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STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

June 9, 2008

Administrative Letter 2008-08

To: All Insurers and Other Interested Parties

Re: Legislation Enacted by the 2008 Virginia General Assembly

We have attached for your reference summaries of certain statutes enacted or amended and re-enacted during the 2008 Session of the Virginia General Assembly. **The effective date of these statutes is July 1, 2008, 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. All references to the Commission refer to the State Corporation Commission.

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 2008 Session. Each organization is responsible for legal review of the statutes pertinent to its operations.

Cordially,

Alfred W. Gross
Commissioner of Insurance

Attachment

NOTE: Please note that the Bureau of Insurance will be converting to Sircon for States, a new web-based computer system, effective Tuesday, September 16. As a result, the Bureau will be unable to process any transactions or provide information for producer licensing, consumer services, or company admissions from 5:00 p.m., Thursday, September 4 through Monday, September 15. Please keep these dates in mind as you plan for your business needs in September. See the Bureau website for further details.

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LIFE AND HEALTH

Chapter 104 (Senate Bill 403)

The bill adds § 38.2-3407.9:03 in the Accident and Sickness Insurance Provisions chapter, requiring that any contract between a carrier and its pharmacy benefits administrator or a carrier and a participating pharmacy, or its contracting agent, that requires claims be submitted electronically shall require that payment be made electronically to the participating provider or its designee for clean claims, as defined in subsection A of § 38.2-3407.15, submitted electronically. An electronic claim must be submitted in the form required by the carrier and in compliance with the Code of Federal Regulations (45 CFR Part 142), as amended, provided that the participating provider or designee agrees to accept claims details for such payments electronically, in compliance with 45 CFR Part 142, as amended, and provides accurate electronic funds transfer information to the carrier. The provisions of the bill apply with respect to contracts that are entered into, amended, extended, or renewed on or after January 1, 2009.

Chapter 209 (House Bill 196)

The bill revises subsection B of § 38.2-3525 in the Accident and Sickness Policies chapter to require that insurers continue coverage for a dependent child based on the child's status as a full time student whose treating physician has certified that it is medically necessary for the student to withdraw from school as a full-time student. Coverage must continue to the earlier of (i) 12 months from the date the child is no longer a full-time student; or (ii) the date the child no longer qualifies as a dependent child under the group policy terms.

Chapter 214 (House Bill 397)

The bill amends § 38.2-4303 in the Health Maintenance Organizations (HMOs) chapter to delete language relating to limits for total deductibles per calendar or contract year. The criteria for determining whether an HMO's deductibles are unreasonable are also deleted.

Chapter 215 (House Bill 504)

The bill amends § 38.2-3407 in the Accident and Sickness Provisions chapter to add a new subsection E that allows insurers to offer individual or group exclusive provider policies (EPPs) or contracts under certain conditions. The term "*exclusive provider policies or contracts*" is defined as meaning "insurance policies or contracts that condition the payment of benefits on the use of preferred providers." An insurer may offer an EPP if (1) the insurer provides or offers a benefit for preferred and non-preferred providers in accordance with subsection D of § 38.2-3407 to a group contract holder and an enrollee can individually, at his option, accept or reject the benefit; and (2) the insurer provides out-of-network emergency

services at the minimum level required by the preferred provider policy or contract. Every insurer must make available or arrange with a carrier to make available, at no cost to the group contractholder, a notice to prospective group contract holders and prospective enrollees that accurately and completely explains the benefit for preferred and non-preferred providers and allows each enrollee to make an election. The notice must be approved by the Commission as required by § 38.2-316. The form of notice provided in connection with any reenrollment may be the same as the approved form of notice filed under § 38.2-316 used in connection with initial enrollment and may be made available to the group contract holder and prospective enrollee by the carrier in any reasonable manner

Chapter 420 (Senate Bill 785)

This bill amends the Code of Virginia by repealing a section numbered § 38.2-3418.1:1, relating to mandated coverage for bone marrow transplants and revises § 2.2-2818 regarding health coverage for state employees. The bill repeals the provision requiring health insurers, health services plans and health maintenance organizations (HMOs) to offer and make available coverage for the treatment of breast cancer by high dose-intensive chemotherapy/autologous bone marrow transplants (ABMT) or stem cell transplants. The bill also repeals the requirement that coverage for dose intensive chemotherapy with ABMT or stem cell support be included in state employee health coverage. **NOTE:** Revisions to previously approved forms to delete the mandated offer or benefit must be submitted to the Bureau for approval.

Chapter 546 (House Bill 728)

The bill requires that the Commission, acting through its Bureau of Insurance (Bureau), develop a uniform group health insurance application form by July 1, 2009. The bill requires the Bureau to convene a work group with representatives of group health insurers, employer organizations, and the Virginia Associations of Health Plans to assist the Bureau. **NOTE:** Insurers may contact the Bureau at (804) 371-9074, if they are interested in more information about the work group.

PROPERTY AND CASUALTY

Chapter 221 and Chapter 58 (House Bill 914 and Senate Bill 612)

The bills amend §§ 38.2-231 (General Provisions), 38.2-2114 (Fire Insurance Policies), and 38.2-2212 (Liability Insurance Policies) to exempt an insurer from the termination notice requirements if an affiliated insurer has manifested its willingness to provide coverage to the insured at a premium that would have been charged for the same exposures on the expiring policy. The affiliated insurer policy must have types and limits of coverage at least equal to those of the expiring policy unless the insured has requested a change in the coverage or limits. The insurer of the expiring policy is not required to send an offer of renewal, and the policy issued by the affiliated insurer will be deemed to be a renewal policy.

