

COMMONWEALTH OF VIRGINIA



STEVEN T. FOSTER
COMMISSIONER OF INSURANCE

Box 1157
RICHMOND, VA 23209
TELEPHONE: (804) 786-3741

STATE CORPORATION COMMISSION BUREAU OF INSURANCE

June 23, 1989

ADMINISTRATIVE LETTER 1989-7

TO: All Insurance Companies, Health Services Plans
Health Maintenance Organizations, and Other
Interested Parties

RE: Legislation enacted by the 1989 Session of the
General Assembly of Virginia

Attached are summaries of certain statutes enacted or amended and re-enacted by the General Assembly of Virginia during the 1989 Session.

The **effective date of each statute is July 1, 1989 EXCEPT** as otherwise indicated in the attachment.

Each organization to which this letter is being sent should review the attachment carefully and see that notice of these laws is directed to the proper persons (including its appointed representatives) to ensure that appropriate action is taken to effect compliance with these new legal requirements. Please note that this document is a summary of legislation and is neither a legal review and interpretation nor a full description of legislative amendments made to insurance-related laws during the 1989 Session. Each organization is responsible for legal review of the statutes pertinent to its operations.

Sincerely yours,

Steven T. Foster
Commissioner of Insurance

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Attachment

**Summary of 1989 Insurance Legislation
Commonwealth of Virginia**

(All Bills Effective July 1, 1989 Unless Otherwise Noted)

Property and Casualty Insurance

House Bill 73

Minimum limits of liability

This 1988 carry-over bill amends Title 46.1 (Motor Vehicles) and Section 38.2-2206 (Uninsured motorists coverage) by increasing the minimum limits of motor vehicle liability insurance required by the financial responsibility laws of the Motor Vehicle Code. The minimum limits of liability have been increased from \$10,000 to \$20,000 for damage or destruction of property in any one accident. The minimum limits of liability for bodily injury or death have not been increased. The provisions of this law apply to all original or renewed policies issued or delivered on or after July 1, 1989. We interpret this to mean the new limit applies to all policies (new or renewal) effective on or after July 1, 1989.

House Bill 1148

Loss of use of motor vehicles

This bill amends Section 8.01-66 of the Civil Remedies Code relating to recovery of damages for loss of the use of motor vehicles. In addition to "any insurance company", "any self insured company must provide a comparable temporary substitute vehicle to any person entitled to recover for damage to or destruction of a motor vehicle.

House Bill 1217

Birth - related neurological injury fund

This bill amends Chapter 50 of Title 38.2 (Neurological Injury Compensation Act) by allowing a physician or hospital that was previously not eligible to become a participating physician or hospital in the Birth Injury Fund to join the Fund during a particular calendar year by paying the required assessment by December 1 of the previous year. The bill allows the Board of Directors to authorize a pro-rated assessment for physicians who become licensed, commence practice, or complete a residency training program described in §38.2-5020 during a calendar year. The bill also allows certain hospitals with residency training programs to pay an annual assessment for physicians in such programs. The definition of participating physician is amended to include licensed nurse midwives who perform obstetrical services either full or part time, as authorized in the plan of operation. The bill also changes the number of citizens on the Board of

Directors from 1 to 3 and the number of directors from 5 to 7. Section 38.2-5019 of the Code of Virginia is repealed by this law. The provisions pertaining to the initial assessment and exemptions from the assessments have been incorporated into §38.2-5020.

House Bill 1220 and Senate Bill 524

Fire programs fund

These bills repeal the third enactment clause of chapter 545 of the 1985 Acts of Assembly so as to eliminate the sunset clause of the Fire Programs Fund. The Fire Programs Fund as established in Section 38.2-401, is maintained through an annual assessment against all licensed insurance companies doing business in the Commonwealth writing any type of insurance defined in Section 38.2-110, 38.2-111, 38.2-126, 38.2-130 and 38.2-131. Seventy-five percent of the total amount collected annually pursuant to this section shall be allocated to the several counties, cities and towns of the Commonwealth providing fire service operations. Such funds shall be used solely for the purposes of fire service training facilities, purchasing fire-fighting equipment or protective clothing and protective equipment for fire-fighting personnel. The effect of eliminating the sunset clause is to require the Bureau of Insurance to collect and remit these funds to the Virginia Fire Services Board on a permanent basis.

House Bill 1252 and Senate Bill 653 (Effective 3/22/89)

Birth - related neurological injury fund

These bills amend Chapter 50 of Title 38.2 (Neurological Injury Compensation Act) by allowing a physician or hospital that was previously eligible but who did not meet the requirements of Section 38.2-5020 on or before January 1, 1989 to become a participating physician or hospital in the Birth Injury Fund by filing the necessary agreements and paying the required assessment by May 15, 1989. The assessment is to be pro-rated for the months remaining in 1989.

