May 27, 2005

Administrative Letter 2005-10

TO: **All Insurers and Other Interested Parties**

RE: **Legislation Enacted by the 2005 Virginia General Assembly**

We have attached for your reference summaries of certain statutes enacted or amended and re-enacted during the 2005 Session of the Virginia General Assembly. **The effective date of these statutes is July 1, 2005, except as otherwise indicated in this letter.** Each organization to which this letter is being sent should review the summaries carefully and see that notice of these laws is directed to the proper persons, **including appointed representatives**, to ensure that appropriate action is taken to effect compliance with these new legal requirements. Copies of individual bills may be obtained at http://legis.state.va.us/. You may enter the bill number (not the chapter number) on the Virginia General Assembly Home Page, and you will be linked to the Legislative Information System. You may also link from the Legislative Information System to any existing section of the Code of Virginia. All statutory references made in the letter are to Title 38.2 (Insurance) of the Code of Virginia unless otherwise noted.

Please note that this document is a **summary** of legislation. It is neither a legal review and interpretation nor a full description of the legislative amendments affecting insurance-related laws during the 2005 Session. Each organization is responsible for legal review of the statutes pertinent to its operations.

Cordially,

Alfred W. Gross
Commissioner of Insurance

AWG/met

Attachment

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PROPERTY AND CASUALTY BILLS

Chapter 95 (House Bill 2219)

This bill amends subsection F of § 38.2-1906 by clarifying that an insurer may cap certain renewal rates for policies acquired from another insurer pursuant to a written agreement of acquisition, merger, or sale that transfers all or part of the other insurer's book of business.

Chapter 192 (House Bill 2681)

This bill adds a new section (§ 38.2-324) to Chapter 3 (Provisions Relating to Insurance Policies) to permit insurers or agents to disclose to the Department of Emergency Management certain information obtained from policyholders or others regarding claims or reports of property damage resulting from a natural disaster as defined in § 44 - 146.16. Such information may also be given to other state, federal, or local government officials. The information may not identify the names or addresses of the persons whose property is damaged and may include only aggregated data that relates to the assessment of the damage from a natural disaster, such as the number of claims, estimates of the dollar amount of damage, and types of damage, for a specified geographic area.

Chapter 251 (Senate Bill 913)

This bill amends § 38.2-1903.1 to change the criteria that establish what is considered a large commercial insurance risk. In addition to having a risk manager, the insured must meet at least two additional criteria in order to be a large commercial risk. The following criteria (all but existing § 38.2-1903.1 C 2 F) were amended:

a. Possesses a net worth in excess of $2 million (currently $10 million);
b. Generates annual revenues in excess of $2 million (currently $25 million);
c. Employs more than 10 full-time or full-time equivalent employees per individual insured (currently 80 full-time or full-time equivalent employees);

d. Pays annual aggregate nationwide insurance premiums in excess of $25,000 (currently at $100,000); and
e. Is a not-for-profit organization or public body, generating annual budgeted expenditures of at least $5 million (currently $10 million).

Chapter 290 (House Bill 1882)

This bill amends §§ 38.2-231 and 38.2-2200 to require insurers that issue policies of miscellaneous casualty insurance to a business entity to comply with the notice requirements of § 38.2-231 pertaining to cancellations, non-renewals, rate increases, and reductions in coverage. The bill also requires that policies which indemnify against liability for injury to a person's economic interests must be subject to the provisions of § 38.2-2200 pertaining to insolvency, bankruptcy, and unsatisfied judgments.

Chapter 445 (House Bill 1663)

This bill adds 46.2-684.1 to the Motor Vehicle Code to allow unregistered vehicles, including unregistered farm vehicles, to be insured under a policy other than a motor vehicle insurance policy (such as a general liability or a farm liability policy). If coverage is provided under a general liability or a farm liability policy, such policy does not have to comply with the provisions of Chapter 22 of Title 38.2 (for example, uninsured motorist coverage does not have to be provided, medical expense coverage does not have to be offered, and the omnibus clause will not apply).

Chapter 635 (House Bill 2410)

This bill amends § 38.2-231 to require insurers of commercial liability and commercial automobile insurance policies to provide a notice to the named insured when there has been a premium increase (rather than a rate increase) greater than 25%. The bill states that the premium increase is determined by comparing the difference between the renewal premium and the premium charged by the insurer at the effective date of the expiring policy. Under the bill, the insurer must advise the named insured of the right to obtain from the agent or the insurer that the specific reason for the increase and the amount of the increase, or in the case of a reduction in coverage, the specific reason for the reduction and the manner in which coverage will be reduced. Additionally, medical malpractice insurers must provide at least 90 days' notice when the policy is being terminated or when the premium is being increased by more than 25%, except that at least 15 days' notice must be given when the policy is being terminated for non-payment of premium.

