SENATE BILL NO. 499

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health

on _____)

(Patron Prior to Substitute--Senator Carroll Foy)

A BILL to amend and reenact §§ 32.1-325 and 38.2-4319 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 5 of Title 32.1 an article numbered 9, consisting of sections numbered 32.1-162.15:12 through 32.1-162.15:23, and by adding a section numbered 38.2-3418.22, relating to donor human milk banks; health insurance; coverage for donor human milk.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 5 of Title 32.1 an article numbered 9, consisting of sections numbered 32.1-162.15:12 through 32.1-162.15:23, and by adding a section numbered 38.2-3418.22 as follows:

Article 9.

Donor Human Milk Banks.

§ 32.1-162.15:12. Definitions.

For the purposes of this article, unless the context requires a different meaning:

"Collect" means to obtain human breast milk from a donor for the purpose of selling or distributing donor human milk or human milk-derived products to children other than the collector's own child.

"Donor human milk bank" means a person that (i) collects, pasteurizes, or stores donor human milk and human milk-derived products for children other than the donor's own child or (ii) sells or distributes such milk or products to children other than the donor's own child based on a health care provider's order or prescription. "Donor human milk bank" does not include any person expressing human milk and human milk-derived products and storing such milk or products at her residence for the purposes of donating such milk or products to a donor human milk bank licensed pursuant to this article.

"Express" means removal of human breast milk from the breast other than when a baby is nursing, to include hand expression and the use of manual or electric pump machines.

"Purchaser" means any person who buys or is supplied donor human milk by a licensed donor human milk bank.

"Store" means holding or freezing donor human breast milk in connection with collection or pasteurization prior to sale or distribution.

§ 32.1-162.15:13. Donor human milk banks; license required; penalty.

A. No person shall own, establish, conduct, maintain, manage, or operate a donor human milk bank without first obtaining a license issued by the State Health Commissioner, which may be renewed annually. The requirement to obtain a license from the Commissioner shall apply to any donor human milk bank doing business in the Commonwealth, except as provided in subsection F.

B. The Board shall promulgate regulations that require any person that collects, pasteurizes, stores, sells, or distributes donor human milk and human milk-derived products for the purposes of donor human milk banking to obtain a license from the Commissioner. Such regulations shall be consistent with the U.S. Food and Drug Administration and Centers for Disease Control and Prevention guidance and regulations for safe human milk banking.

C. Any person establishing or operating a donor human milk bank that is not licensed as required by this article is guilty of a Class 6 felony.

D. No license issued under this article shall be assignable or transferable.

E. The Commissioner shall have the authority to enter into licensure recognition agreements with other states that license donor human milk banks to facilitate interstate operation of donor human milk banks with the goal of improving access to pasteurized donor human milk and human milk-derived products, provided that the Commissioner determines the donor human milk bank licensing standards and requirements of the other state are substantially equivalent to those established pursuant to this article.

F. A donor human milk bank that is actively licensed in good standing in another state that has entered into a licensure recognition agreement pursuant to subsection E is not subject to the provisions of this article.

§ 32.1-162.15:14. Application fees; use of fees.

A. The Board is authorized to promulgate regulations and schedules for fees to be charged for the operation of the donor human milk bank licensure and inspection program.

B. All fees received under the provisions of this article shall be paid into a special fund of the Department and appropriated to the Department solely for the operation of the donor human milk bank licensure and inspection program. Any surplus of fees above actual program operating costs maintained in the nonreverting special fund in any state fiscal year shall be applied to the future program operating costs in the following state fiscal year.

§ 32.1-162.15:15. Regulations.

A. The Board shall promulgate regulations that require any person that collects, pasteurizes, stores, sells, or distributes donor human milk and human milk-derived products for the purposes of donor human milk banking to obtain a license from the Commissioner. Such regulations shall be in substantial conformity to the standards of health, hygiene, sanitation, construction, and safety as established and recognized by medical and health care professionals and by specialists in matters of public health and safety, including the U.S. Food and Drug Administration and Centers for Disease Control and Prevention guidance and regulations for safe human milk banking.

B. The Board shall promulgate regulations for the licensure of donor human milk banks, which shall include (i) a process for licensure and renewal of a license as a donor human milk bank, (ii) appropriate fees for licensure and renewal of a license as a donor human milk bank, (iii) standards and requirements for donor human milk banks to protect the health and safety of the public and ensure the quality of donor human milk and human milk-derived products, (iv) provisions for inspections of donor human milk banks, and (v) provisions for revocation or denial of a license to operate a donor human milk bank.

C. The Board shall also promulgate regulations that prohibit the collection, storage, sale, distribution, or pasteurizing of any donor human milk and human milk-derived products for the purposes of donor human milk banking that do not meet the licensing standards and requirements for donor human milk banks that operate or do business in the Commonwealth.

§ 32.1-162.15:16. Inspections and interviews.

A. Applicants for licensure and licensees shall at all times afford the Commissioner or his representatives reasonable opportunity to inspect all of their facilities, books, and records, and to interview their agents and employees and any person participating in such donor human milk banks or under their custody, control, direction, or supervision. Interviews conducted pursuant to this section with persons participating in a donor human milk bank operated by or under the custody, control, direction, or supervision of an applicant for licensure or a licensee shall be (i) authorized by the person to be interviewed or his legally authorized representative and (ii) limited to discussion of issues related to the applicant's or licensee's compliance with applicable laws and regulations.

