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SENATE BILL NO. 321

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend and reenact § 38.2-3418.17 of the Code of Virginia, relating to health insurance; coverage for autism spectrum disorder; definition.*

Patron—Vogel

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-3418.17 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-3418.17. Coverage for autism spectrum disorder.

A. Notwithstanding the provisions of § 38.2-3419 and any other provision of law, each insurer proposing to issue accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each corporation providing accident and sickness subscription contracts; and each health maintenance organization providing a health care plan for health care services shall, as provided in this section, provide coverage for the diagnosis of autism spectrum disorder and the treatment of autism spectrum disorder, in individuals (i) from January 1, 2012, until January 1, 2016, from age two years through age six years; (ii) from January 1, 2016, until January 1, 2020, from age two years through age 10 years; and (iii) from and after January 1, 2020, of any age, subject to the annual maximum benefit limitation set forth in subsection K and to the provisions of subsection G. If an individual who is being treated for autism spectrum disorder becomes older than the applicable maximum age set forth in the preceding sentence and continues to need treatment, this section does not preclude coverage of treatment and services. In addition to the requirements imposed on health insurance issuers by § 38.2-3436, an insurer shall not terminate coverage or refuse to deliver, issue, amend, adjust, or renew coverage of an individual solely because the individual is diagnosed with autism spectrum disorder or has received treatment for autism spectrum disorder.

B. For purposes of this section:

"Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

"Autism spectrum disorder" means any pervasive developmental disorder, ~~including (i) autistic disorder, (ii) Asperger's Syndrome, (iii) Rett syndrome, (iv) childhood disintegrative disorder, or (v) Pervasive Developmental Disorder — Not Otherwise Specified, or autism spectrum disorder,~~ as defined in the most recent edition ~~or the most recent edition at the time of diagnosis~~ of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

"Behavioral health treatment" means professional, counseling, and guidance services and treatment programs that are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual.

"Diagnosis of autism spectrum disorder" means medically necessary assessments, evaluations, or tests to diagnose whether an individual has an autism spectrum disorder.

"Medically necessary" means *in accordance with the generally accepted standards of mental disorder or condition care and clinically appropriate in terms of type, frequency, site, and duration*, based upon evidence and reasonably expected to do any of the following: (i) prevent the onset of an illness, condition, injury, or disability; (ii) reduce or ameliorate the physical, mental, or developmental effects of an illness, condition, injury, or disability; or (iii) assist to achieve or maintain maximum functional capacity in performing daily activities, taking into account both the functional capacity of the individual and the functional capacities that are appropriate for individuals of the same age.

"Pharmacy care" means medications prescribed by a licensed physician and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

"Psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.

"Psychological care" means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices.

"Therapeutic care" means services provided by licensed or certified speech therapists, occupational therapists, physical therapists, or clinical social workers.

"Treatment for autism spectrum disorder" shall be identified in a treatment plan and includes the

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59 following care prescribed or ordered for an individual diagnosed with autism spectrum disorder by a
60 licensed physician or a licensed psychologist who determines the care to be medically necessary: (i)
61 behavioral health treatment, (ii) pharmacy care, (iii) psychiatric care, (iv) psychological care, (v)
62 therapeutic care, and (vi) applied behavior analysis when provided or supervised by a board certified
63 behavior analyst who shall be licensed by the Board of Medicine. The prescribing practitioner shall be
64 independent of the provider of applied behavior analysis.

65 "Treatment plan" means a plan for the treatment of autism spectrum disorder developed by a licensed
66 physician or a licensed psychologist pursuant to a comprehensive evaluation or reevaluation performed
67 in a manner consistent with the most recent clinical report or recommendation of the American
68 Academy of Pediatrics or the American Academy of Child and Adolescent Psychiatry.

69 C. Except for inpatient services, if an individual is receiving treatment for an autism spectrum
70 disorder, an insurer, corporation, or health maintenance organization shall have the right to request a
71 review of that treatment, including an independent review, not more than once every 12 months unless
72 the insurer, corporation, or health maintenance organization and the individual's licensed physician or
73 licensed psychologist agree that a more frequent review is necessary. The cost of obtaining any review,
74 including an independent review, shall be covered under the policy, contract, or plan.

75 D. Coverage under this section will not be subject to any visit limits, and shall be neither different
76 nor separate from coverage for any other illness, condition, or disorder for purposes of determining
77 deductibles, lifetime dollar limits, copayment and coinsurance factors, and benefit year maximum for
78 deductibles and copayment and coinsurance factors.

79 E. Nothing shall preclude the undertaking of usual and customary procedures, including prior
80 authorization, to determine the appropriateness of, and medical necessity for, treatment of autism
81 spectrum disorder under this section, provided that all such appropriateness and medical necessity
82 determinations are made in the same manner as those determinations are made for the treatment of any
83 other illness, condition, or disorder covered by such policy, contract, or plan.

84 F. The provisions of this section shall not apply to (i) short-term travel, accident only, limited, or
85 specified disease policies; (ii) short-term nonrenewable policies of not more than six months' duration; or
86 (iii) policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the
87 Social Security Act, known as Medicare, or any other similar coverage under state or federal
88 governmental plans.