Chapter 516 and Chapter 111 (House Bill 1176 and Senate Bill 697)

The bills amend § 38.2-517 in the Unfair Trade Practices chapter to prohibit any person from engaging in the practice of capping, which is defined as the setting of arbitrary and unreasonable limits on what an insurer will allow as reimbursement for paint and materials.

MARKET REGULATION

Chapter 249 (House Bill 336)

The bill amends § 38.2-1317.1 to include results of market analyses as a consideration in scheduling examinations and adds a new section numbered § 38.2-1317.2 to the Examinations article of the Reports, Reserves and Examinations chapter relating to the confidentiality of such market analyses. The bill establishes a regulatory process called “market analysis” to determine the nature, scope, and frequency of examinations. The bill also makes the confidentiality provisions currently applicable to financial examinations and financial analyses applicable to market conduct examinations and market analyses.

TITLE INSURANCE

Chapter 92 (Senate Bill 149)

The bill amends the Consumer Real Estate Settlement Protection Act (CRESPA, §§ 6.1-2.19-6.1-2.29) to increase the amount of the required surety bond a settlement agent must obtain from $100,000 to $200,000.

Chapter 250 (House Bill 431)

The bill amends § 38.2-1814.1 in the Insurance Agents chapter by adding a requirement that any resident seeking to be licensed as a title insurance agent must complete a 16-hour pre-licensing study course.

AGENT REGULATION

Chapter 212 (House Bill 298)

The bill amends the affidavit form and content requirements in § 38.2-4806 (Surplus Lines chapter). The bill eliminates the requirement that a surplus lines broker execute an affidavit stating that he was unable, after a diligent search, to obtain insurance from a licensed insurer. An affidavit in a form prescribed by the Commission is still required to be filed with the Commission within 30 calendar days after the end of each calendar quarter.

Chapter 213 (House Bill 349)

The bill amends sections of the Insurance Agents chapter to eliminate the requirement that a foreign or domestic business entity first obtain a certificate of authority, including a certificate of registration, certificate of organization, certificate of limited partnership, or charter, from the Commission prior to being eligible to obtain a license as an insurance agent, consultant, surplus lines broker, or viatical settlement broker. The business entity must still obtain the necessary certificate of authority. A failure to obtain that certificate of authority may result in the Bureau of Insurance terminating the producer license.

Chapter 303 (House Bill 831)

The bill amends § 38.2-1834.1 in the Insurance Agents chapter and § 6.1-2.27:1 in the Consumer Real Estate Settlement Protection Act (CRESPA) to clarify the ability of the Commission to share confidential information with local, in addition to state and federal, law enforcement authorities.

Chapter 357 (House Bill 542)

The bill amends § 38.2-1833 of the Insurance Agents chapter to remove the requirement that the Commission provide notice to an agent regarding his valid appointment by an insurer. The bill adds the requirement that the insurer notify its agent if the Commission notified the insurer that the attempt to appoint the agent was invalid. Such insurer notice must be provided within five business days of receipt of the invalid appointment notice from the Commission. Any agent who sells or solicits insurance on behalf of the insurer after being notified of an invalid appointment shall be in violation of this section and shall be subject to penalties as prescribed in §§ 38.2-218 (General Provisions) and 38.2-1831.

FINANCIAL REGULATION

Chapter 93 (Senate Bill 182)

The bill amends § 38.2-1423 in the Investments chapter of Title 38.2. Certain references set forth in the Code to identify preferred stocks have been replaced with references to the more generic “medium quality,” “high quality,” and “highest quality.”

Chapter 95 (Senate Bill 207)

The bill amends § 38.2-1039 to state that an “industrial insured” is an insured (i) who procures the insurance of any risk or risks other than life and annuity contracts by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained licensed insurance consultant; (ii) whose aggregate annual premiums for insurance on all risks, except for life, annuity, and accident and sickness insurance, total at least $100,000; and (iii) who has at least 25 full-time employees, and (iv) either has gross assets in excess of $3 million or has annual gross revenues in excess of $5 million.

Chapter 216 (House Bill 549)

The bill amends §§ 38.2-1401 and 38.2-1443.1 in the Investments chapter and adds § 38.2-3100.2 (Life Insurance) to provide for the allocation of funding agreements to separate accounts. The bill provides that the assets of a separate account to which an insurer has allocated assets under a funding agreement shall not be chargeable with liabilities arising out of any other business that the insurer conducts. If a separate account is not chargeable with liabilities arising out of such other business, a risk charge will be payable from the separate account to the insurer's general account. The measure also provides that funding agreement assets held in the insurer's general account, and other obligations due under the funding agreement from the general account, will be treated as an insurance contract. In addition, a domestic insurer that has established separate accounts for funding agreements and has allocated funds to such separate accounts shall file with the Commission any prescribed periodic or special reports. An insurer shall not make an agreement providing for the allocation of funding agreement amounts to a separate account until a statement as to its methods of operation has been approved by the Commission.