B. The Commissioner shall cause every licensed donor human milk bank to be subject to an unannounced inspection periodically, but not less often than biennially, in accordance with the provisions of this article and regulations of the Board.

C. The activities, services, and facilities of each applicant for renewal of the applicant's license as a donor human milk bank may be subject to an inspection or examination by the Commissioner to determine if the applicant is in compliance with current regulations of the Board.

D. For any donor human milk bank, the Commissioner may authorize such other announced or unannounced inspections as the Commissioner considers appropriate.

§ 32.1-162.15:17. Records and reports.

Every donor human milk bank shall keep such records and make such reports to the Commissioner as the Board may require by regulation. The forms to be used in the making of such reports shall be prescribed and furnished by the Commissioner.

§ 32.1-162.15:18. Confidentiality of complainant's identity.

Whenever the Department conducts inspections and investigations in response to complaints received from the public, the identity of the complainant and the identity of any child or patient who is the subject of the complaint, or identified therein, shall be confidential and shall not be open to inspection by members of the public. Identities of the complainant and child or patient who is the subject of the complaint shall be revealed only if a court order so requires. Nothing contained herein shall prevent the

Department, in its discretion, from disclosing to the donor human milk bank the nature of the complaint or the identity of the child or patient who is the subject of the complaint. Nothing contained herein shall prevent the Department or its employees from making reports under Chapter 15 (§ 63.2-1500 et seq.) or Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2. If the Department intends to rely, in whole or in part, on any statements made by the complainant at any administrative proceeding brought against the donor human milk bank, the Department shall disclose the identity of the complainant to the donor human milk bank a reasonable time in advance of such proceeding.

§ 32.1-162.15:19. Retaliation or discrimination against complainants.

No donor human milk bank may retaliate or discriminate in any manner against any person who (i) in good faith complains or provides information to, or otherwise cooperates with, the Department or any other agency of government or any person or entity operating under contract with an agency of government having responsibility for protecting the rights of children or patients; (ii) attempts to assert any right protected by state or federal law; or (iii) assists any person in asserting such right.

§ 32.1-162.15:20. Disciplinary action; civil penalty.

A. The Commissioner may impose disciplinary action (i) for violation of any of the provisions of this article or any regulation adopted under any provision of this article which violation adversely affects, or is an imminent and substantial threat to, the health, safety, or welfare of the public or (ii) for permitting, aiding, or abetting the commission of any illegal act in a donor human milk bank.

B. The disciplinary actions that the Commissioner may impose include:

1. Revoking or refusing to renew a license or to issue a license;

2. Suspending or refusing to reinstate a license;

3. Placing a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of its license and that the health, safety, or welfare of the public is at risk;

4. Mandating training for the licensee or licensee's employees or volunteers, with any costs to be borne by the licensee, when the Commissioner concludes that the lack of such training has led directly to violations of regulations;

5. Assessing monetary penalties of not more than $1,000 per violation per day, not to exceed $25,000 for a series of related incidents of noncompliance, upon finding that the donor human milk bank is substantially out of compliance with the terms of its license and the health, safety, or welfare of the public is at risk;

6. Requiring licensees to contact the purchaser in writing regarding health and safety violations; and

7. Requiring submission of and compliance with plans of corrective action, with or without actions directed by the Commissioner.

C. Any monetary penalties collected under this section shall be paid in equal portions to the Physician Loan Repayment Program established in § 32.1-122.6:1, the Nurse Loan Repayment Program established in § 32.1-122.6:04, and the Nursing Scholarship and Loan Repayment Fund established in § 54.1-3011.2 after deduction of the administrative costs of the Commissioner and the Department in furtherance of this section.

D. Except as provided in § 32.1-162.15:21, the Commissioner shall take no action to impose disciplinary action against a donor human milk bank that is not operated by an agency of the Commonwealth, unless at least thirty days prior to taking such action the Commissioner provides the donor human milk bank with reasonable notice and an opportunity to be heard by the Commissioner's presiding officer in accordance § 2.2-4019. Such disciplinary action may be in addition to any penalty imposed by law for the violation.

1. All requests for an opportunity to be heard following a notice of imposition of disciplinary action shall be received in writing within 15 days of the date of receipt of such notice.

2. All administrative proceedings under this section shall be separate from the regulatory office of the Department that conducted the inspection, investigation, examination, or review.

3. The presiding officer shall provide a recommendation to the Commissioner, including findings of fact, conclusions, and appropriate disciplinary action.

4. The Commissioner may affirm, modify, or reverse such recommendation and shall issue a final case decision.

E. Whenever the Commissioner refuses to issue or renew a license or revokes a license for a donor human milk bank other than a donor human milk bank operated by an agency of the Commonwealth, the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall apply.

F. Except as provided in § 32.1-162.15:22, the Commissioner shall take no action to impose disciplinary action against a donor human milk bank operated by an agency of the Commonwealth except after reasonable notice of imposition of disciplinary action and an opportunity to appeal, in accordance with § 32.1-162.15:23.

G. An appeal, taken as provided in this article, shall operate to stay any criminal prosecution for operation without a license.

