COMMONWEALTH OF VIRGINIA

ALFRED W. GROSS
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

P.O. BOX 1157
RICHMOND, VIRGINIA 23218
TELEPHONE: (804) 371-9741
TDD/VOICE: (804) 371-9206
http://www.scc.virginia.gov/division/boi

STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

June 14, 2010

Administrative Letter 2010-06

To: All Insurers and Other Interested Parties

Re: Legislation Enacted by the 2010 Virginia General Assembly

We have attached for your reference summaries of certain statutes enacted or amended and re-enacted during the 2010 Session of the Virginia General Assembly. **The effective date of these statutes is July 1, 2010, 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 2010 Session. Each organization is responsible for review of the statutes pertinent to its operations.

Cordially,

Alfred W. Gross
Commissioner of Insurance

Attachment

TABLE OF CONTENTS

CHAPTER / BILL NUMBER **PAGE NUMBER**

Chapter 21 (House Bill 554)

The bill amends § 38.2-3541.1 (Group Accident and Sickness Insurance Policies) relating to the continuation of health coverage after involuntary termination of employment. It revises the time period for continuation of coverage under the American Recovery and Reinvestment Act of 2009 (P. L. 111-5) from nine months to include "any additional period specified by the Act as later amended." **The legislation was effective upon its passage.**

Chapter 157 (Senate Bill 535) and Chapter 357 (House Bill 116)

The bill amends §§ 38.2-3407.7 (Pharmacies; Freedom of Choice); 38.2-4209.1 (Health Services Plans); and 38.2-4312.1 (Health Maintenance Organizations) to permit for the selection of a single mail order pharmacy provider as the exclusive provider of pharmacy services delivered to the covered person's address by mail, common carrier, or delivery services.

Chapter 211 (House Bill 77)

This bill revises §§ 38.2-3724 and 38.2-3735 (Credit Life and Credit Accident and Sickness) relating to disclosure requirements for credit life and accident and sickness contracts. The revision specifies the type of contracts for which notice is required to advise a debtor of his right to a refund if the insurance is terminated before its maturity date or if the debt is paid off early.

Chapter 225 (House Bill 258)

The bill amends § 38.2-3430.2 (Individual Health Insurance) to add individuals with previous coverage under "a state plan under Title XIX of the Social Security Act (42 U.S.C. *§* 1396 et seq.)" (Medicaid) to the definition of "eligible individual."

Chapter 226 (House Bill 260)

The bill amends § 38.2-218 (Penalties and Restitution Payments) to authorize the Commission to require a person to make restitution in the amount of direct actual financial loss for improperly withholding, misappropriating or converting any money or property received in the course of doing business.

Chapter 227 (House Bill 352) and Chapter 374 (Senate Bill 465)

The bill amends § 38.2-3323 (Life Insurance Policies) relating to group life insurance coverage of spouses, dependent children, and other persons. The bill permits coverage under a group life insurance policy to any other person in whom the insured group member has an insurable interest as defined in §§ 38.2-301 and 38.2-302 as may mutually be agreed upon by the insurer and the group policyholder.

Chapter 234 (House Bill 531)

The bill adds an exception to § 38.2-1907 (Regulation of Rates), which makes certain filings and supplementary rate information open to public inspection. Filings and supplementary rate information which contain information that constitutes a trade secret, as defined in § 59.1-336, shall not be open to public inspection.

Chapter 235 (House Bill 532) and Chapter 371 (Senate Bill 439)

The bill amends §§ 38.2-2617, 38.2-2618, and 38.2-2619 (Home Protection Companies) to exempt home service contract providers with a net worth in excess of $100 million from the licensing requirements under Article 2 of Chapter 26 of Title 38.2.

Chapter 272 (House Bill 548)

The bill adds § 38.2-3540.2 (Group Accident and Sickness Policies) and amends § 38.2-4319 (Health Maintenance Organizations) to allow group accident and sickness policies and health care plans to provide a premium discount to employers that maintain an employee wellness program that meets the insurer's criteria. An employer may require an employee to undergo a health assessment to enroll in the wellness program.

