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SENATE BILL NO. 605

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 20, 2020)

(Patrons Prior to Substitute—Senators McDougle and Boysko [SB 654])
Senate Amendments in [] - January 30, 2020

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; medicines; formula and enteral nutrition products.

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 formula and enteral nutrition products as medicine.

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, whose policy, contract, or plan, including any certificate or evidence of coverage issued in connection with such policy, contract, or plan, includes coverage for medicines shall:

1. Classify medically necessary formula and enteral nutrition products as medicine; and
2. Include coverage for medically necessary formula and enteral nutrition products on the same terms and subject to the same conditions imposed on other medicines covered under the policy, contract, or plan.

B. As used in this section:

"Inherited metabolic disorder" means an inherited enzymatic disorder caused by single gene defects involved in the metabolism of amino, organic, [~~and~~] [or] fatty acids.

"Medically necessary formula and enteral nutrition products" means any liquid or solid formulation of formula and enteral nutrition products for covered individuals requiring treatment for an inherited metabolic disorder and for which the covered individual's physician has issued a written order stating that the formula or enteral nutrition product is medically necessary and has been proven effective as a treatment regimen for the covered individual and that the formula or enteral nutrition product is a critical source of nutrition as certified by the physician by diagnosis. The medically necessary formula or enteral products do not need to be the covered individual's primary source of nutrition.

C. The coverage required by this section shall:

1. Apply to the partial or exclusive feeding of a covered individual by means of oral intake or enteral feeding by tube;

2. Include coverage for any medical equipment, supplies, and services that are required to administer the covered formula or enteral nutrition products;

3. Apply only when the formula and enteral nutrition products are (i) furnished pursuant to the prescription or order of a physician or other health care professional qualified to make such prescription or order for the management of an inherited metabolic disorder and (ii) used under medical supervision, which may include a home setting; and

4. Not apply to nutritional supplements taken electively.

D. No insurer, corporation, or health maintenance organization shall impose upon any person receiving benefits for any formula and enteral nutrition products 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 medicines or (ii) reduction in allowable reimbursement for medicine.

E. The provisions of this section shall apply to any policy, contract, or plan delivered, issued for delivery, or renewed in the Commonwealth on and after January 1, 2021.

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

§ 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,

ENGROSSED

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60 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, *and* 38.2-600 through 38.2-620,
61 Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, *and* 38.2-1306.1, Article 2
62 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, *and* Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.), 5
63 (§ 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,
64 Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), *and* 4 (§ 38.2-1446 et seq.) of Chapter 14,
65 Chapter 15 (§ 38.2-1500 et seq.), Chapter 17 (§ 38.2-1700 et seq.), §§ 38.2-1800 through 38.2-1836,
66 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
67 38.2-3407.20, 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
68 through ~~38.2-3418.17~~ 38.2-3418.18, 38.2-3419.1, *and* 38.2-3430.1 through 38.2-3454, Article 8
69 (§ 38.2-3461 et seq.) of Chapter 34, § 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of
70 § 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,
71 38.2-3540.2, 38.2-3541.2, 38.2-3542, *and* 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35,
72 Chapter 35.1 (§ 38.2-3556 et seq.), Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.),
73 *and* Chapter 58 (§ 38.2-5800 et seq.) shall be applicable to any health maintenance organization granted
74 a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed
75 *and* regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with
76 respect to the activities of its health maintenance organization.

77 B. For plans administered by the Department of Medical Assistance Services that provide benefits
78 pursuant to Title XIX or Title XXI of the Social Security Act, as amended, no provisions of this title
79 except this chapter *and*, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136,
80 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,
81 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, *and*
82 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,
83 *and* 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
84 (§ 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
85 seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), *and* 4 (§ 38.2-1446 et seq.)
86 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,
87 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,
88 §§ 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,
89 38.2-3418.2, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, *and* 38.2-3500, subdivision 13 of § 38.2-3503,
90 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,
91 38.2-3540.1, 38.2-3540.2, 38.2-3541.2, 38.2-3542, *and* 38.2-3543.2, Chapter 52 (§ 38.2-5200 et seq.),
92 Chapter 55 (§ 38.2-5500 et seq.), *and* Chapter 58 (§ 38.2-5800 et seq.) shall be applicable to any health
93 maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer
94 or health services plan licensed *and* regulated in conformance with the insurance laws or Chapter 42
95 (§ 38.2-4200 et seq.) except with respect to the activities of its health maintenance organization.

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

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

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

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