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SENATE BILL NO. 907

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor
on January 29, 2018)

(Patron Prior to Substitute—Senator McClellan)

A BILL to amend and reenact § 38.2-3407.5:1 of the Code of Virginia, relating to health insurance; coverage for contraceptives.

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-3407.5:1 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-3407.5:1. Coverage for prescription contraceptives.

A. As used in this section:

"Contraceptive device" means any contraceptive device or non-drug product that has been approved by the FDA for use by women.

"Contraceptive drug" includes any drug approved by the FDA to prevent an unwanted pregnancy for use by women.

"Contraceptive procedure" means any permanent or semi-permanent procedure that prevents pregnancies in women, including tubal ligation.

"FDA" means the U.S. Food and Drug Administration.

"Religious employer" means an employer:

1. Whose purpose is the inculcation of religious values;

2. That primarily employs persons who share the religious tenets of the employer;

3. That primarily serves persons who share the religious tenets of the employer; and

4. That is a nonprofit organization under § 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code.

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 on an outpatient basis, shall offer and make available provide coverage thereunder for any prescribed (a) contraceptive drug or, (b) contraceptive device approved by the United States Food and Drug Administration for use as a contraceptive, or (c) contraceptive procedure.

~~B. No~~ C. Except as provided in subsection D, no insurer, corporation or health maintenance organization shall impose upon any person receiving prescription contraceptive benefits 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 prescription drugs, or (ii) reduction in allowable reimbursement for prescription drug benefits.

D. If the FDA has approved one or more therapeutic equivalent versions of a contraceptive drug or contraceptive device, an insurer may provide coverage for more than one contraceptive drug or contraceptive device and may impose cost-sharing requirements as long as at least one is available without cost sharing.

E. An insurer, corporation, or health maintenance organization subject to this section shall not impose any burdensome restrictions or delays on the coverage required by this section and shall provide clear information, in writing, about the contraceptive coverage included and excluded in its offered plans, available on its website and by mail at the request of a present or potential covered individual.

F. The provisions of ~~subsection A~~ this section shall not be construed to:

1. Require coverage for prescription coverage benefits in any contract, policy or plan that does not otherwise provide coverage for prescription drugs;

2. Preclude the use of closed formularies, provided, however, that such formularies shall include oral, implant and injectable contraceptive drugs, intrauterine devices and prescription barrier methods; or

3. Require coverage for experimental contraceptive drugs not approved by the United States Food and Drug Administration FDA; or

4. Apply to a grandfathered health benefit plan as defined in § 38.2-3438.

~~D. G.~~ G. An insurer, corporation, or health maintenance organization subject to this section shall apply the same procedures for requesting an exception for contraceptive drugs not otherwise covered by the contract, policy or plan that the insurer, corporation, or health maintenance organization is required to apply pursuant to 45 C.F.R. § 156.122(c) with respect to prescription drugs not otherwise covered by its contract, policy or plan.

H. The provisions of this section shall not apply to short-term travel, accident-only, limited or

60 specified disease policies, or contracts designed for issuance to persons eligible for coverage under Title
61 XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or
62 federal governmental plans, or to short-term nonrenewable policies of not more than six months'
63 duration.

64 E. ~~The provisions of this section shall be applicable to contracts, policies or plans delivered, issued~~
65 ~~for delivery or renewed in this Commonwealth on and after July 1, 1997.~~

66 I. *Notwithstanding any provision of this section to the contrary, an insurer, corporation, or health*
67 *maintenance organization may offer to a religious employer a policy, contract, or plan that does not*
68 *include coverage for contraceptive drugs, contraceptive devices, or contraceptive procedures that are*
69 *contrary to the religious employer's religious tenets only if the insurer, corporation, or health*
70 *maintenance organization notifies in writing all employees who may be covered under the policy,*
71 *contract, or plan of the drugs, contraceptive devices, or contraceptive procedures that the employer*
72 *refuses to cover for religious reasons.*

73 **2. That the provisions of § 38.2-3407.5:1 of the Code of Virginia, as it was in effect prior to the**
74 **effective date of this act, shall be applicable to contracts, policies, or plans delivered, issued for**
75 **delivery, or renewed on and after July 1, 1997, but before January 1, 2019, and the provisions of**
76 **§ 38.2-3407.5:1 of the Code of Virginia, as amended by this act, shall be applicable to contracts,**
77 **policies, or plans delivered, issued for delivery, or renewed on and after January 1, 2019.**