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SENATE BILL NO. 238

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on January 31, 2024)

(Patron Prior to Substitute—Senator Hashmi)

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

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 contraceptives.

A. ~~Each~~ As used in this section:

"Contraceptive device" means any device or non-drug product that has been approved as a contraceptive by the FDA.

"Contraceptive drug" means any drug approved as a contraceptive by the FDA.

"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 such drug or device, as determined by an attending health care provider.

"Therapeutically equivalent version" means a drug or device that has the same clinical effect and safety profile as another drug or device and that meets the criteria for therapeutic equivalence as determined by the FDA.

B. Notwithstanding the provisions of § 38.2-3419, 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 drug or device approved by the United States Food and Drug Administration for use as a contraceptive drugs and contraceptive devices in accordance with §§ 38.2-3442 and 38.2-3438, including for over-the-counter use.

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.

D. Notwithstanding the provisions of subsection C, an insurer, corporation, or health maintenance organization that provides coverage for more than one therapeutically 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 such 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 such individual based on a determination of medical need, an insurer, corporation, or health maintenance organization shall provide coverage for the recommended contraceptive drug or contraceptive device without cost-sharing.

E. An insurer, corporation, or health maintenance organization to which the provisions of this section apply shall not impose any burdensome restrictions or delays on the coverage required by this section and shall provide clear, written, and complete information in a single location 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.

C. 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; or

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 contraceptives not approved by the United States Food and Drug Administration FDA.

D. G. 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

60 federal governmental plans, or to short-term nonrenewable policies of not more than six months'
61 duration.
62 E. The provisions of this section shall be applicable to contracts, policies or plans delivered, issued
63 for delivery or renewed in this Commonwealth on and after July 1, 1997.