Chapter 281 (House Bill 800)

The bill amends §§ 38.2-1815 (License Required of Resident Life & Annuities Agents); 38.2-1825 (Duration and Termination of Licenses and Appointments); and 38.2-1869 (Termination of License) to remove the requirement that a nonresident agent must obtain an underlying life and annuities license from the Bureau of Insurance prior to applying for a variable contract license.

Chapter 335 (House Bill 939)

The bill amends § 38.2-1874 (Continuing Education) to delete language that limits appeals with regard to actions of the Insurance Continuing Education Board (CE Board) to licensees whose licenses are affected by the action.

Chapter 337 (House Bill 1018)

The bill repeals § 38.2-323 (Countersignature Requirements) which states that no insurance policy shall contain any provision that deems the policy to be invalid due to the absence of the signature or countersignature of an agent or company representative.

Chapter 395 (House Bill 11)

The bill amends §§ 32.1-137.13 through 32.1-137.15 (Utilization Review Standards and Appeals) to revise the process for reconsideration or appeal of an adverse decision for utilization review. The bill requires that notification include instructions for the provider on behalf of the covered person to seek either a reconsideration pursuant to § 32.1-137.14 (Reconsideration of An Adverse Decision), or an appeal pursuant to § 32.1-137.15 (Appeal of An Adverse Decision). The treating provider shall be notified verbally at the time of the determination and in writing following the determination of the reconsideration of the adverse decision and of the process for an appeal of the determination, including the contact name, address and telephone number to file and perfect an appeal. If the treating provider requests that the adverse decision be reviewed by a peer of the treating provider at any time during the reconsideration process, the request for reconsideration shall be vacated, and considered an appeal pursuant to § 32.1-137.15. In such cases, the covered person shall be notified of the initiation of the appeal, and all documentation and information provided during the reconsideration shall be converted to the appeal process. No additional actions shall be required of the treating provider to perfect the appeal. For appeals other than expedited appeals, the physician advisor reviewing the appeal must be a peer of the health care provider and board certified in the same or similar specialty as the treating health care provider. **The effective date of the legislation is delayed and shall not become effective until October 1, 2010.**

Chapter 443 (House Bill 1375)

The bill amends § 38.2-3407.5 (Accident and Sickness Insurance; Prescription Drug Coverage) to revise the lists of standard reference compendia for accident and sickness insurers.

Chapter 492 (House Bill 93)

The bill amends § 38.2-2206 (Underinsured Motorist Coverage) by permitting the liability insurer of the underinsured wrongdoer to make an irrevocable offer to pay the limits of its policy and to give written notice of such offer to any insurer providing underinsured motorist coverage with respect to the loss. The liability insurer is then relieved of the cost of defending its insured, and the underinsured motorist insurer(s) shall assume the cost of defense. However, the liability insurer retains the duty to defend its insured. The bill further provides that the liability insurer remains liable for all legal costs incurred prior to making the irrevocable offer of its limits. The underinsured motorist insurer must have been served (pursuant to § 38.2-2206) prior to the liability insurer making an offer of its limits, and the underinsured motorist insurer has 60 days from the date of the liability insurer's offer before the duty to pay defense costs shifts to the underinsured motorist insurer. The underinsured motorist insurer's duty to pay defense costs ends when it offers its limits.

Chapter 503 (House Bill 315)

The bill amends § 38.2-3541 (Continuation of Accident and Sickness Insurance Coverage) to revise the current requirements for continuation of group health coverage upon termination of eligibility. The bill expands the ability of a person who becomes ineligible for coverage under a group health insurance policy to exercise the option to continue coverage under the group policy. The measure (i) extends the maximum length of continued coverage from 90 days to 12 months; (ii) allows premiums to be paid monthly; and (iii) requires the policyholder to inform the persons insured under the group policy of the option. The notice shall be provided within 14 days of the policyholder's knowledge of the covered person's loss of eligibility under the group policy. The measure also retains the policyholder's option to have the issuer issue an individual policy to the covered person who loses eligibility, and the maximum period for applying for such a policy is extended from 31 to 60 days after loss of eligibility.