H. A monetary penalty that is not appealed shall become due on the first day after the appeal period expires. The license of a donor human milk bank that has failed to pay a civil penalty due under this section shall not be renewed until the civil penalty has been paid in full, with interest, provided that the Commissioner may renew a license when an unpaid monetary penalty is the subject of a pending appeal.

I. If a license is revoked or refused renewal, a new license may be issued by the Commissioner after:

1. Satisfactory evidence is submitted to him that the conditions upon which the revocation or refusal was based have been corrected; and

2. Proper inspection has been made and compliance with all provisions of this article, regulations promulgated pursuant to this article, and applicable state and federal law and regulations hereunder has been obtained.

J. The Board shall promulgate regulations to implement the provisions of this section that include:

1. Criteria for when the imposition of disciplinary action or initiation of court proceedings as specified in § 32.1-27, or a combination thereof, are appropriate in order to ensure prompt correction of violations involving noncompliance with requirements of any order of the Board or Commissioner or any provision of or regulation promulgated pursuant to this article;

2. Criteria for imposition of disciplinary action based upon the severity, pervasiveness, duration, and degree of risk to the health, safety, or welfare of the public;

3. Provisions under which (i) the Commissioner may accept a plan of corrective action, including a schedule of compliance, from a donor human milk bank prior to assessing a monetary penalty pursuant to subdivision B 5 and (ii) the Commissioner may reduce or abate the monetary penalty amount if the donor human milk bank complies with the plan of correction within its terms; and

4. Procedures for imposition of disciplinary action consistent with the Administrative Process Act (§ 2.2-4000 et seq.).

§ 32.1-162.15:21. Summary suspension; privately operated donor human milk banks.

A. Pursuant to the procedures set forth in this section and in addition to the authority for other disciplinary actions provided in this title, the Commissioner may issue a notice of summary suspension of the license of any donor human milk bank in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the donor human milk bank that pose an immediate and substantial threat to the health, safety, or welfare of the public receiving care and the Commissioner believes the operation of the donor human milk bank should be suspended during the pendency of such proceeding.

B. A notice of summary suspension issued by the Commissioner to a donor human milk bank shall set forth (i) the summary suspension procedures; (ii) hearing and appeal rights as provided in this article; (iii) the facts and evidence that formed the basis for the summary suspension; and (iv) the time, date, and location of a hearing to determine whether the summary suspension is appropriate. Such notice shall be served on the donor human milk bank or its designee as soon as practicable thereafter by personal service or certified mail, return receipt requested, to the address of record of the donor human milk bank.

C. The summary suspension hearing shall be presided over by a hearing officer selected by the Commissioner from a list prepared by the Executive Secretary of the Supreme Court of Virginia and shall be held as soon as practicable, but in no event later than 21 days following service of the notice of summary suspension; however, the hearing officer may grant a written request for a continuance, not to exceed an additional 14 days, for good cause shown. Within 14 days after such hearing, the hearing officer shall provide to the Commissioner written findings and conclusions, together with a recommendation as to whether the license should be summarily suspended.

D. Within 14 days of the receipt of the hearing officer's findings, conclusions, and recommendation, the Commissioner may issue a final order of summary suspension or an order that such summary suspension is not warranted by the facts and circumstances presented. The Commissioner shall adopt the hearing officer's recommended decision unless to do so would be an error of law or Department policy. If the Commissioner rejects the hearing officer's findings, conclusions, or recommendation, the Commissioner shall state with particularity the basis for rejection. In issuing a final order of summary suspension, the Commissioner may choose to suspend the license of the donor human milk bank or to suspend only certain authority of the donor human milk bank to operate, including the authority to provide certain services or perform certain functions that the Commissioner determines should be restricted or modified in order to protect the health, safety, or welfare of the children receiving care. A final order of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following service of the order. The sole issue before the court shall be whether the Commissioner had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

E. A copy of any final order of summary suspension shall be prominently displayed by the donor human milk bank at each public entrance of the facility, or in lieu thereof, the donor human milk bank may display a written statement summarizing the terms of the order in a prominent location, printed in a clear and legible size and typeface, and identifying the location within the facility where the final order of summary suspension may be reviewed.

F. The provisions of this section shall not apply to any donor human milk bank operated by an agency of the Commonwealth, which shall instead be governed by the provisions of § 32.1-162.15:22.

§ 32.1-162.15:22. Summary suspension; donor human milk banks operated by an agency of the Commonwealth.

Whenever the Commissioner issues a summary order of suspension of the license to operate a donor human milk bank operated by an agency of the Commonwealth:

1. Before such summary order of suspension shall take effect, the Commissioner shall issue to the donor human milk bank a notice of summary order of suspension setting forth (i) the procedures for a hearing and right of review as provided in this section and (ii) the facts and evidence that formed the basis on which the summary order of suspension is sought. Such notice shall be served on the licensee or its designee as soon as practicable thereafter by personal service or certified mail, return receipt requested, to the address of record of the licensee. The notice shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the notice of the summary order of suspension and shall be convened by the Commissioner or his designee. After such hearing, the Commissioner may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented.