Chapter 649 (House Bill 2659)
Chapter 692 (Senate Bill 1173)

This bill adds § 38.2-2228.2 to Chapter 22 (Liability Insurance Policies) to require that all medical malpractice claims settled or adjudicated to final judgment, as well as, all claims closed without payment, must be reported annually to the Commission. These must be reported by the insurer and must be reported electronically. A statistical summary must be provided as well as individual reports on each claim. The bill requires the reports to be filed by July 1 of the year following the applicable calendar year, but the report containing data for Calendar years 2002, 2003, and 2004 must be filed by September 1, 2005.

Chapter 771 (Senate Bill 1260)

This bill amends § 38.2-2204 to specify that an insurer may limit its liability to the policy's limits for any accident or occurrence or for any one person regardless of the number of insureds under the policy. When one accident or occurrence involves more than one defendant who is covered by the policy, however, the plaintiff may recover the per person limit of the policy against each such defendant, subject to the per accident or occurrence limit of the policy.

Chapter 848 (House Bill 2821)

This bill amends § 38.2-4608 to allow title insurers and title agents to charge risk rates that they negotiate with potential insureds. The bill states that such negotiated rates are presumed not to be unfairly discriminatory and do not violate § 38.2-509 (Virginia's anti-rebating statute) if the rates otherwise comply with subsection A of § 38.2-4608.

Chapter 872 (House Bill 814)

This bill amends § 38.2-2114 to require that a policy written to insure an owner-occupied dwelling may not be non-renewed solely due to an inquiry from an insured about his coverage or policy provisions. An inquiry is defined to mean a written or oral communication by an insured seeking information regarding coverage or policy provisions that does not notify the insurer of a loss, incident, or accident and that does not provide information indicating an increase in the hazard insured against. The bill further prohibits insurers from reporting inquiries to consumer reporting agencies or insurance support organizations.

TITLE INSURANCE BILLS

Chapter 734 (Senate Bill 875)
Chapter 780 (House Bill 1586)

The bills add § 6.1-2.23:2 to the Consumer Real Estate Settlement Protection Act (CRESPA). Section 6.1-2.23:2 prohibits settlement agents from charging any party to a real estate transaction, as a separate item on a settlement statement, a sum exceeding $10 for complying with any requirement imposed on the settlement agent by §§ 58.1-316 or 58.1-317.

FINANCIAL REGULATION BILLS

Chapter 38 (Senate Bill 1059)

The bill amends subsection A to 38.2-1057 to authorize the State Treasurer to assess an annual fee not to exceed one-fourth of one percent of the par or face value of the deposited securities or surety bonds (current law provides for a fee not to exceed one-tenth of one percent) against each insurer to cover the expense of holding deposits. The bill also adds a new subsection B to require that the assessments will be deposited in a special, nonreverting fund known as the Insurance Collateral Assessment Fund (Fund) administered by the State Treasurer. Any moneys remaining in the Fund at the end of the fiscal year will remain in the Fund and will be used to offset future years' expenses.

LIFE AND HEALTH BILLS

Chapter 335 (Senate Bill 864)

This bill amends § 38.2-3430.3 to prohibit health insurance issuers from imposing affiliation periods on eligible individuals in the individual accident and sickness health insurance market. Such insurance is currently guaranteed to be available to eligible individuals with prior coverage in accordance with federal regulations issued under the Health Insurance Portability and Accountability Act.

Chapter 349 (Senate Bill 1106)

This bill amends and reenacts subsection B of § 38.2-3407.15 (Ethics and Fairness in Business Practices) to require the insurance carrier, if the carrier as a matter of policy, bundles or downcodes claims submitted by a provider, to disclose that practice clearly in each provider contract. Further, such carrier shall either (i) disclose in its provider contracts or in its website the specific bundling and downcoding policies that the carrier reasonably expects to be applied to the provider or provider's services on a routine basis as a matter of policy or (ii) disclose in each provider contract a telephone or facsimile number or e-mail address that a provider can use to request the specific bundling and downcoding policies that the carrier reasonably expects to be applied to that provider or provider's services on a routine basis as a matter of policy. If a request is made by or on behalf of a provider, a carrier must provide the requesting provider with the policies within 10 business days following the date the request is received.

Subsection B is also revised to provide that no amendment to any provider contract or to any addenda, schedule, exhibit or policy applicable to the provider shall be effective unless the amendment has been delivered to the provider at least 60 days before the effective date and the provider has failed to notify the carrier within 30 days of receipt of the documentation of the provider's intention to terminate the provider contract at the earliest date thereafter permitted under the provider contract.

All carriers must establish, in writing, their claims payment dispute mechanism and must make the information available to providers. The provisions of this bill apply to provider contracts that are entered into, amended, extended, or renewed on or after January 1, 2006.