Chapter 504 (House Bill 317)

The bill adds § 38.2-3541.2 (Group Accident and Sickness Policies), amends § 38.2-4214 (Health Services Plans) and § 38.2-4319 (Health Maintenance Organizations). The bill requires group health insurance policies, health services plans, and health care plans to offer enrollment opportunities for employees and dependents who are eligible for coverage under, but not enrolled in, such policies or plans upon their (i) losing eligibility for coverage under the Commonwealth's Medicaid or FAMIS program or (ii) becoming eligible for premium assistance under either program. In order to enroll, the employee or dependent must request coverage within 60 days of being terminated from coverage under the state program or 60 days of becoming eligible for premium assistance. Employers providing such policies or group plans are required to notify employees of their potential eligibility for premium assistance under these state

programs and to disclose to the Department of Medical Assistance Services, upon request, information to permit the Department to determine the cost-effectiveness of any premium assistance provided. The measure implements certain provisions of the federal Children's Health Insurance Program Reauthorization Act of 2009, and applies to corporations issuing subscription contracts, health maintenance organizations, and insurers.

Chapter 510 (House Bill 448)

The bill amends § 38.2-1442 (Investments) and §§ 38.2-1700 through 38.2-1715 (Virginia Life, Accident and Sickness Insurance Guaranty Association) to update and expand the scope of the Guaranty Association.

Chapter 515 (House Bill 556) and Chapter 687 (Senate Bill 642)

The bill amends § 38.2-3406.1 (Small Employer Groups) and revises § 38.2-4319 (Health Maintenance Organizations) to include HMOs in the definition of “health insurer” outlined in § 38.2-3406.1, thereby allowing HMOs to offer and sell to small employer groups health care plans that do not include all of the mandated health insurance benefits. The bill adds “evidence of coverage” to the policy forms and subscription contracts that must disclose that all state-mandated benefits are not included in the coverage. The disclosure must be included in any application or enrollment form as well as the contract and evidence of coverage.

Chapter 583 (House Bill 1263) and Chapter 734 (Senate Bill 622)

The bill adds § 38.2-3407.17 (Accident and Sickness Insurance General Provisions) and revises §§ 38.2-4214 (Health Services Plans), 38.2-4319 (Health Maintenance organizations) and 38.2-4509 (Dental Optometric Plan Services). The bill provides that no contract between a dental plan and a dentist or oral surgeon may establish fees or rates that the dentist or oral surgeon must accept or require the dentist or oral surgeon accept reimbursement from the dental plan as full payment unless the services are covered under the applicable plan. The bill applies to any contract between a dental plan and a dentist or oral surgeon for the provision of health care to patients that is entered into, amended, extended or renewed on or after July 1, 2010. The Commission has no jurisdiction to adjudicate individual controversies that arise out of the bill.

Chapter 595 (Senate Bill 163)

The bill adds § 38.2-5604 (Virginia Health Savings Account Plan) to provide that, notwithstanding a provision of law to the contrary, the rights of a participant or beneficiary to the money, assets and income of an HSA are exempt from creditor process and are not liable for attachment, garnishment or other process and cannot be seized, taken, appropriated or applied by any legal or equitable process of law to pay any debt or liability of the participant or beneficiary of the account.

Chapter 642 (House Bill 1095)

The bill amends § 38.2-3430.2 (Individual Health Insurance Coverage) as to the timing of the 63-day period during which an individual enrolling in a health plan must obtain coverage to have previous creditable coverage counted. The time period begins on the first day after the person's coverage ends and continues until an application for coverage is submitted. The postmark date is the submission date when an application is mailed.

Chapter 704 (House Bill 1377)

The bill adds § 38.2-4229.2 (Health Services Plans). If another state enacts a law that requires a health services plan operating in Virginia to provide a program or benefits for the residents of the other state, the Commission is authorized to conduct a hearing and an investigation to determine the impact of the state's law on health services plans in Virginia. The Commissioner of Insurance shall conduct an examination which focuses on the impact on surplus, premiums rates for residents of the Commonwealth, and solvency, and shall report its findings to the Commission. If the Commission determines that there is a harmful impact on the residents of Virginia, the Commission shall issue an order to protect such residents.