2. A final order of summary suspension shall include notice that the licensee may request, in writing and within three business days after receiving the Commissioner's decision, that the Commissioner refer the matter to the Secretary of Health and Human Resources (the Secretary) for resolution within three business days of the referral. Any determination by the Secretary shall be final and not subject to judicial review. If the final order of summary suspension is upheld, it shall take effect immediately, and a copy of the final order of summary suspension shall be prominently displayed by the licensee at each public entrance of the donor human milk bank. Any concurrent revocation, denial, or other proceedings shall not be affected by the outcome of any determination by the Secretary.

§ 32.1-162.15:23. Right to appeal notice of intent; donor human milk banks operated by agencies of the Commonwealth.

The Commissioner shall provide, no fewer than 45 days prior to imposing any proposed disciplinary action, notice of imposition of disciplinary action. A donor human milk bank operated by an agency of the Commonwealth shall have the right to appeal any notice of imposition of disciplinary action as follows:

1. Within 30 days after receiving a notice of imposition of disciplinary action, the licensee shall request in writing that the Commissioner review the intended disciplinary action and may submit, together

with such request, relevant information, documentation, or other pertinent data supporting its appeal. The Commissioner shall issue a decision within 60 days after receiving the request and shall have the authority to uphold the disciplinary action or take whatever action he deems appropriate to resolve the controversy.

2. If the donor human milk bank disputes the Commissioner's decision, the licensee shall request, within 30 days of receiving the Commissioner's decision, that the Commissioner refer the matter to the Secretary of Health and Human Resources (the Secretary). The Secretary shall issue a decision within 60 days of receiving the request for review. The Secretary's decision shall be final and shall not be subject to judicial review.

2. That §§ 32.1-325 and 38.2-4319 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-3418.22 as follows:

§ 32.1-325. Board to submit plan for medical assistance services to U.S. Secretary of Health and Human Services pursuant to federal law; administration of plan; contracts with health care providers.

A. The Board, subject to the approval of the Governor, is authorized to prepare, amend from time to time, and submit to the U.S. Secretary of Health and Human Services a state plan for medical assistance services pursuant to Title XIX of the United States Social Security Act and any amendments thereto. The Board shall include in such plan:

1. A provision for payment of medical assistance on behalf of individuals, up to the age of 21, placed in foster homes or private institutions by private, nonprofit agencies licensed as child-placing agencies by the Department of Social Services or placed through state and local subsidized adoptions to the extent permitted under federal statute;

2. A provision for determining eligibility for benefits for medically needy individuals which disregards from countable resources an amount not in excess of $3,500 for the individual and an amount not in excess of $3,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by (i) the face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources and (ii) the amount of any other revocable or

irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial expenses;

3. A requirement that, in determining eligibility, a home shall be disregarded. For those medically needy persons whose eligibility for medical assistance is required by federal law to be dependent on the budget methodology for Aid to Families with Dependent Children, a home means the house and lot used as the principal residence and all contiguous property. For all other persons, a home shall mean the house and lot used as the principal residence, as well as all contiguous property, as long as the value of the land, exclusive of the lot occupied by the house, does not exceed $5,000. In any case in which the definition of home as provided here is more restrictive than that provided in the state plan for medical assistance services in Virginia as it was in effect on January 1, 1972, then a home means the house and lot used as the principal residence and all contiguous property essential to the operation of the home regardless of value;

4. A provision for payment of medical assistance on behalf of individuals up to the age of 21, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission;

5. A provision for deducting from an institutionalized recipient's income an amount for the maintenance of the individual's spouse at home;

6. A provision for payment of medical assistance on behalf of pregnant women which provides for payment for inpatient postpartum treatment in accordance with the medical criteria outlined in the most current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards for Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and Gynecologists. Payment shall be made for any postpartum home visit or visits for the mothers and the children which are within the time periods recommended by the attending physicians in accordance with and as indicated by such Guidelines or Standards. For the purposes of this subdivision, such Guidelines or Standards shall include any changes thereto within six months of the publication of such Guidelines or Standards or any official amendment thereto;

7. A provision for the payment for family planning services on behalf of women who were Medicaid-eligible for prenatal care and delivery as provided in this section at the time of delivery. Such family planning services shall begin with delivery and continue for a period of 24 months, if the woman continues to meet the financial eligibility requirements for a pregnant woman under Medicaid. For the purposes of this section, family planning services shall not cover payment for abortion services and no funds shall be used to perform, assist, encourage or make direct referrals for abortions;

8. A provision for payment of medical assistance for high-dose chemotherapy and bone marrow transplants on behalf of individuals over the age of 21 who have been diagnosed with lymphoma, breast cancer, myeloma, or leukemia and have been determined by the treating health care provider to have a performance status sufficient to proceed with such high-dose chemotherapy and bone marrow transplant. Appeals of these cases shall be handled in accordance with the Department's expedited appeals process;

9. A provision identifying entities approved by the Board to receive applications and to determine eligibility for medical assistance, which shall include a requirement that such entities (i) obtain accurate contact information, including the best available address and telephone number, from each applicant for medical assistance, to the extent required by federal law and regulations, and (ii) provide each applicant for medical assistance with information about advance directives pursuant to Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title 54.1, including information about the purpose and benefits of advance directives and how the applicant may make an advance directive;

10. A provision for breast reconstructive surgery following the medically necessary removal of a breast for any medical reason. Breast reductions shall be covered, if prior authorization has been obtained, for all medically necessary indications. Such procedures shall be considered noncosmetic;

