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**HOUSE BILL NO. 434**

Offered January 10, 2018

Prefiled January 6, 2018

A *BILL to amend and reenact § 38.2-4319 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-3418.18, relating to health insurance coverage for proton therapy.*

Patrons—Yancey and Carter

Referred to Committee on Commerce and Labor

**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 a section numbered 38.2-3418.18 as follows:**

**§ 38.2-3418.18. Coverage for proton therapy.**

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 shall provide coverage as an in-network service for physician-prescribed proton therapy for the treatment of breast or prostate cancer under a hypofractionated proton therapy protocol as part of a clinical trial or registry.

**B. As used in this section:**

"CPT code" refers to the unique numerical designations established by the American Medical Association for various medical, surgical, and diagnostic services used in billing healthcare services.

"Eligible patients" refers to those patients who are eligible to participate in any hypofractionated proton therapy protocol and who would otherwise receive IMRT treatment.

"Fee schedule" means established in the most recently published Medicare physician fee schedule in effect for the Commonwealth.

"Fee schedule amount" means the dollar amount paid for CPT Code 77523 in accordance with the fee schedule.

"Hypofractionated proton therapy protocol" means one of the cancer treatment protocols described in this section that involves the delivery of fewer, larger doses of radiation with proton therapy to achieve the same curative effect as conventional radiation therapy delivered in smaller doses over an extended period of time.

"Intensity modulated radiation therapy" or "IMRT" means a type of conformal radiotherapy that delivers photon or x-ray radiation beams of different intensities from many angles to closely approximate the shape of the tumor.

"Proton therapy" means the advanced form of cancer treatment that utilizes charged particles to induce tumor cell death.

"Provider" includes any healthcare provider that provides proton therapy treatment to eligible patients under one of the hypofractionated proton therapy protocols.

"Radiation therapy" includes proton therapy, IMRT, brachytherapy, stereotactic body radiation therapy, and three-dimensional conformal radiation therapy.

"Standard IMRT protocol" for breast cancer is 33 IMRT treatments and for prostate cancer is 40 IMRT treatments.

**C. The hypofractionated proton therapy protocol for:**

1. Breast cancer shall include 20 treatments as compared to 33 treatments under the standard IMRT protocol;

2. Prostate cancer shall include 20 treatments as compared to 40 treatments under the standard IMRT protocol; and

3. Prostate cancer, breast cancer, and other indications shall include additional hypofractionated proton therapy protocols and shall be covered pursuant to this section, provided such protocols are part of a clinical trial or registry and the total cost of treatment pursuant to the protocol is less than or equal to the total cost of the corresponding IMRT treatment for the same indication.

D. The amount payable for the proton treatment delivery for the indications in subsection C shall be fixed at the following amounts so that the total cost of treatment under the hypofractionated proton therapy protocol will be equal to or less than the total cost of treatment for the corresponding standard IMRT protocol for the same indication:

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59 1. For treatments under subdivision C 1, the insurer, corporation, or health maintenance  
60 organization shall pay a fixed rate of 145.2 percent of the fee schedule amount;

61 2. For treatments under subdivision C 2, the insurer, corporation, or health maintenance  
62 organization shall pay a fixed rate of 177.9 percent of the fee schedule amount;

63 3. For treatments under subdivision C 3, the insurer, corporation, or health maintenance  
64 organization will pay a fixed percentage of the fee schedule amount, such that the total cost of patient  
65 treatment under any of the additional hypofractionated proton therapy protocols shall be equal to the  
66 total cost of treatment under the standard IMRT protocol for that indication; and

67 4. For all other CPT codes applicable to both proton therapy and IMRT, the insurer, corporation, or  
68 health maintenance organization shall pay the amount established by the Healthcare Bluebook at  
69 [healthcarebluebook.com](http://healthcarebluebook.com) as a "fair price" for such CPT code in the Commonwealth, and if the particular  
70 CPT code is not listed on such web site, 190 percent of the amount set forth in the fee schedule for  
71 such CPT code.

72 E. If this section applies to the state employee health insurance plan established under § 2.2-2818 as  
73 a result of the provisions of § 2.2-2818.2, and if the application of the percentages set forth in  
74 subdivisions D 1 through 4 would result in a total cost of hypofractionated proton therapy treatment  
75 that exceeds the total cost of IMRT treatment for insureds under the state employee health insurance  
76 plan, such percentages shall be adjusted for the state employee health insurance plan so that the cost of  
77 a course of hypofractionated proton therapy treatment is equal to the state employee health insurance  
78 plan's weighted average cost for a standard course of IMRT treatment. In order to obtain an adjustment  
79 pursuant to this section, the state employee health insurance plan shall submit a written request to the  
80 provider advising the provider of the state employee health insurance plan's aggregate cost of a  
81 standard course of IMRT treatment for the indication at issue. The provider shall adjust the percentages  
82 immediately upon receipt of the written request from the state employee health insurance program.