House Bill 1311

Fire insurance coverage under certain loans

This bill adds a new section to Title 6.1 (Banking and Finance). Under this law, lenders are prohibited from requiring borrowers who apply for a loan secured by a mortgage or deed of trust, to purchase property insurance coverage in an amount exceeding the replacement value of the improvements on the real property. In determining the replacement value of the improvements on the real property, the lender may:

1. Accept the value placed on the improvements by the insurer;
or
2. Use the value placed on the improvements that is determined by the lender's appraisal of the real property.

House Bill 1467 (Effective 3/20/89)

Commercial liability insurers' reports

This bill amends Section 38.2-1905.1 (Report on level of competition, availability, and affordability) by stipulating that the Commission shall hold a hearing by September 30 (instead of two months after the supplemental reports are due) to determine whether competition is an effective regulator of rates. In making this determination the Commission may consider, among other things, whether a pattern of unreasonably high rates (instead of "excessive" rates) exists. Section 38.2-1905.2 is amended to require a commercial liability insurer that did not actually write the designated lines or subclassifications to report to the Commission that it wrote no such insurance (instead of allowing the insurer to forego submitting a report if it did not write any of the designated lines or subclassifications). The proposed changes also make the failure to file a substantially complete report equivalent to not filing a report. Section 38.2-2228.1 is amended to require the Commission to establish the date the commercial liability claims reports are to be filed and makes the failure to file the reports by the due date a violation of the chapter.

House Bill 1495

Arbitrary refusal of insurers to settle small claims

This bill amends Section 8.01-66.1 of the Civil Remedies Code relating to the arbitrary refusal of an automobile insurer to settle a small claim. The bill makes an insurer liable for double the amount of the claim plus attorney's fees and expenses if the insurer in bad faith denies, refuses, or fails to pay a claim of \$1,000 or less in excess of the deductible. The old language set the amount at \$500 or less in excess of the deductible.

House Bill 1583

Medical malpractice claim reports

This bill is the result of the State Corporation Commission's study of Alternative Premium Distribution Methods for Medical Malpractice Insurance requested by HJR 186. The bill amends Section 38.2-2228 of the Code of Virginia by requiring all medical malpractice claims (not just closed claims) to be reported annually to the Commissioner of Insurance. The bill requires certain additional data to be submitted including the amount of attorney's fees and expenses paid and reserved, the date the claim was reported to the company, the date the loss occurred, the date the claim was closed, the date and amount of the initial reserve, the reserve valued at the end of the current

calendar year, and the amount of the loss paid by the insurer if different from the amount of settlement or judgement awarded to the claimant.

The new law states that statistical summaries and individual closed-claim reports shall be a matter of public record, but that individual open-claim reports shall not be a matter of public record. The law also includes a provision that the date and amount of the initial reserve and the reserve valued at the end of the current calendar year shall not be disclosed to the public if so requested by the reporting insurer.

House Bill 1925

Recodification of Title 46.1

This bill is the recodification of the Motor Vehicle Code (Title 46.1). The new code title is 46.2. This code was revised to remove ambiguities, simplify language and structure, and improve the clarity of the law. A cross-reference table of new and old code sections is found in House Document No. 42.

House Bill 1955

Cancellation and non-renewal of commercial auto policies

This bill amends Section 38.2-231 (Notice of cancellation and refusal to renew) by requiring insurers of commercial automobile policies to meet the same cancellation and non-renewal notice provisions required for other commercial liability policies. In addition, the notice of cancellation or non-renewal of a commercial automobile policy must advise the insured of the availability of coverage through the V.A.I.P. (assigned risk plan); and the policy may not be terminated solely because of the lack of supporting business or the potential for acquiring it. The bill also requires insurers of commercial automobile policies to meet the same notification provisions as required for other commercial liability policies when rates are being increased by more than 25%. The law further provides that the insurer must keep a copy of the lienholder's notice of cancellation, refusal to renew, or increase in rate. Proof of mailing must also be retained as required by the section.

House Bill 1967 (Effective January 1, 1990)

Notice of optional auto liability insurance coverage

This bill amends Sections 38.2-2201 and 38.2-2202 pertaining to the notice of optional medical expense coverage. The new law changes the time period within which all reasonable and necessary medical expenses may be incurred in order to be reimbursed under this coverage. Under the new law, the expenses must be incurred within three years after the date of the accident. (The old law set the time limit at two years.) The law provides that all

original or renewed policies issued or delivered on or after January 1, 1990 must contain the new notice provision. We interpret this to mean that all policies effective on or after January 1, 1990 must contain the new notice provision.