11. A provision for payment of medical assistance for annual pap smears;

12. A provision for payment of medical assistance services for prostheses following the medically necessary complete or partial removal of a breast for any medical reason;

13. A provision for payment of medical assistance which provides for payment for 48 hours of inpatient treatment for a patient following a radical or modified radical mastectomy and 24 hours of inpatient care following a total mastectomy or a partial mastectomy with lymph node dissection for

treatment of disease or trauma of the breast. Nothing in this subdivision shall be construed as requiring the provision of inpatient coverage where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate;

14. A requirement that certificates of medical necessity for durable medical equipment and any supporting verifiable documentation shall be signed, dated, and returned by the physician, physician assistant, or advanced practice registered nurse and in the durable medical equipment provider's possession within 60 days from the time the ordered durable medical equipment and supplies are first furnished by the durable medical equipment provider;

15. A provision for payment of medical assistance to (i) persons age 50 and over and (ii) persons age 40 and over who are at high risk for prostate cancer, according to the most recent published guidelines of the American Cancer Society, for one PSA test in a 12-month period and digital rectal examinations, all in accordance with American Cancer Society guidelines. For the purpose of this subdivision, "PSA testing" means the analysis of a blood sample to determine the level of prostate specific antigen;

16. A provision for payment of medical assistance for low-dose screening mammograms for determining the presence of occult breast cancer. Such coverage shall make available one screening mammogram to persons age 35 through 39, one such mammogram biennially to persons age 40 through 49, and one such mammogram annually to persons age 50 and over. The term "mammogram" means an X-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the X-ray tube, filter, compression device, screens, film and cassettes, with an average radiation exposure of less than one rad mid-breast, two views of each breast;

17. A provision, when in compliance with federal law and regulation and approved by the Centers for Medicare & Medicaid Services (CMS), for payment of medical assistance services delivered to Medicaid-eligible students when such services qualify for reimbursement by the Virginia Medicaid program and may be provided by school divisions, regardless of whether the student receiving care has an individualized education program or whether the health care service is included in a student's individualized education program. Such services shall include those covered under the state plan for medical assistance services or by the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT)

benefit as specified in § 1905(r) of the federal Social Security Act, and shall include a provision for payment of medical assistance for health care services provided through telemedicine services, as defined in § 38.2-3418.16. No health care provider who provides health care services through telemedicine shall be required to use proprietary technology or applications in order to be reimbursed for providing telemedicine services;

18. A provision for payment of medical assistance services for liver, heart and lung transplantation procedures for individuals over the age of 21 years when (i) there is no effective alternative medical or surgical therapy available with outcomes that are at least comparable; (ii) the transplant procedure and application of the procedure in treatment of the specific condition have been clearly demonstrated to be medically effective and not experimental or investigational; (iii) prior authorization by the Department of Medical Assistance Services has been obtained; (iv) the patient selection criteria of the specific transplant center where the surgery is proposed to be performed have been used by the transplant team or program to determine the appropriateness of the patient for the procedure; (v) current medical therapy has failed and the patient has failed to respond to appropriate therapeutic management; (vi) the patient is not in an irreversible terminal state; and (vii) the transplant is likely to prolong the patient's life and restore a range of physical and social functioning in the activities of daily living;

19. A provision for payment of medical assistance for colorectal cancer screening, specifically screening with an annual fecal occult blood test, flexible sigmoidoscopy or colonoscopy, or in appropriate circumstances radiologic imaging, in accordance with the most recently published recommendations established by the American College of Gastroenterology, in consultation with the American Cancer Society, for the ages, family histories, and frequencies referenced in such recommendations;

20. A provision for payment of medical assistance for custom ocular prostheses;

21. A provision for payment for medical assistance for infant hearing screenings and all necessary audiological examinations provided pursuant to § 32.1-64.1 using any technology approved by the United States Food and Drug Administration, and as recommended by the national Joint Committee on Infant Hearing in its most current position statement addressing early hearing detection and intervention programs. Such provision shall include payment for medical assistance for follow-up audiological

examinations as recommended by a physician, physician assistant, advanced practice registered nurse, or audiologist and performed by a licensed audiologist to confirm the existence or absence of hearing loss;

22. A provision for payment of medical assistance, pursuant to the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (P.L. 106-354), for certain women with breast or cervical cancer when such women (i) have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention (CDC) Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act; (ii) need treatment for breast or cervical cancer, including treatment for a precancerous condition of the breast or cervix; (iii) are not otherwise covered under creditable coverage, as defined in § 2701 (c) of the Public Health Service Act; (iv) are not otherwise eligible for medical assistance services under any mandatory categorically needy eligibility group; and (v) have not attained age 65. This provision shall include an expedited eligibility determination for such women;

23. A provision for the coordinated administration, including outreach, enrollment, re-enrollment and services delivery, of medical assistance services provided to medically indigent children pursuant to this chapter, which shall be called Family Access to Medical Insurance Security (FAMIS) Plus and the FAMIS Plan program in § 32.1-351. A single application form shall be used to determine eligibility for both programs;

