Obsolete and Withdrawn By Administrative Letter 2015-09

BUREAU OF INSURANCE

June 30, 1998

ADMINISTRATIVE LETTER 1998-7

TO: All Health Maintenance Organizations Licensed Pursuant to Chapter 43 of Title 38.2 of the Code of Virginia

RE: Holding Company Registration - Form B Filings Due July 15, 1998

During its 1998 session, the General Assembly of Virginia enacted Senate Bill No. 248, which amended multiple sections of the Code of Virginia, including §§ 38.2-1322 and 38.2-4319 in Title 38.2. These amendments expand the definition of "Insurer" for purposes of applying the holding company statutes that comprise Article 5 of Chapter 13 of Title 38.2 (the Act) and sweep the Act into the specific listing of statutes which shall be applicable to any health maintenance organization (HMO) granted a license under Chapter 43 of Title 38.2. The amendments become effective July 1, 1998.

On and after July 1, 1998, HMOs which are members of an "insurance holding company" shall be subject to the Act and the Commission's rules concerning insurance holding companies at 14 VAC 5-260-10 *et seq*. (the rules) .Generally, compliance requires timely disclosure or prior approval of transactions between the HMO and an affiliate. Specifically, the Act requires, among other things, that HMOs, which are licensed to do business in Virginia and are members of an insurance holding company system, register with the Commission within 15 days after becoming subject to registration. In accordance with this provision at § 38.2-1329, currently licensed HMOs which are members of holding company systems will be expected to register with the Commission in the form and manner prescribed by regulation on or before July 15, 1998.

The purpose of this administrative letter is to provide guidance to those HMOs that will be required to file their initial registration statement with the Commission on or before July 15, 1998.

Attached is a copy of the Act, as amended. Attached also are the rules, including the instructions and filing forms for Forms A through F, which instructions and forms are a part of and published with the rules immediately following 14 VAC 5-260-100. For purposes of this

letter, attention is directed particularly to § 38.2-1329 of the Act, the rules at 14 VAC 5-210-60 and 14 VAC 5-210-70 concerning registration, and the instructions and forms specific to the Form B registration statement.

Section 38.2-1329 A reads:

> Each insurer licensed to do business in this Commonwealth that is a member of an insurance holding company system shall register with the Commission. Any insurer subject to registration under this section shall register within fifteen days after it becomes subject to registration, unless the Commission extends the time for registration for good cause shown.

14 VAC 5-260-60 reads in part:

> An insurer required to file a registration statement pursuant to § 38.2-1329 of the Act shall furnish the required information in the format designated on Form B of this regulation.

Pertinent definitions are:

"Insurer" means, as used in the Act, an insurance company as defined in § 38.2-100 and means also a health maintenance organization licensed under Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2.

"Insurance holding company system" means two or more affiliated persons, one or more of which is a person licensed pursuant to Title 38.2.

"Affiliate" of a specific person or a person "affiliated" with a specific person means a person that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person specified.

"Control," including the terms "controlling," "controlled by" and "under common control with," means direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, through (i) the ownership of voting securities, (ii) by contract other than a commercial contract for goods or nonmanagement services, or (iii) otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing collectively ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection I of § 38.2-1329 that control does not exist. After giving all interested persons notice and opportunity to be heard and making specific findings to support its determination, the Commission may determine that control exists, notwithstanding the absence of a presumption to that effect.

Significant provisions. HMOs filing their initial registration statements are asked to pay particular attention to the following:

- An HMO shall file a Form B with the Commission on or before July 15, 1998, if on and after July 1, 1998, the HMO is licensed in this Commonwealth and a member of an insurance holding company. Instructions published with the holding company regulations prescribe the place and manner of filing.

- Required information shall be reported for year ended December 31, 1997. Subsequently occurring transactions which are "material" as defined by the Act or the rules and accompanying instructions shall be reported also.

- Pursuant to § 38.2-1329, the Commission may extend the time for registration for good cause shown. The Commission does not anticipate that it will extend the initial filing date for registration statements due on July 15, 1998, because information regarding transactions as of December 31, 1997, should be readily available to the company. Similarly, a company should know whether such information may have materially changed.

- The Form B instructions published with the rules provide that information and documents required by any item of the registration statement may be incorporated by reference. Material incorporated by reference shall be clearly identified in the reference. Documents incorporated by reference must be currently on file with the Commission and need not be resubmitted if they were filed within three years of the Form B filing unless the Commission specifically requests otherwise. The incorporation of documents by reference may enable many HMOs to reduce the size of their initial registration filings. Relevant documents may have already been filed with Commission pursuant to the requirements of §§ 38.2-4301, 38.2-4302 or 38.2-4307.

- Pursuant to 14 VAC 5-260-60 D, an insurer which is authorized to do business in this Commonwealth may file a registration statement on behalf of any affiliated company which is required to register under § 38.2-1329 of the Act. HMOs which are affiliated with one or more licensed insurers may be able to use or incorporate by reference materials gathered by an affiliates in connection with an earlier holding company filing. An HMO, which files as its registration statement the Form B filed by an affiliate, may need to file a Form C summary of registration also.

- Pursuant to the Act and 14 VAC 5-260-60 D 6, a foreign company subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in § 38.2-1329 of the Act shall be exempted and excepted from registration in this Commonwealth, however, if requested by the Commission, such company shall furnish to the Commission a copy of the registration statement or other information filed in its state of domicile. An HMO which is a member of an insurance holding company system and licensed in Virginia but domiciled elsewhere shall be required to file with the Commission notice of its membership in an insurance holding company. For HMOs licensed on July 1, 1998, such notice shall be due on or before July 15,

1998. Notice shall be accompanied by (i) an organizational chart showing affiliates and the ultimate controlling party and (ii) a statement describing the nature of holding company regulation in the state of domicile or, alternatively, copy of the registration statement filed with the domiciliary regulator; exhibits and source documents for such registration statements do not have to be submitted.

- All domestic insurers are subject to § 38.2-1323 concerning the acquisition of control of insurers. Pursuant to 14 VAC 5-260-40, applications for approval of acquisition or other change of control shall be filed in the format of Form A. A Form E filing may be appropriate also.

- All domestic insurers subject to registration under § 38.2-1329 shall be subject also to provisions in the Act and holding company rules pertaining to the filing of Forms D and F concerning material transactions and dividends.

Questions concerning this administrative letter and the holding company requirements as they apply to HMOs should be directed to:

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Sincerely,

Alfred W. Gross
Commissioner

AWG:jdg
Attachments: (2) Article 5 of Chapter 13 of Title 38.2
14 VAC 5-260-10 *et seq*. concerning insurance holding companies