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HOUSE BILL NO. 1609

Offered January 13, 2025

Prefiled January 3, 2025

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 38.2-3418.22, relating to health insurance; coverage option for fertility services; essential health benefits benchmark plan.

Patrons—Helmer, Anthony, Cole, LeVere Bolling and Thomas

Referred to Committee on Labor and Commerce

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 38.2-3418.22 as follows:

§ 38.2-3418.22. Coverage for fertility services.

A. Notwithstanding the provisions of § 38.2-3419 or subdivision A 1 of § 38.2-6506, 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 shall offer and make available coverage for (i) diagnosis and treatment of infertility, (ii) standard fertility preservation procedures, and (iii) procedures described in subsection E.

B. As used in this section:

"Covered individual" means a policyholder, subscriber, enrollee, participant, or other individual covered by an insurance policy, subscription contract, or health care plan described in subsection A.

"Diagnosis and treatment of infertility" means the recommended procedures and medications at the direction of a licensed physician that are consistent with established, published, or approved medical practices or professional guidelines published by the American College of Obstetricians and Gynecologists or the American Society for Reproductive Medicine.

"Embryo" has the same meaning as provided in § 20-156.

"Embryo transfer" has the same meaning as provided in § 20-156.

"Infertility" means a disease, condition, or status characterized by (i) the failure to establish a pregnancy or to carry a pregnancy to live birth after regular, unprotected sexual intercourse; (ii) a person's inability to reproduce either as a single individual or with such person's partner without medical intervention; or (iii) a licensed physician's findings based on a patient's medical, sexual, and reproductive history; age; physical findings; or diagnostic testing.

"In vitro fertilization" has the same meaning as provided in § 20-156.

"Regular, unprotected sexual intercourse" means at least 12 months of unprotected sexual intercourse for a woman younger than 35 years of age or at least six months of unprotected sexual intercourse for a woman 35 years of age or older. Pregnancy resulting in a miscarriage shall not restart the 12-month or six-month clock to qualify as having infertility.

"Standard fertility preservation procedures" means procedures to preserve fertility that are consistent with established medical practices and professional guidelines published by the American Society for Reproductive Medicine or the American Society of Clinical Oncology for a person who has a medical condition or is expected to undergo medication therapy, surgery, radiation, chemotherapy, or other medical treatment that is recognized by medical professionals to cause a risk of impairment to fertility.

C. An insurer shall not impose (i) any exclusions, limitations, or other restrictions on coverage of fertility medications that are different from those imposed on any other prescription medication; (ii) any exclusions, limitations, or other restrictions on coverage of any fertility services based on a covered individual's participation in fertility services provided by or to a third party; or (iii) deductibles, copayments, coinsurance, benefit maximums, waiting periods, or any other limitations on coverage for the diagnosis and treatment of infertility and standard fertility preservation procedures, except as provided in this section, that are different from those imposed upon benefits for services not related to infertility.

D. Such coverage shall include four completed oocyte retrievals with unlimited embryo transfers in accordance with the guidelines of the American Society for Reproductive Medicine, using single embryo transfer when recommended and medically appropriate and storage of gametes and tissue for fertility preservation purposes.

E. Such coverage shall also include coverage for a covered individual, regardless of the covered individual's fertility status, to receive an embryo transfer of an embryo that was created as a result of another

individual's treatment for infertility and donated to the covered individual.

F. Such coverage shall include coverage for in vitro fertilization, provided that the procedures are performed at medical facilities that conform to the American College of Obstetricians and Gynecologists guidelines for in vitro fertilization clinics or to the American Society for Reproductive Medicine minimal standards for programs of in vitro fertilization.

G. The provisions of this section shall apply to all insurance policies, subscription contracts, and health care plans delivered, issued for delivery, reissued, extended, or renewed in the Commonwealth on or after January 1, 2026, and to all such policies, contracts, or plans to which a term is changed or any premium adjustment is made on or after such date.

H. The provisions of this section shall not apply to (i) short-term travel, accident-only, or limited or specified disease policies; (ii) policies, contracts, or plans issued in the individual market or small group markets; (iii) 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 (iv) 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, 38.2-316.2, 38.2-322, 38.2-325, 38.2-326, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-629, 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 (§ 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 (§ 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, Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter 14, Chapter 15 (§ 38.2-1500 et seq.), Chapter 17 (§ 38.2-1700 et seq.), §§ 38.2-1800 through 38.2-1836, 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 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 through 38.2-3418.19, 38.2-3418.21, *38.2-3418.22*, 38.2-3419.1, and 38.2-3430.1 through 38.2-3454, Articles 8 (§ 38.2-3461 et seq.) and 9 (§ 38.2-3465 et seq.) of Chapter 34, § 38.2-3500, subdivision 13 of § 38.2-3503, 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, 38.2-3540.1, 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, Chapter 35.1 (§ 38.2-3556 et seq.), § 38.2-3610, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.), Chapter 65 (§ 38.2-6500 et seq.), and Chapter 66 (§ 38.2-6600 et seq.) shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the activities of its health maintenance organization.

B. For plans administered by the Department of Medical Assistance Services that provide benefits pursuant to Title XIX or Title XXI of the Social Security Act, as amended, 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, 38.2-322, 38.2-325, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, and 38.2-600 through 38.2-629, 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 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 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 seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) 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, 38.2-3407.9, 38.2-3407.9:01, and 38.2-3407.9:02, subsection E of § 38.2-3407.10, §§ 38.2-3407.10:1, 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, 38.2-3418.2, 38.2-3418.16, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, and 38.2-3500, subdivision 13 of § 38.2-3503, 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, 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.), Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.), Chapter 65 (§ 38.2-6500 et seq.), and Chapter 66 (§ 38.2-6600 et seq.) shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the activities of its health maintenance organization.

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

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

E. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health

maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to offer coverage to or accept applications from an employee who does not reside within the health maintenance organization's service area.

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

2. That the provisions of the first enactment of this act shall not become effective unless reenacted by the 2026 Session of the General Assembly.

3. That notwithstanding subsection D of § 30-343.1 of the Code of Virginia, the Health Insurance Reform Commission (the Commission) shall consider coverage for (i) diagnosis and treatment of infertility; (ii) standard fertility preservation procedures; and (iii) procedures described in subsection E of § 38.2-3418.22 of the Code of Virginia, as created by this act, in its 2025 review of the essential health benefits benchmark plan pursuant to § 30-343.1 of the Code of Virginia. The Commission shall include such coverage in its recommendation to the General Assembly for a new essential health benefits benchmark plan unless the Commission identifies a compelling reason to exclude such coverage.