24. A provision, when authorized by and in compliance with federal law, to establish a public-private long-term care partnership program between the Commonwealth of Virginia and private insurance companies that shall be established through the filing of an amendment to the state plan for medical assistance services by the Department of Medical Assistance Services. The purpose of the program shall be to reduce Medicaid costs for long-term care by delaying or eliminating dependence on Medicaid for such services through encouraging the purchase of private long-term care insurance policies that have been designated as qualified state long-term care insurance partnerships and may be used as the first source of benefits for the participant's long-term care. Components of the program, including the treatment of assets for Medicaid eligibility and estate recovery, shall be structured in accordance with federal law and applicable federal guidelines;

25. A provision for the payment of medical assistance for otherwise eligible pregnant women during the first five years of lawful residence in the United States, pursuant to § 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (P.L. 111-3);

26. A provision for the payment of medical assistance for medically necessary health care services provided through telemedicine services, as defined in § 38.2-3418.16, regardless of the originating site or whether the patient is accompanied by a health care provider at the time such services are provided. No health care provider who provides health care services through telemedicine services shall be required to use proprietary technology or applications in order to be reimbursed for providing telemedicine services.

For the purposes of this subdivision, a health care provider duly licensed by the Commonwealth who provides health care services exclusively through telemedicine services shall not be required to maintain a physical presence in the Commonwealth to be considered an eligible provider for enrollment as a Medicaid provider.

For the purposes of this subdivision, a telemedicine services provider group with health care providers duly licensed by the Commonwealth shall not be required to have an in-state service address to be eligible to enroll as a Medicaid vendor or Medicaid provider group.

For the purposes of this subdivision, "originating site" means any location where the patient is located, including any medical care facility or office of a health care provider, the home of the patient, the patient's place of employment, or any public or private primary or secondary school or postsecondary institution of higher education at which the person to whom telemedicine services are provided is located;

27. A provision for the payment of medical assistance for the dispensing or furnishing of up to a 12-month supply of hormonal contraceptives at one time. Absent clinical contraindications, the Department shall not impose any utilization controls or other forms of medical management limiting the supply of hormonal contraceptives that may be dispensed or furnished to an amount less than a 12-month supply. Nothing in this subdivision shall be construed to (i) require a provider to prescribe, dispense, or furnish a 12-month supply of self-administered hormonal contraceptives at one time or (ii) exclude coverage for hormonal contraceptives as prescribed by a prescriber, acting within his scope of practice, for reasons other than contraceptive purposes. As used in this subdivision, "hormonal contraceptive"

means a medication taken to prevent pregnancy by means of ingestion of hormones, including medications containing estrogen or progesterone, that is self-administered, requires a prescription, and is approved by the U.S. Food and Drug Administration for such purpose;

28. A provision for payment of medical assistance for remote patient monitoring services provided via telemedicine, as defined in § 38.2-3418.16, for (i) high-risk pregnant persons; (ii) medically complex infants and children; (iii) transplant patients; (iv) patients who have undergone surgery, for up to three months following the date of such surgery; and (v) patients with a chronic or acute health condition who have had two or more hospitalizations or emergency department visits related to such health condition in the previous 12 months when there is evidence that the use of remote patient monitoring is likely to prevent readmission of such patient to a hospital or emergency department. For the purposes of this subdivision, "remote patient monitoring services" means the use of digital technologies to collect medical and other forms of health data from patients in one location and electronically transmit that information securely to health care providers in a different location for analysis, interpretation, and recommendations, and management of the patient. "Remote patient monitoring services" includes monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and other patient physiological data, treatment adherence monitoring, and interactive videoconferencing with or without digital image upload;

29. A provision for the payment of medical assistance for provider-to-provider consultations that is no more restrictive than, and is at least equal in amount, duration, and scope to, that available through the fee-for-service program;

30. A provision for payment of the originating site fee to emergency medical services agencies for facilitating synchronous telehealth visits with a distant site provider delivered to a Medicaid member. As used in this subdivision, "originating site" means any location where the patient is located, including any medical care facility or office of a health care provider, the home of the patient, the patient's place of employment, or any public or private primary or secondary school or postsecondary institution of higher education at which the person to whom telemedicine services are provided is located;

31. A provision for the payment of medical assistance for targeted case management services for individuals with severe traumatic brain injury; ~~and~~

32. A provision for payment of medical assistance for the initial purchase or replacement of complex rehabilitative technology manual and power wheelchair bases and related accessories, as defined by the Department's durable medical equipment program policy, for patients who reside in nursing facilities. Initial purchase or replacement may be contingent upon (i) determination of medical necessity; (ii) requirements in accordance with regulations established through the Department's durable medical equipment program policy; and (iii) exclusive use by the nursing facility resident. Recipients of medical assistance shall not be required to pay any deductible, coinsurance, copayment, or patient costs related to the initial purchase or replacement of complex rehabilitative technology manual and power wheelchair bases and related accessories; and

33. A provision for the payment of medical assistance for pasteurized donor human milk and human milk-derived products for an infant who is younger than six months of age and (i) is medically or physically unable to receive maternal breast milk or to participate in breastfeeding or whose mother is medically or physically unable to produce maternal breast milk in sufficient quantities or caloric density or to participate in breastfeeding despite optimal lactation support; (ii) has a body weight that is below a healthy level, as determined by a health care provider; or (iii) has a congenital or acquired condition that places the infant at high risk for development of necrotizing enterocolitis or that may benefit from the use of pasteurized donor human milk and human milk-derived products, as determined by a health care provider. Pasteurized donor human milk obtained pursuant to this subdivision shall be obtained from a donor human milk bank that is licensed by the Department.

