

HOUSE BILL NO. 480

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Commerce and Energy

on _____)

(Patron Prior to Substitute--Delegate Helmer)

A BILL to amend and reenact § 38.2-4319, as it is currently effective and as it may become effective, of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-3418.21, relating to health insurance; coverage for the diagnosis of and treatment for infertility, standard fertility preservation services, and certain other procedures.

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-4319, as it is currently effective and as it may become effective, of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-3418.21 as follows:

§ 38.2-3418.21. Coverage for fertility services.

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 shall provide coverage under any such policy, contract, or plan 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

27 practices or professional guidelines published by the American College of Obstetricians and
28 Gynecologists or the American Society for Reproductive Medicine.

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

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

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

36 "Regular, unprotected sexual intercourse" means no more than 12 months of unprotected sexual
37 intercourse for a woman less than 35 years of age, or no more than six months of unprotected sexual
38 intercourse for a woman 35 years of age or older. Pregnancy resulting in a miscarriage shall not restart the
39 12-month or six-month clock to qualify as having infertility.

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

46 C. No insurance policy, subscription contract, or health care plan shall impose (i) any exclusions,
47 limitations, or other restrictions on coverage of fertility medications that are different from those imposed
48 on any other prescription medication; (ii) any exclusions, limitations, or other restrictions on coverage of
49 any fertility services based on a covered individual's participation in fertility services provided by or to a
50 third party; or (iii) deductibles, copayments, coinsurance, benefit maximums, waiting periods, or any other
51 limitations on coverage for the diagnosis and treatment of infertility and standard fertility preservation
52 procedures, except as provided in this section, that are different from those imposed upon benefits for
53 services not related to infertility.

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

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

61 F. The provisions of this section shall apply to all insurance policies, subscription contracts, and
62 health care plans delivered, issued for delivery, reissued, extended, or renewed in the Commonwealth on
63 or after January 1, 2023, and to all such policies, contracts, or plans to which a term is changed or any
64 premium adjustment is made on or after such date.

65 G. The provisions of this section shall not apply to (i) short-term travel, accident-only, or limited
66 or specified disease policies; (ii) policies, contracts, or plans issued in the individual market or small group
67 markets; (iii) contracts designed for issuance to persons eligible for coverage under Title XVIII of the
68 Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental
69 plans; or (iv) short-term nonrenewable policies of not more than six months' duration.

70 **§ 38.2-4319. (Contingent expiration date) Statutory construction and relationship to other**
71 **laws.**

72 A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this
73 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
74 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,
75 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
76 (§ 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-
77 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-
78 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 (§
79 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-
80 1500 et seq.), Chapter 17 (§ 38.2-1700 et seq.), §§ 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405,

81 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-
82 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-
83 3418.19, 38.2-3418.21, 38.2-3419.1, and 38.2-3430.1 through 38.2-3454, Articles 8 (§ 38.2-3461 et seq.)
84 and 9 (§ 38.2-3465 et seq.) of Chapter 34, § 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of §
85 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-
86 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
87 35.1 (§ 38.2-3556 et seq.), § 38.2-3610, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.),
88 Chapter 58 (§ 38.2-5800 et seq.) and Chapter 65 (§ 38.2-6500 et seq.) shall be applicable to any health
89 maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer
90 or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§
91 38.2-4200 et seq.) except with respect to the activities of its health maintenance organization.

92 B. For plans administered by the Department of Medical Assistance Services that provide benefits
93 pursuant to Title XIX or Title XXI of the Social Security Act, as amended, no provisions of this title
94 except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136, 38.2-
95 200, 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,
96 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
97 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-
98 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-
99 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
100 Chapter 13, Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter
101 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,
102 38.2-3407.9:01, and 38.2-3407.9:02, subdivisions F 1, 2, and 3 of § 38.2-3407.10, §§ 38.2-3407.10:1,
103 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,
104 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
105 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-
106 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 (§
107 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.), and Chapter 65 (§

108 38.2-6500 et seq.) shall be applicable to any health maintenance organization granted a license under this
109 chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in
110 conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the
111 activities of its health maintenance organization.

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

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

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

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

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135 1500 et seq.), Chapter 17 (§ 38.2-1700 et seq.), §§ 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405,
136 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-
137 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-
138 3418.19, 38.2-3418.21, 38.2-3419.1, and 38.2-3430.1 through 38.2-3454, Articles 8 (§ 38.2-3461 et seq.)
139 and 9 (§ 38.2-3465 et seq.) of Chapter 34, § 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of §
140 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-
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158 38.2-3407.9:01, and 38.2-3407.9:02, subdivisions F 1, 2, and 3 of § 38.2-3407.10, §§ 38.2-3407.10:1,
159 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,
160 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
161 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-

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177 maintenance organization's service area.

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179 and B shall be construed to mean and include "health maintenance organizations" unless the section cited
180 clearly applies to health maintenance organizations without such construction.

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