83 F. If the application of the percentages set forth in subdivisions D 1 through 4 would result in a  
84 total hypofractionated proton therapy treatment cost that exceeds the insurer's, corporation's, or health  
85 maintenance organization's weighted average total cost for a standard course of IMRT treatment based  
86 on their payment data for the six-month period from July 1, 2017, through December 31, 2017, such  
87 percentages shall be adjusted for that insurer, corporation, or health maintenance organization so that  
88 the total cost of a course of hypofractionated proton therapy treatment is equal to the weighted average  
89 total cost for a standard course of IMRT treatment. In the event that an insurer, corporation, or health  
90 maintenance organization seeks an adjustment of such percentages pursuant to this subsection, the  
91 insurer, corporation, or health maintenance organization shall submit data to the provider in acceptable  
92 form justifying such adjustment. A review of the data and adjustment of the percentage where  
93 appropriate shall be completed within 30 days of the submission of the data.

94 G. Adjustments to the percentages set forth in subdivisions D 1 through 4 may be made annually on  
95 March 1 based on the payer's weighted average total cost for a standard course of IMRT treatment  
96 during the preceding calendar year. In the event that an insurer, corporation, or health maintenance  
97 organization seeks an annual adjustment of the foregoing percentages pursuant to this subsection, the  
98 insurer, corporation, or health maintenance organization shall submit data in acceptable form justifying  
99 such adjustment to the provider on or before February 1 of the year in which the adjustment is sought.  
100 A review of the data and adjustment of the percentages where appropriate shall be completed on or  
101 before March 1 and shall be fixed until the subsequent adjustment date.

102 H. The benefits required by this section shall be subject to the annual deductible and coinsurance  
103 established for all other similar benefits within the insurance policy, subscription contract, or health  
104 care plan, provided the annual deductible and coinsurance for the benefits required by this section shall  
105 be no greater than the annual deductible and coinsurance established for all other similar benefits  
106 within that insurance policy, subscription contract, or health care plan.

107 I. If an insurer, corporation, or health maintenance organization shall be required to pay any more  
108 for a course of hypofractionated proton therapy than their present, weighted average payment for a  
109 course of IMRT treatment, (i) the insurer, corporation, or health maintenance organization shall pay to  
110 the provider the amount of such average payment for a course of IMRT treatment and (ii) the provider  
111 shall be permitted to bill, or otherwise make arrangements for payment by, the eligible patient for the  
112 balance due, less any copayment, deductible, or other cost-sharing payment made by the eligible patient.  
113 Such billing of the balance due shall be permitted without regard to whether the provider participates  
114 as a network provider under the insurance policy, subscription contract, or health care plan.

115 J. The requirements of this section shall apply to all insurance policies, subscription contracts, and  
116 health care plans delivered, issued for delivery, reissued, or extended in the Commonwealth on and after  
117 January 1, 2018, or at any time thereafter when any term of the policy, contract, or plan is changed or  
118 any premium adjustment is made.

119 K. This section shall not apply to short-term travel, accident-only, or limited or specified disease  
120 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 governmental plans.

**§ 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, 38.2-136, 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-316.1, 38.2-322, 38.2-325, 38.2-326, 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.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, 38.2-1306.1, Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.), 5 (§ 38.2-1322 et seq.), 5.1 (§ 38.2-1334.3 et seq.), and 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter 14, §§ 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3406.1, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through 38.2-3407.19, 38.2-3411, 38.2-3411.2, 38.2-3411.3, 38.2-3411.4, 38.2-3412.1, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.17, 38.2-3418.18, 38.2-3419.1, 38.2-3430.1 through 38.2-3454, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2, 38.2-3541.2, 38.2-3542, 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 35.1 (§ 38.2-3556 et seq.), Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) 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 (§ 38.2-4200 et seq.) except with respect to the activities of its health maintenance organization.

B. For plans administered by the Department of Medical Assistance Services that provide benefits pursuant to Title XIX or Title XXI of the Social Security Act, as amended, no provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136, 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-322, 38.2-325, 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.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, 38.2-1306.1, Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.), 5 (§ 38.2-1322 et seq.), 5.1 (§ 38.2-1334.3 et seq.), and 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter 14, §§ 38.2-3401, 38.2-3405, 38.2-3407.2 through 38.2-3407.5, 38.2-3407.6, 38.2-3407.6:1, 38.2-3407.9, 38.2-3407.9:01, and 38.2-3407.9:02, subdivisions F 1, F 2, and F 3 of § 38.2-3407.10, §§ 38.2-3407.11, 38.2-3407.11:3, 38.2-3407.13, 38.2-3407.13:1, 38.2-3407.14, 38.2-3411.2, 38.2-3418.1, 38.2-3418.2, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2, 38.2-3541.2, 38.2-3542, 38.2-3543.2, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) 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 (§ 38.2-4200 et seq.) except with respect to the activities of its health maintenance organization.

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

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

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

F. For purposes of applying this section, "insurer" when used in a section cited in subsections A and B shall be construed to mean and include "health maintenance organizations" unless the section cited clearly applies to health maintenance organizations without such construction.