B. In preparing the plan, the Board shall:

1. Work cooperatively with the State Board of Health to ensure that quality patient care is provided and that the health, safety, security, rights and welfare of patients are ensured.

2. Initiate such cost containment or other measures as are set forth in the appropriation act.

3. Make, adopt, promulgate and enforce such regulations as may be necessary to carry out the provisions of this chapter.

4. Examine, before acting on a regulation to be published in the Virginia Register of Regulations pursuant to § 2.2-4007.05, the potential fiscal impact of such regulation on local boards of social services. For regulations with potential fiscal impact, the Board shall share copies of the fiscal impact analysis with local boards of social services prior to submission to the Registrar. The fiscal impact analysis shall include the projected costs/savings to the local boards of social services to implement or comply with such regulation and, where applicable, sources of potential funds to implement or comply with such regulation.

5. Incorporate sanctions and remedies for certified nursing facilities established by state law, in accordance with 42 C.F.R. § 488.400 et seq., Enforcement of Compliance for Long-Term Care Facilities With Deficiencies.

6. On and after July 1, 2002, require that a prescription benefit card, health insurance benefit card, or other technology that complies with the requirements set forth in § 38.2-3407.4:2 be issued to each recipient of medical assistance services, and shall upon any changes in the required data elements set forth in subsection A of § 38.2-3407.4:2, either reissue the card or provide recipients such corrective information as may be required to electronically process a prescription claim.

C. In order to enable the Commonwealth to continue to receive federal grants or reimbursement for medical assistance or related services, the Board, subject to the approval of the Governor, may adopt, regardless of any other provision of this chapter, such amendments to the state plan for medical assistance services as may be necessary to conform such plan with amendments to the United States Social Security Act or other relevant federal law and their implementing regulations or constructions of these laws and regulations by courts of competent jurisdiction or the United States Secretary of Health and Human Services.

In the event conforming amendments to the state plan for medical assistance services are adopted, the Board shall not be required to comply with the requirements of Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2. However, the Board shall, pursuant to the requirements of § 2.2-4002, (i) notify the Registrar of Regulations that such amendment is necessary to meet the requirements of federal law or regulations or because of the order of any state or federal court, or (ii) certify to the Governor that the regulations are necessitated by an emergency situation. Any such amendments that are in conflict with the

Code of Virginia shall only remain in effect until July 1 following adjournment of the next regular session of the General Assembly unless enacted into law.

D. The Director of Medical Assistance Services is authorized to:

1. Administer such state plan and receive and expend federal funds therefor in accordance with applicable federal and state laws and regulations; and enter into all contracts necessary or incidental to the performance of the Department's duties and the execution of its powers as provided by law.

2. Enter into agreements and contracts with medical care facilities, physicians, dentists and other health care providers where necessary to carry out the provisions of such state plan. Any such agreement or contract shall terminate upon conviction of the provider of a felony. In the event such conviction is reversed upon appeal, the provider may apply to the Director of Medical Assistance Services for a new agreement or contract. Such provider may also apply to the Director for reconsideration of the agreement or contract termination if the conviction is not appealed, or if it is not reversed upon appeal.

3. Refuse to enter into or renew an agreement or contract, or elect to terminate an existing agreement or contract, with any provider who has been convicted of or otherwise pled guilty to a felony, or pursuant to Subparts A, B, and C of 42 C.F.R. Part 1002, and upon notice of such action to the provider as required by 42 C.F.R. § 1002.212.

4. Refuse to enter into or renew an agreement or contract, or elect to terminate an existing agreement or contract, with a provider who is or has been a principal in a professional or other corporation when such corporation has been convicted of or otherwise pled guilty to any violation of § 32.1-314, 32.1-315, 32.1-316, or 32.1-317, or any other felony or has been excluded from participation in any federal program pursuant to 42 C.F.R. Part 1002.

5. Terminate or suspend a provider agreement with a home care organization pursuant to subsection E of § 32.1-162.13.

For the purposes of this subsection, "provider" may refer to an individual or an entity.

E. In any case in which a Medicaid agreement or contract is terminated or denied to a provider pursuant to subsection D, the provider shall be entitled to appeal the decision pursuant to 42 C.F.R. § 1002.213 and to a post-determination or post-denial hearing in accordance with the Administrative

Process Act (§ 2.2-4000 et seq.). All such requests shall be in writing and be received within 15 days of the date of receipt of the notice.

The Director may consider aggravating and mitigating factors including the nature and extent of any adverse impact the agreement or contract denial or termination may have on the medical care provided to Virginia Medicaid recipients. In cases in which an agreement or contract is terminated pursuant to subsection D, the Director may determine the period of exclusion and may consider aggravating and mitigating factors to lengthen or shorten the period of exclusion, and may reinstate the provider pursuant to 42 C.F.R. § 1002.215.

F. When the services provided for by such plan are services which a marriage and family therapist, clinical psychologist, clinical social worker, professional counselor, or clinical nurse specialist is licensed to render in Virginia, the Director shall contract with any duly licensed marriage and family therapist, duly licensed clinical psychologist, licensed clinical social worker, licensed professional counselor or licensed clinical nurse specialist who makes application to be a provider of such services, and thereafter shall pay for covered services as provided in the state plan. The Board shall promulgate regulations which reimburse licensed marriage and family therapists, licensed clinical psychologists, licensed clinical social workers, licensed professional counselors and licensed clinical nurse specialists at rates based upon reasonable criteria, including the professional credentials required for licensure.

