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SENATE BILL NO. 1185

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor on January 31, 2019)

(Patron Prior to Substitute—Senator Favola)

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.

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

"Contraceptive procedure" means any permanent or semi-permanent procedure that prevents pregnancies, such as, but not limited to, tubal ligation in women or vasectomies in men.

"Decision to opt out of providing contraceptive coverage" means a determination by an employer that it will not provide contraceptive coverage to its employees employed in the Commonwealth pursuant to the employer's lawful exercise of a right granted to the employer under federal statute, regulation, or court decision that authorizes an employer not to provide contraceptive coverage to its employees on grounds that providing contraceptive coverage is contrary to the employer's religious beliefs.

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

"Medical need" includes considerations such as severity of side effects, difference in permanence and reversibility of a contraceptive drug or device, and ability to adhere to the appropriate use of the item, as determined by the attending health care provider.

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 *contraceptive* drug ~~or~~, *contraceptive* device ~~approved by the United States Food and Drug Administration for use as a contraceptive~~, *or contraceptive procedure*.

~~B.~~ *C.* 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.

~~C.~~ *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. If a covered individual's health care provider recommends a particular contraceptive drug or contraceptive device approved by the FDA for the individual based on a determination of medical need, the insurer shall defer to the provider's determination and judgment and shall provide coverage without cost sharing for the prescribed contraceptive drug or contraceptive device.

F. 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.

G. If a covered individual's health care provider recommends a particular contraceptive procedure that is not covered by the individual's health insurance plan, based on a determination of medical need, the insurer shall defer to the provider's determination and judgment and shall provide coverage without cost sharing for the prescribed contraceptive procedure.

H. 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*

3. Require any employer who has implemented a decision to opt out of providing contraceptive coverage to provide such coverage, provided that the employer (i) includes in any description of any group health benefit plan that the employer provides or offers to its employees and prospective employees a statement that the group health benefit plan does not provide contraceptive coverage as a result of the employer's decision to opt out of providing contraceptive coverage and (ii) notifies the Commission's Bureau of Insurance, at such address as the Bureau designates for such purpose on its agency website, of its decision to opt out of providing contraceptive coverage within 30 days of the effective date of such decision.

~~D.~~ *I.* The provisions of this section shall not apply to short-term travel, accident-only, limited or specified disease 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, or to short-term nonrenewable policies of not more than six months' duration.

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

2. That the provisions of § 38.2-3407.5:1 of the Code of Virginia, as it was in effect prior to the effective date of this act, shall be applicable to contracts, policies, or plans delivered, issued for delivery, or renewed on and after July 1, 1997, but before January 1, 2020, and the provisions of § 38.2-3407.5:1 of the Code of Virginia, as amended by this act, shall be applicable to contracts, policies, or plans delivered, issued for delivery, or renewed on and after January 1, 2020.