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SENATE BILL NO. 361
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on _____)
(Patron Prior to Substitute—Senator Carroll Foy)

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

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

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

"Therapeutically equivalent version" means a drug, device, or product that has the same clinical effect and safety profile as another drug, device, or product and meets the criteria for therapeutic equivalence as determined by the U.S. Food and Drug Administration.

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, or product approved for use as a contraceptive by the United States U.S. Food and Drug Administration for use as a contraceptive, including those available over-the-counter in accordance with §§ 38.2-3442 and 38.2-3438.

~~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.*

33 ~~C. The~~ *D. Notwithstanding the provisions of subsection A C, an insurer, corporation, or health*
34 *maintenance organization that provides coverage for more than one therapeutically equivalent version of a*
35 *drug, device, or product approved for use as a contraceptive by the U.S. Food and Drug Administration may*
36 *impose cost-sharing requirements on any such version, provided that at least one therapeutically equivalent*
37 *version of such contraceptive drug, device, or product is available without cost-sharing. However, if a*
38 *covered individual's health care provider recommends a particular contraceptive drug, device, or product for*
39 *such individual based on a determination of medical need, an insurer, corporation, or health maintenance*
40 *organization shall provide coverage for the recommended contraceptive drug, product, or device without*
41 *cost-sharing.*

42 *E. Each insurer, corporation, or health maintenance organization subject to the provisions of this section:*

43 *1. Shall not impose any burdensome restriction or delay on the coverage required by this section; or*

44 *2. Shall provide complete and clearly written information in a single location about the coverage required*
45 *pursuant to this section and included or excluded in each of the offered plans available on its website and by*
46 *mail at the request of a covered individual or an individual seeking coverage.*

47 *F. Each insurer, corporation, or health maintenance organization subject to the provisions of this section*
48 *shall provide complete and clearly written information at a single location about the contraceptive coverage*
49 *included under such policy, contract, or plan.*

50 *G. No provision of this section shall not be construed to:*

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

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

55 *3. Require coverage for experimental contraceptive drugs, devices, or products not approved by the*
56 *United States U.S. Food and Drug Administration.*

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

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

63 **2. That the provisions of this act shall apply only to contracts, policies, or plans delivered, issued for**

64 delivery, or renewed in the Commonwealth on or after January 1, 2027.