G. The Board shall prepare and submit to the Secretary of the United States Department of Health and Human Services such amendments to the state plan for medical assistance services as may be permitted by federal law to establish a program of family assistance whereby children over the age of 18 years shall make reasonable contributions, as determined by regulations of the Board, toward the cost of providing medical assistance under the plan to their parents.

H. The Department of Medical Assistance Services shall:

1. Include in its provider networks and all of its health maintenance organization contracts a provision for the payment of medical assistance on behalf of individuals up to the age of 21 who have special needs and who are Medicaid eligible, including individuals who have been victims of child abuse and neglect, for medically necessary assessment and treatment services, when such services are delivered

by a provider which specializes solely in the diagnosis and treatment of child abuse and neglect, or a provider with comparable expertise, as determined by the Director.

2. Amend the Medallion II waiver and its implementing regulations to develop and implement an exception, with procedural requirements, to mandatory enrollment for certain children between birth and age three certified by the Department of Behavioral Health and Developmental Services as eligible for services pursuant to Part C of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.).

3. Utilize, to the extent practicable, electronic funds transfer technology for reimbursement to contractors and enrolled providers for the provision of health care services under Medicaid and the Family Access to Medical Insurance Security Plan established under § 32.1-351.

4. Require any managed care organization with which the Department enters into an agreement for the provision of medical assistance services to include in any contract between the managed care organization and a pharmacy benefits manager provisions prohibiting the pharmacy benefits manager or a representative of the pharmacy benefits manager from conducting spread pricing with regards to the managed care organization's managed care plans. For the purposes of this subdivision:

"Pharmacy benefits management" means the administration or management of prescription drug benefits provided by a managed care organization for the benefit of covered individuals.

"Pharmacy benefits manager" means a person that performs pharmacy benefits management.

"Spread pricing" means the model of prescription drug pricing in which the pharmacy benefits manager charges a managed care plan a contracted price for prescription drugs, and the contracted price for the prescription drugs differs from the amount the pharmacy benefits manager directly or indirectly pays the pharmacist or pharmacy for pharmacist services.

I. The Director is authorized to negotiate and enter into agreements for services rendered to eligible recipients with special needs. The Board shall promulgate regulations regarding these special needs patients, to include persons with AIDS, ventilator-dependent patients, and other recipients with special needs as defined by the Board.

J. Except as provided in subdivision A 1 of § 2.2-4345, the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the activities of the Director authorized by

subsection I of this section. Agreements made pursuant to this subsection shall comply with federal law and regulation.

K. When the services provided for by such plan are services by a pharmacist, pharmacy technician, or pharmacy intern (i) performed under the terms of a collaborative agreement as defined in § 54.1-3300 and consistent with the terms of a managed care contractor provider contract or the state plan or (ii) related to services and treatment in accordance with § 54.1-3303.1, the Department shall provide reimbursement for such service.

§ 38.2-3418.22. Coverage for expenses incurred in the provision of pasteurized donor human milk.

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 for expenses incurred in the provision of pasteurized donor human milk and human milk-derived products, provided that:

1. The covered person is an infant younger than the age of six months;

2. A licensed medical practitioner has issued a written order for the provision of such donor human milk or human-milk derived product for an infant who:

a. Is medically or physically unable to receive maternal breast milk or participate in breastfeeding or whose mother is medically or physically unable to produce maternal breast milk in sufficient quantities or caloric density or participate in breastfeeding despite optimal lactation support; or

b. Meets any of the following conditions:

(1) A body weight below a healthy level, as determined by the licensed medical practitioner;

(2) A congenital or acquired condition that places the infant at a high risk for development of necrotizing enterocolitis; or

(3) A congenital or acquired condition that may benefit from the use of such donor human milk or milk-derived product as determined by the licensed medical practitioner.

B. Nothing in this section shall preclude the insurer, corporation, or health maintenance organization from performing utilization review, including periodic review of the medical necessity of a particular service.

C. No insurer, corporation, or health maintenance organization shall impose upon any person receiving benefits pursuant to this section any copayment, fee, or condition that is not equally imposed upon all individuals in the same benefit category.

D. The provisions of this section shall apply to any policy, contract, or plan delivered, issued for delivery, or renewed in the Commonwealth on and after January 1, 2026.

E. The provisions of this section shall not apply to short-term travel, accident-only, or limited or specified disease policies; 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 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, 38.2-322, 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, subdivisions E 1, 2, and 3 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.

3. That the provisions of the first enactment of this act shall not become effective until the State Board of Health has promulgated regulations for the licensure of donor human milk banks. The State Board of Health shall certify in writing to the Virginia Code Commission the date on which it meets such requirement.

4. That the State Board of Health shall promulgate regulations for the licensure of donor human milk banks within 280 days of the enactment of the second enactment of this act. Notwithstanding any other provision of law, the emergency regulations promulgated by the State Board of Health pursuant to this enactment shall remain in effect until the promulgation of final regulations.

5. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is _____ for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000. Pursuant to § 30-

19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is _____ for periods of commitment to the custody of the Department of Juvenile Justice.

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