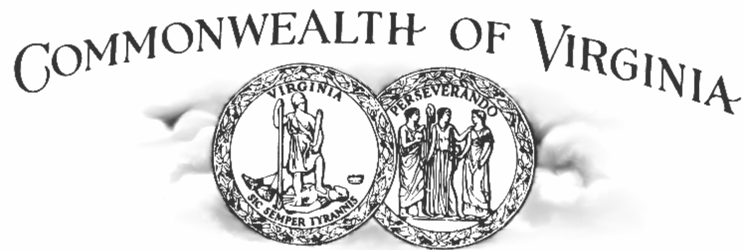
ALFRED W. GROSS
COMMISSIONER OF INSURANCE



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STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

June 9, 2006

Administrative Letter 2006-10

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

Re: **Legislation Enacted by the 2006 Virginia General Assembly**

We have attached for your reference summaries of certain statutes enacted or amended and re-enacted during the 2006 Session of the Virginia General Assembly. **The effective date of these statutes is July 1, 2006, 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 2006 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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CONTINUING EDUCATION FOR AGENTS BILL

Chapter 589 (House Bill 261 Hargrove)

This bill amends §§ 38.2-1868.1 relating to insurance agents' compliance with continuing education (CE) requirements. Agents whose licenses have terminated may avoid a ninety-day waiting period by paying a processing fee and an administrative penalty of $1000, and by successful completion of the required examination. Previously, the administrative penalty was $1000 per license type.

LIFE AND HEALTH BILLS

Chapter 209 (House Bill 1429 Purkey)

This bill amends § 38.2-3115 to exempt credit life insurance payable in whole or in part to a creditor that is an affiliate of the insurer and that does not charge interest after the insured's death from paying interest on the policy proceeds.

Chapter 398 (House Bill 323 Morgan) **Effective January 1, 2007**

This bill amends § 38.2-3407.10 to add a new subsection P that provides that an insurance carrier which rents or leases its provider panel to unaffiliated carriers must make a list of the unaffiliated carriers available to its providers upon request. If the list is available in electronic format, it must be updated monthly. The provider must also be given the means to request and receive a printed copy of the list.

Chapter 410 (House Bill 573 Nixon)

This bill amends § 38.2-1800 to increase the maximum amount of coverage that a "limited burial insurance authority" can sell, solicit or negotiate from $7,500 to $10,000 for burial association group life insurance certificates. The bill applies to burial society members under Chapter 40 (Burial Societies) and for agents who represent burial associations (see § 38.2-3318.1).

Chapter 427 (House Bill 761 Hamilton)

This bill adds Article 5 to Chapter 35 (Accident and Sickness Insurance) to allow small employers to create a cooperative for the purpose of offering or providing health care services, and amends §§ 38.2-4214, 38.2-4319 and 38.2-4509 to make these small employer health insurance pooling provisions applicable to health services plans, health maintenance organizations (HMOs), dental and optometric plans. Section 38.2-3552 provides that any person can organize and maintain a cooperative for the purpose of offering, providing or facilitating the provision of health care services for its members. Members must be small

employers (an employer with, on average, 2 to 50 eligible employees). A cooperative must be treated as a single entity for negotiation of terms, including premiums, for coverage. At the option of the cooperative, it can be either (i) deemed a policyholder for its members or (ii) deemed a sponsoring entity for the acquisition of separate group policies. A cooperative that is deemed the policyholder must obtain authorization to act for its members that is acceptable to the issuer. The authorization must be included in the agreement; must identify specific representatives of the cooperative who can enter into insurance contracts; and must specify the extent and limits of authority. If the cooperative has elected to be deemed the policyholder and has furnished authorization to the issuer, the issuer must consider the cooperative the policyholder in all respects permissible under state or federal laws and regulations. If the cooperative has elected to be a sponsoring entity, the issuer must issue a separate policy to each member of the cooperative. Each policy must conform to the benefit and premium specifications and other terms agreed to by the issuer and cooperative. An issuer providing policies to a cooperative must make the policies available to all eligible employees of its employer-members and their eligible dependents, regardless of any health status-related factor relating to individuals eligible for coverage through a member. An employee can reject the coverage in writing. The premiums for the policy or policies can be paid from funds from the cooperative, its members or both; or funds from the covered persons or both the covered persons, members, or the cooperatives. Section 38.2-3555 provides that the Commission can promulgate rules and regulations necessary to implement the bill pursuant to § 38.2-223.

