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SENATE BILL NO. 1112

Offered January 11, 2023

Prefiled January 10, 2023

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

Patrons—Hashmi, Barker, Bell, Boysko, Deeds, Ebbin, Edwards, Favola, Howell, Lewis, Locke, Lucas, Marsden, Mason, McClellan, McPike, Rouse, Saslaw and Surovell; Delegates: Kory, Seibold and Simonds

Referred to Committee on Commerce and Labor

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 device or non-drug product that has been approved by the FDA to prevent pregnancy.

"Contraceptive drug" means any drug approved by the FDA to prevent pregnancy.

"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 contraceptive device, or an ability to adhere to the appropriate use of the item, as determined by the attending health care provider.

"Therapeutically equivalent version" means a drug product that can be substituted with the full expectation that the substituted product will produce the same clinical effect and safety profile as the prescribed product and that meets the criteria for therapeutic equivalence as determined by the FDA.

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. If the FDA has approved one or more therapeutic equivalent versions of a prescription contraceptive drug or contraceptive device, an insurer shall provide coverage of either (i) the original prescription contraceptive drug or contraceptive device or (ii) at least one therapeutically equivalent version of the prescription contraceptive drug or contraceptive device, as determined by the FDA.

B. C. 1. 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. Notwithstanding the provisions of subsection C, an insurer, corporation, or health maintenance organization that provides coverage for more than one therapeutic equivalent version of a contraceptive drug or contraceptive device may impose cost-sharing requirements on any such version, provided that at least one therapeutically equivalent version of the contraceptive drug or contraceptive device is available without cost-sharing. However, if a covered individual's health care provider recommends a particular contraceptive drug or contraceptive device for the individual based on a determination of medical need, it shall be insufficient for the insurer, corporation, or health maintenance organization to provide coverage of a therapeutically equivalent version of the recommended prescription contraceptive drug or contraceptive device without cost sharing, and the insurer, corporation, or health maintenance organization shall defer to the provider's determination and shall provide coverage for the recommended prescribed contraceptive drug or contraceptive device without cost-sharing.

E. An insurer, corporation, or health maintenance organization covered by 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 from its offered plans available on its website and by mail at the request of a current or potential covered individual.

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

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

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

61 3. Require coverage for experimental ~~contraceptive drugs~~ *contraceptives* not approved by the United
62 States Food and Drug Administration *FDA*.

63 ~~D.~~ G. The provisions of this section shall not apply to short-term travel, accident-only, limited or
64 specified disease policies, or contracts designed for issuance to persons eligible for coverage under Title
65 XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or
66 federal governmental plans, or to short-term nonrenewable policies of not more than six months'
67 duration.

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

70 **2. That the provisions of this act shall be applicable to contracts, policies, or health benefit plans**
71 **delivered, issued for delivery, or renewed in the Commonwealth on and after January 1, 2024.**