Chapter 399 (House Bill 2143)

The bill amends § 38.2-3407.14 by stating that the written notice of intent to increase the renewal premium by more than 35% shall be sent to a designated consultant or other agent of the group policyholder, contract holder, or subscriber if such group policyholder, contract holder, or subscriber requests in writing that the designated consultant or other agent receive the notice.

Chapter 503 (Senate Bill 1097)
Chapter 572 (House Bill 1492)

This bill amends various titles of the Code of Virginia to require, no later than July 1, 2006, that a high deductible health plan that would qualify for use with a health savings account (HSA) pursuant to § 223 of the Internal Revenue Code be one of the health care coverage options available for health insurance coverage. That portion of the bill that amends Title 38.2 requires the Department of Taxation and the State Corporation Commission to amend the Virginia Medical Savings Account Act to make it consistent with federal HSA legislation. The revised Virginia Health Savings Account Plan shall identify measures that will increase the utilization and efficacy of HSAs. Existing medical savings accounts may be converted to HSAs. Health Insurance carriers may offer high deductible health plans that qualify for and may be offered in conjunction with HSAs.

Chapter 640 (House Bill 2482)

This bill amends various titles in the Code of Virginia to prohibit the use of an employee's social security number (SSN) as an identification number for coverage under the State Employee Health Plan. The bill prohibits the intentional communication of an individual's SSN to the public; printing an individual's SSN on any card required for the individual to access or receive products or services; requiring an individual to use his SSN to access an internet Website unless a password, unique personal identification number or other authentication device is also required to access the site; sending or causing to be sent or delivered any letter, envelope or package that displays a SSN on the face of the mailing envelope, or package, or from which a SSN is visible, on the outside or inside of the mailing envelope or package. The restriction of the use of SSNs does not prohibit the collection, use or release of a SSN permitted by the laws of the Commonwealth or the U. S. or the use of a SSN for internal verification or administrative purposes unless the use is prohibited by a state or federal statue, rule or regulation.

The law does not apply to public bodies as defined in § 2.2-3701 or records required to be open to the public, and is not to be construed to limit access to records pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)

The bill also prohibits the embedding of an encrypted or unencrypted SSN in or on a card or document, including, but not limited to, using a bar code, chip, magnetic strip, or other technology in place of removing the SSN. A violation of the provisions of the bill is a prohibited practice under the Virginia Consumer Protection Act (§ 59.1-196 et seq.)

For (i) health care providers, as defined in § 8.01-581.1 (ii) managers of pharmacy benefit plans; (iii) insurers as defined in § 38.2-100; (iv) corporations providing health services plans; (v) health maintenance organizations providing health care plans; or (vi) contractors of any such persons, the prohibition on use of SSNs on cards for access to services or products becomes effective January 1, 2006.

Chapter 656 (House Bill 2766)
Chapter 698 (Senate Bill 1227)

This bill amends § 38.2-301, the provision allowing a person to procure a contract on another person when there is "a beneficiary designated by the insured," if the beneficiary did not have an insurable interest in the insured when the contract was made. The measure provides that a lawful and substantial economic interest, which constitutes an insurable interest, is deemed to exist in parties to a contract for the purchase or sale of a business firm or in trustees of certain trusts. The measure does not apply to life insurance policies or contracts where, prior to December 31, 2004, a Virginia-headquartered charitable organization executed a nondisclosure and exclusivity agreement and was the holder of a charitable certificate issued prior to that date, if the policies or contracts are written on individuals who were donors to such a charitable organization or an organization under common control with the charitable organization. This bill is identical to SB 1227.

Chapter 739 (Senate Bill 904)

This bill amends § 2.2-2818 (to make these provisions applicable to the health care coverage for state employees) and adds § 38.2-3407.13:2 to provide that when an insurer, health services plan or health maintenance organization (HMO) follows a policy of sending its claim payment to the insured, subscriber or enrollee for services from a non-participating physician or osteopath, the insurer, health services plan or HMO must (i) include language in the certificate or evidence of coverage that notifies the insured, subscriber or enrollee of the responsibility to apply the plan payment to the claim from the provider; (ii) include this language with any payment sent to the insured, subscriber or enrollee, and (iii) include the name and last known address of the non-participating provider on the evidence of benefits statement..

The provisions in § 38.2-3407.13:2 become effective on January 1, 2006 for any insurer, health services plan, or HMO that as of January 1, 2005 had no more than 500,000 insureds, subscribers or enrollees in Virginia; including enrollment of affiliated insurers, health services plans, or HMOs.

Chapter 871 (Senate Bill 1338)

This bill amends § 38.2-3525, which currently allows group insurers to include dependent coverage for the spouse of an insured group member; any child who is under the age of 19 years; any child who is a dependent and a full-time student under 25 years of age, without regard to whether such child resides in the same household as the insured group member, or any class of spouse and dependent children of each insured group member who so elects. Senate Bill 1338 allows coverage for any other class of persons as may be mutually agreed upon by the insurer and the group policyholder.