House Bill 1986

Medical malpractice review panels

This bill amends Section 8.01-581.1 of the Civil Remedies Code pertaining to medical malpractice review panels and the arbitration of malpractice claims. The definition of "health care provider" is expanded to include a professional corporation, all of whose shareholders or members are licensed to provide health care or professional services as a physician, hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist or assistant, clinical psychologist, or HMO.

Life and Health

House Bill 1024

Mandated provider list to include clinical nurse specialist

This bill amends §38.2-3408 of the accident and sickness chapter and §38.2-4221 of the health services plan chapter to provide that a clinical nurse specialist who renders mental health services must be reimbursed by an insurer or health services plan if the clinical nurse specialist (CNS) provides a covered service that can legally be performed by that provider (CNS). The bill defines CNS in Title 54.1.

House Bill 1195

Mandated provider list to include audiologists/speech pathologists

This bill amends §38.2-3408 of the accident and sickness chapter and §38.2-4221 of the health services plan chapter to provide that a licensed audiologist/speech pathologist must be reimbursed by an insurer or health services plan if the audiologist/speech pathologist provides a covered service that can legally be performed by that provider.

House Bill 1265

Pre-need contracts

This bill amends one section of the insurance code (38.2-4021) and adds article 5 to the funeral directors and embalmers code along with changes to 8.01-512.4, 37.1-142, 54.1-2800, and 54.1-2803-54.1-2807 of the Code of Virginia. This bill prescribes regulations for pre-need funeral contracts and pre-need funeral trust accounts. The bill also provides for disclosure requirements.

House Bill 1449

Mandated benefits for mammograms

This bill amends and re-enacts §§38.2-3607 and 38.2-4319 and adds §38.2-3418.1 to require that insurers, health services plans and health maintenance organizations offer coverage for mammograms for policies delivered, issued for delivery or renewed after January 1, 1990. The requirement applies to all individual and group accident and sickness policies and contracts and specifically states that individual and group Medicare supplement policies are included. The bill defines the term "mammogram" and includes requirements relating to who should perform, interpret,

and order the mammogram. The bill by reference, includes standards for the equipment to be used and the retention of the film. The bill also provides that mammograms shall be offered biannually to persons 40-49; annually to those over 50 and one mamogram shall be covered for persons 35-39. The mammogram benefit may be limited to \$50 and is subject to the same dollar limits, deductibles and co-insurance factors as for physical illness generally.

House Bill 1575

Subrogation

This bill amends and re-enacts 38.2-3405 of the accident and sickness insurance chapter. The bill provides that an insurance policy, or subscription contract or health services plan cannot require a beneficiary to sign an agreement requiring the beneficiary to repay the company or plan for any benefits recovered from any other source. The provision does not apply to benefits paid by Worker's Compensation Coverage or state or federal programs. It does not apply to coordination of benefits provisions of two or more coverages that pay for the same claim.

House Bill 1869

Credit insurance age limit extended

This bill amends §38.2-3708 of the Credit Life and Accident and Sickness Chapter to provide that insurers must offer credit life insurance to debtors who are up to 70 years old by the maturity date of the debt. The present requirement is to offer the coverage to debtors who are up to 65 years old by the maturity date.

House Bill 1971

Commission may promulgate regulations to govern AIDS and HIV virus underwriting practices, advertising practices, claims practices, policy provisions and other practices

This bill amends and re-enacts §38.2-501 of the Unfair Trade Practices Chapter, §38.2-3401 of the Accident and Sickness Insurance Chapter, §38.2-4214 of the Health Services Plan Chapter, §38.2-4319 of the Health Maintenance Organizations Chapter, and §38.2-4509 of the Dental or Optometric Services Plan Chapter. The bill also adds §38.2-3100.1 to the Life Insurance Chapter. The bill clarifies that the Unfair Trade Practices Act applies to individual and group contracts, certificates and evidences of coverage including but not limited to the types of insurers and plans already listed. New §38.2-3100.1 provides that life insurance and annuity contracts can only be issued as

group or individual contracts. §38.2-3100.1 also provides that the Commission may promulgate necessary or appropriate regulations to govern advertising practices, underwriting practices, policy provisions, claim practices or other practices with regard to group and individual life insurance and annuities for AIDS and the HIV Virus. Section 38.2-3401 is amended to include the same authority with regard to individual and group accident and sickness policies. Sections 38.2-4214, 38.2-4319, 38.2-4509 are amended to clarify that the language in Section 38.2-3401 applies to health services plans, HMOs and dental and optometric services plans.

