as provided in

law for benefits, refunds, and administrative expenses, including but not limited to legislative oversight of the health insurance fund.

D. For the purposes of this section:

"Peer-reviewed medical literature" means a scientific study published only after having been critically reviewed for scientific accuracy, validity, and reliability by unbiased independent experts in a journal that has been determined by the International Committee of Medical Journal Editors to have met the Uniform Requirements for Manuscripts submitted to biomedical journals. Peer-reviewed medical literature does not include publications or supplements to publications that are sponsored to a significant extent by a pharmaceutical manufacturing company or health carrier.

"Standard reference compendia" means the American Medical Association Drug Evaluations, the American Hospital Formulary Service Drug Information, or the United States Pharmacopoeia Dispensing Information.

"State employee" means state employee as defined in § 51.1-124.3, employee as defined in § 51.1-201, the Governor, Lieutenant Governor and Attorney General, judge as defined in § 51.1-301 and judges, clerks and deputy clerks of regional juvenile and domestic relations, county juvenile and domestic relations, and district courts of the Commonwealth, interns and residents employed by the School of Medicine and Hospital of the University of Virginia, and interns, residents, and employees of the Medical College of Virginia Hospitals Authority as provided in § 23-50.16:24.

E. Provisions shall be made for retired employees to obtain coverage under the above plan. The Commonwealth may, but shall not be obligated to, pay all or any portion of the cost thereof.

F. Any self-insured group health insurance plan established by the Department of Personnel and Training which utilizes a network of preferred providers shall not exclude any physician solely on the basis of a reprimand or censure from the Board of Medicine, so long as the physician otherwise meets the plan criteria established by the Department.

§ 38.2-3407.5. Denial of benefits for certain prescription drugs and other treatments prohibited.

A. Each (i) 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, (ii) corporation providing individual or group accident and sickness subscription contracts, and (iii) 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 prescription drugs, *surgical procedures, radiation, other therapies or supportive care prescribed for the treatment of cancer*, whether on an inpatient basis, outpatient basis, or both, shall provide in each such policy, contract, plan, certificate, and evidence of coverage that such benefits will not be denied for any drug, *surgical procedure, radiation, other therapy or supportive care prescribed for the treatment of cancer*, approved by the United States Food and Drug Administration for use in the treatment of cancer on the basis that the drug, *surgical procedure, radiation, other therapy or supportive care* has not been approved by the United States Food and Drug Administration for the treatment of the specific type of cancer for which the drug, *surgical procedure, radiation, other therapy or supportive care* has been prescribed, ~~provided if~~ (i) the drug has been recognized as safe and effective for treatment of that specific type of cancer in any of the standard reference compendia or (ii) *such drug, surgical procedure, radiation, other therapy or supportive care has been approved for clinical use for the treatment of cancer by one of the National Institutes of Health, regardless of whether approved by the United States Food and Drug Administration for the treatment of any disease or condition or for any cancer.*

B. Each (i) 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, (ii) corporation providing individual or group accident and sickness subscription contracts, and (iii) 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 prescription drugs, whether on an inpatient basis, outpatient basis, or both, shall provide in each such policy, contract, plan, certificate, and evidence of coverage, that such benefits will not be denied for any drug prescribed to treat a covered indication so long as the drug has been approved by the United States Food and Drug Administration for at least one indication, and the drug is recognized for treatment of the covered indication in one of the standard reference compendia or in substantially accepted peer-reviewed medical literature.

C. For the purposes of subsections A and B:

"Peer-reviewed medical literature" means a scientific study published only after having been critically reviewed for scientific accuracy, validity, and reliability by unbiased independent experts in a journal that has been determined by the International Committee of Medical Journal Editors to have met the Uniform Requirements for Manuscripts submitted to biomedical journals. Peer-reviewed medical literature does not include publications or supplements to publications that are sponsored to a significant

183 extent by a pharmaceutical manufacturing company or health carrier.

184 "Standard reference compendia" means the American Medical Association Drug Evaluations, the
185 American Hospital Formulary Service Drug Information, or the United States Pharmacopoeia Dispensing
186 Information.

187 D. Coverage, as described in subsections A and B, includes medically necessary services associated
188 with the administration of the drug.

189 E. Subsections A and B shall not be construed to do any of the following:

190 1. Require coverage for any drug if the United States Food and Drug Administration has determined
191 its use to be contraindicated for the treatment of the specific type of cancer or indication for which the
192 drug has been prescribed;

193 2. Require coverage for experimental drugs not otherwise approved for any indication by the United
194 States Food and Drug Administration;

195 3. Alter any law with regard to provisions limiting the coverage of drugs that have not been
196 approved by the United States Food and Drug Administration;

197 4. Create, impair, alter, limit, modify, enlarge, abrogate, or prohibit reimbursement for drugs used in
198 the treatment of any other disease or condition; or

199 5. Require coverage for prescription drugs in any contract, policy or plan that does not otherwise
200 provide such coverage.

201 F. The provisions of this section shall not apply to short-term travel, or accident-only policies, or to
202 short-term nonrenewable policies of not more than six months' duration.

203 G. The provisions of subsection A are applicable to contracts, policies or plans delivered, issued for
204 delivery or renewed in this Commonwealth on and after July 1, 1994, and the provisions of subsection
205 B are applicable to contracts, policies or plans delivered, issued for delivery or renewed in this
206 Commonwealth on and after July 1, 1997.