Chapter 448 (House Bill 1044 Kilgore)

This bill amends §§ 38.2.-4307.1 to provide that an HMO with a capital and surplus of at least $4.5 million is not required to file a statement of covered and uncovered expenses. Sections 38.2-4300 and 38.2-5800 are amended so that subscriber identification cards are no longer considered evidences of coverage.

Chapter 599 (House Bill 786 Landes) and Chapter 570 (Senate Bill 287 Blevins)

This bill amends §§ 58.1-322 and 58.1-339.11 in Title 58.1 (Taxation). The bill adds a credit for long-term care (LTC) insurance premiums paid by an insured for a policy entered into on or after January 1, 2006. The tax credit is equal to 15% of the amount paid by the individual during the tax year for LTC premiums for coverage for himself not to exceed over the life of any policy 15% of the amount of premium for the first 12 months of coverage. If the credit exceeds the individual's income tax liability for the tax year, the excess amount can be carried over for credit against the income taxes of the individual for the next five years or until the credit is used, whichever comes first.

Chapter 638 (House Bill 443 Shuler)

This bill amends § 38.2-602 to add "licensed professional counselors" and "licensed marriage and family therapist" to the list of providers included in the definition of "medical professional" in Chapter 6 (Insurance Information and Privacy Protection). Section 38.2-3412.1 is revised to add the word "licensed" before "marriage and family therapist" in the list of providers in the definition of treatment for mental health and substance abuse services coverage.

Chapter 866 (House Bill 1041 Kilgore)

This bill revises §§ 38.2-1318, 38.2-4306, 38.2-4319, 38.2-5803 and 38.2-5804 to remove HMO contracts that provide coverage to Medicaid enrollees under plans administered by the Department of Medical Assistance Services (DMAS) from certain aspects of the regulatory oversight of the Bureau of Insurance with regard to evidences of coverage, schedules of charges for enrollee coverage for health care services, written complaint systems, and certain disclosure and representation requirements. The bill does not limit the Commission's ability to consult with DMAS before taking action on any person providing Medicaid benefits.

PROPERTY AND CASUALTY BILLS

Chapter 279 (House Bill 1275 Janis)

This bill amends § 38.2-209 by clarifying that this provision does not apply to surety bonds. This provision pertains to the ability of an insured individual to recover the costs and reasonable attorney fees awarded by a court in a civil case in which the insured has sued his insurer to determine what coverage exists, or the extent to which the insurer is liable for compensating a covered loss. Fidelity bonds are not affected by this legislation.

Chapter 554 (House Bill 1001 Rust)

This bill amends § 38.2-231 to limit the circumstances pursuant to which insurers are required to provide notice of reduction in coverage or increase in premiums. **S**ubsection C clarifies that the notice which commercial liability and commercial automobile insurers must provide when there has been a premium increase greater than 25% only has to be given when the increase is initiated by the insurer (and not the insured). Subsection C also clarifies that the notice may either advise the named insured of the specific reason for the increase (and the amount of the increase) or advise the named insured that this information may be obtained from the agent or the insurer. A definition has been added to subsection M which defines an "insurer-initiated increase in premium" as other than one resulting from (i) changes in coverage requested by the insured; (ii) changes in policy limits requested by the insured; (iii) changes in the insured's operation or location that result in a change in the classification of the risk; or (iv) changes in rating exposures such as increases in payroll, receipts, square footage, number of automobiles insured, or number of employees. Subsection E is amended to add certain situations where a notice of an increase in premium does not have to be provided such as when a renewal policy or renewal offer has been sent not less than 45 days prior to the policy's effective date (or 90 days in the case of a medical malpractice policy), when the policy is issued to certain large commercial risks, or when the policy is retrospectively rated. Subsection D makes it clear that if the insurer does not provide the notice as required in subsection C, and the insured does not accept the new policy, coverage that extends beyond the policy's expiration date must be provided under the old rates but using the latest exposures, coverages, and limits.