House Bill 1988

HMO discrimination against pharmacists

This bill amends §38.2-4312 of the Code of Virginia, to prohibit Health Maintenance Organizations from unreasonably discriminating against pharmacists when contracting for specialty or referral practitioners or providers, provided the plan covers services which the members of such classes are licensed to render.

Senate Bill 729

Medicare supplement policies

This bill amends and re-enacts §38.2-3604, adds § 38.2-3608 and 38.2-3609, and repeals §38.2-3602.

The repeal of §38.2-3602 changes the loss ratio required for group medicare supplement policies offered to individuals through the mails or by mass media advertising. The loss ratio required will be 75%. The bill provides that all Medicare Supplement policies must include a 30 day free look. Companies are also required to file all advertisements for Medicare Supplement policies with the Commission prior to use. The bill also provides that the Commission may issue rules to establish claims payment requirements.

Insurance Agents

House Bill 1633

Licensing of agents

This bill amends and re-enacts §§38.2-1814, 38.2-1814.1, 38.2-1816, 38.2-1817, 38.2-1819, 38.2-1822, 38.2-1830 and 38.2-1836 of the Insurance Agents Chapter. Most of these amendments clarify existing requirements as to time limits between dates of satisfaction of prelicensing requirements and date licenses must be obtained; or modifying or , deleting wording due to the use of an automated prelicensing examination service. In addition,

the bill removes the requirement that Title insurers annually supply the Commission with a list of their appointed agents. The bill also clarifies the relationship between temporary licenses and appointments made under such licenses. Finally, the bill requires agents to notify the Commission of any assumed or fictitious names under which they are conducting business, and to again notify the Commission at such time as the assumed or fictitious name is no longer being used.

Senate Bill 542

Notice of claim or suit

This bill amends §38.2-1801 of the Agents Chapter to clarify that for policies of life or accident and sickness insurance and annuities and variable annuities notice of claim or suit must be given to insurers at the home office address shown on the policy.

Financial Regulation

House Bill 1335

Prohibition against administrator & service company affiliation

This bill amends the Code of Virginia by adding a section numbered 65.1-104.3 to prohibit any employee, officer, director, or any person with a direct or indirect interest in any service company which provides services for a group self-insurance association from acting as administrator of such group self-insurance association.

This bill also prohibits any person, firm, or corporation acting as an administrator from also being an employee, officer, or director of, or having any direct or indirect financial interest in any service company of such group self-insurance association.

This bill has no affect on extension or renewal contracts for services as an administrator or service company. It will only affect those contracts entered into after January 1, 1989.

House Bill 1636

Mortgage guaranty contingency reserves

This bill amends §38.2-1315 of the Code of Virginia pertaining to mortgage guaranty insurance contingency reserves. This bill allows industry more flexibility in utilizing contingency reserves for loss payments. Industry will no longer need the approval of the Commission to utilize the reserve funds, so long as the incurred losses in any twelve-month period, less any

amounts already released from the contingency reserve during that period, exceed thirty-five percent of the corresponding earned premium.

House Bill 1791

Affiliate transactions

This bill amends §38.2-1331 and 38.2-4214 of the Code of Virginia and adds in Chapter 42 of Title 38.2 an article numbered 2, relating to corporate activities of nonstock corporations offering health services plans.

This bill will give the Commission regulatory oversight in affiliate transactions of nonstock corporations offering health service plans (i.e. BC/BS). The Commission will be authorized to set standards for transactions with affiliates and have oversight over the terms and conditions of transactions by a nonstock corporation offering health services plans and its affiliates.

Nonstock corporations that are members of a holding system will be required to register with the Commission. Written approval of the Commission will be required for any transaction between a nonstock corporation licensed under this chapter and any affiliates, if such transaction involves more than three-fourths of one percent of admitted assets or five percent of surplus as of the immediately preceding December 31, whichever is less.

House Bill 1798

HMO insolvency plans

This bill amends §§38.2-4310, 38.2-4311 and 38.2-4317 of the Code of Virginia and adds a section numbered 38.2-4317.1 to provide enrollees additional protection against the insolvency of an HMO.

This bill will require that each HMO have a plan for handling insolvencies which allow for continuation of benefits for the duration of the contract period for which premiums have been paid.

In the case of HMO insolvency, there would be a required thirty day open enrollment period of all other carriers that participated in the open enrollment process with the insolvent HMO.

This bill would also require a mandatory hold harmless agreement, and establish an insolvency deposit assessment which would require all HMO's to contribute in the event of an insolvency.

The Commission may also require that an HMO have a special deposit to secure non-participating providers.