89 G. The requirements of this section requiring that coverage be provided with regard to individuals
90 from age two years through age six years shall apply to all insurance policies, subscription contracts,
91 and health care plans delivered, issued for delivery, reissued, or extended on or after January 1, 2012,
92 but prior to January 1, 2016; the requirements of this section requiring that coverage be provided with
93 regard to individuals from age two years through age 10 years shall apply to all insurance policies,
94 subscription contracts, and health care plans delivered, issued for delivery, reissued, or extended on or
95 after January 1, 2016, but prior to January 1, 2020; the requirements of this section requiring that
96 coverage be provided with regard to individuals of any age shall apply to all insurance policies,
97 subscription contracts, and health care plans delivered, issued for delivery, reissued, or extended on or
98 after January 1, 2020, and to all such policies, contracts, or plans to which a term is changed or any
99 premium adjustment is made on or after such date; and the requirements of this section requiring that
100 coverage be provided by policies, contracts, or plans issued in the individual market or small group
101 markets shall apply to all insurance policies, subscription contracts, and health care plans in the
102 individual and small group markets delivered, issued for delivery, reissued, or extended on or after
103 January 1, 2021, and to all such policies, contracts, or plans to which a term is changed or any premium
104 adjustment is made on or after such date.

105 H. Any coverage required pursuant to this section shall be in addition to the coverage required by
106 § 38.2-3418.5 and other provisions of law. This section shall not be construed as diminishing any
107 coverage required by § 38.2-3412.1. This section shall not be construed as affecting any obligation to
108 provide services to an individual under an individualized family service plan, an individualized education
109 program, or an individualized service plan.

110 I. Pursuant to the provisions of § 2.2-2818.2, this section shall apply to health coverage offered to
111 state employees pursuant to § 2.2-2818 and to health insurance coverage offered to employees of local
112 governments, local officers, teachers, and retirees, and the dependents of such employees, teachers, and
113 retirees pursuant to § 2.2-1204.

114 J. Notwithstanding any provision of this section to the contrary:

115 1. An insurer, corporation, or health maintenance organization, or a governmental entity providing
116 coverage for such treatment pursuant to subsection I, is exempt from providing coverage for behavioral
117 health treatment required under this section and not covered by the insurer, corporation, health
118 maintenance organization, or governmental entity providing coverage for such treatment pursuant to
119 subsection I as of December 31, 2011, if:

120 a. An actuary, affiliated with the insurer, corporation, or health maintenance organization, who is a

121 member of the American Academy of Actuaries and meets the American Academy of Actuaries'
122 professional qualification standards for rendering an actuarial opinion related to health insurance rate
123 making, certifies in writing to the Commissioner of Insurance that:

124 (1) Based on an analysis to be completed no more frequently than one time per year by each insurer,
125 corporation, or health maintenance organization, or such governmental entity, for the most recent
126 experience period of at least one year's duration, the costs associated with coverage of behavioral health
127 treatment required under this section, and not covered as of December 31, 2011, exceeded one percent
128 of the premiums charged over the experience period by the insurer, corporation, or health maintenance
129 organization; and

130 (2) Those costs solely would lead to an increase in average premiums charged of more than one
131 percent for all insurance policies, subscription contracts, or health care plans commencing on inception
132 or the next renewal date, based on the premium rating methodology and practices the insurer,
133 corporation, or health maintenance organization, or such governmental entity, employs; and

134 b. The Commissioner approves the certification of the actuary;

135 2. An exemption allowed under subdivision 1 shall apply for a one-year coverage period following
136 inception or next renewal date of all insurance policies, subscription contracts, or health care plans
137 issued or renewed during the one-year period following the date of the exemption, after which the
138 insurer, corporation, or health maintenance organization, or such governmental entity, shall again provide
139 coverage for behavioral health treatment required under this section;

140 3. An insurer, corporation, or health maintenance organization, or such governmental entity, may
141 claim an exemption for a subsequent year, but only if the conditions specified in subdivision 1 again are
142 met; and

143 4. Notwithstanding the exemption allowed under subdivision 1, an insurer, corporation, or health
144 maintenance organization, or such a governmental entity, may elect to continue to provide coverage for
145 behavioral health treatment required under this section.

146 K. Coverage for applied behavior analysis under this section will be subject to an annual maximum
147 benefit of \$35,000, unless the insurer, corporation, or health maintenance organization elects to provide
148 coverage in a greater amount.

149 L. As of January 1, 2014, to the extent that this section requires benefits that exceed the essential
150 health benefits specified under § 1302(b) of the federal Patient Protection and Affordable Care Act
151 (H.R. 3590), as amended (the ACA), the specific benefits that exceed the specified essential health
152 benefits shall not be required of a qualified health plan when the plan is offered in the Commonwealth
153 by a health carrier through a health benefit exchange established under § 1311 of the ACA. Nothing in
154 this subsection shall nullify application of this section to plans offered outside such an exchange.