Chapter 580 (Senate Bill 610 Newman)

This bill reenacts the third enactment of Chapter 822 (SB 601) of the 2004 Acts of Assembly by delaying until July 1, 2008 (rather than July 1, 2006) the provisions that would establish a state-operated risk management plan which would allow certain qualifying physicians and sole community hospitals to purchase insurance from a risk management plan to be administered by the Department of Treasury. A fourth reenactment clause has been added which states that the provisions of the act shall not become effective unless an appropriation of funds for the period of July 1, 2008 through June 30, 2010 passes during the 2008 General Assembly.

Chapter 889 (Senate Bill 90 Watkins) and Chapter 851 (House Bill 816 May)

The bill amends § 38.2-2212 to prohibit insurers from non-renewing a private passenger motor vehicle insurance policy solely because the owner refuses to provide access to recorded data from a recording device as defined in § 46.2-1088.6. The bill also adds § 38.2-2213.1 to prohibit insurers and agents from reducing coverage, increasing the insured's premium, applying a surcharge, refusing to apply a discount, placing in a less favorable tier, or refusing to place in the company's best tier or most favorably priced company solely because the owner refuses to allow the insurer access to recorded data from a recording device as defined in § 46.2-1088.6. The bill allows insurers to charge an actuarially sound rate in accordance with § 38.2-1904. The bill also states that for purposes of investigating an accident or a claim, consent of the motor vehicle owner or the owner's agent or legal representative shall not be requested or obtained until after the event giving rise to the claim has occurred and shall not be made a condition of the defense, payment or settlement of a claim.

Home Protection Bill

Chapter 634 (House Bill 383 Suit)

This bill creates a new Article 2 in Chapter 26 that allows home service contracts to be issued by licensed home service contract providers. A home service contract is a contract to perform or indemnify for the repair, replacement, or maintenance of the components, parts, appliances, or systems of a residential dwelling. Unlike home protection insurance contracts, which are regulated under Article 1, home service contracts do not provide coverage for major structural defects and are not considered insurance. Home service contract providers must fully insure their obligations, maintain a funded reserve account or maintain a specified minimum net worth as a condition to obtaining a license.

Financial Regulation Bills

Chapter 320 (Senate Bill 474 Colgan)

The bill amends § 38.2-1315.1 to replace the term "summary of opinion or issues" with the term "actuarial opinion summary."

Chapter 329 (Senate Bill 586 Miller, Y.)

The bill amends § 38.2-1022 to delete the requirement that bylaw amendments must be filed with the Commission when a licensed insurer transfers its state of domicile to another state.

Chapter 577 (Senate Bill 546 Stosch)

This bill amends §§ 38.2-1329, 38.2-1330 and adds a new § 38.2-1330.1. Section 38.2-1329 now requires insurers registered under the Holding Company Act to report to the Commission all dividends and other distributions to shareholders within five (formerly two) business days following their declaration and at least 30 days prior to payment. Section 38.2-1330 adds consideration of the quality of the insurer's earnings and the extent to which the reported earnings of the insurer include extraordinary items as factors in determining whether an insurer's surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs in connection with transactions with affiliates. Section 38.2-1330.1 has been added to prohibit domestic insurers from declaring or paying dividends or other distributions from a source other than earned surplus without the Commission's prior written approval. In addition, domestic insurers may not pay an extraordinary dividend or other distribution to its shareholders until the earlier of thirty days after the Commission has received written notice of the declaration thereof and has not disapproved such payment or the Commission's approval of such payment.

Chapter 762 (Senate Bill 593 Watkins)

The bill amends §§ 38.2-1356 and 38.2-1363 to authorize the Commission to place on probations, suspend, revoke or refuse to issue or renew the license of a managing general agent or reinsurance intermediary that has its certificate of authority or other evidence of registration with the Clerk of the Commission terminated, canceled or revoked.