

COMMONWEALTH OF VIRGINIA

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Administrative Letter 2011-04

To: All Insurers and Other Interested Parties

Re: Legislation Enacted by the 2011 Virginia General Assembly

We have attached for your reference summaries of certain statutes enacted or amended and re-enacted during the 2011 Session of the Virginia General Assembly. **The effective date of these statutes is July 1, 2011, 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. The federal Patient Protection and Affordable Care Act is referred to as PPACA.

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 2011 Session. Each organization is responsible for review of the statutes pertinent to its operations.

Sincerely

A handwritten signature in cursive script that reads "Jacqueline K. Cunningham".

Jacqueline K. Cunningham
Commissioner of Insurance

Attachment

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Chapter 107 (House Bill 1985)

This bill amends § 38.2-2206 (Uninsured Motorist Coverage) to provide that a liability insurer may make irrevocable offers of its limits contingent upon a final judgment that is at least equal to the liability insurer's offer or may make such offer of its limits contingent upon the underinsured motorist insurer's waiver of subrogation.

Chapter 186 (Senate Bill 1390)

The bill amends the definition of "life insurance" in § 38.2-102 (General Provisions) to include additional benefits that provide specified disease or limited benefit health coverage, subject to compliance with the minimum standards for individual accident and sickness policies set forth in § 38.2-3519. Such additional benefits may be combined in an individual policy or added as a rider to the policy if the insurer is licensed to transact the business of accident and sickness insurance in Virginia and complies with the rate and form filing requirements contained in the Commission's Rules Governing the Filing of Rates for Individual and Certain Group Accident and Sickness Insurance Policy Forms (14 VAC 5-130-10 et seq.)

Chapter 194 (House Bill 1458) and Chapter 227 (Senate Bill 1388)

The bill adds a new article to the Life Insurance chapter (§§ 38.2-3100 et seq.) to establish requirements for use of retained asset accounts by insurers licensed in Virginia. The insurer shall provide, at the time a claim is made, written information describing the settlement options available under the policy and how to obtain specific details relevant to the options. The insurer shall also provide certain written disclosures to the beneficiary of a policy before the retained asset account option is selected, if optional, or established, if not optional. If the insurer settles benefits through a retained asset account, the insurer shall provide the beneficiary with a supplemental contract that clearly discloses the rights of the beneficiary and the obligations of the insurer under the supplemental contract.

Chapter 198 (House Bill 1504)

The bill amends provisions in the Investments chapter (§§ 38.2-1400 et seq.), amends § 38.2-1501, and adds § 38.2-1522 to the Rehabilitation & Liquidation of Insurers chapter to establish the criteria to be met by domestic insurers in order to engage in hedging and replication transactions involving derivative instruments. The bill includes an enactment clause that allows insurers currently investing in derivative instruments to continue doing so after the effective date of this act provided they submit guidelines to the Commission for review by April 1, 2011.

Chapter 222 (House Bill 2480)

The bill adds a new article to the Insurance Agents chapter (§§ 38.2-1800 et seq.) to allow the sale of Portable Electronics Insurance (PEI) for the repair or replacement of portable electronic devices by vendors of such devices. The bill also amends § 38.2-1800 to include “portable electronics insurance authority” in the lines of insurance that may be sold by limited lines property and casualty (P&C) insurance agents. Vendors of portable electronic devices holding a limited lines P&C license may sell PEI.

Chapter 298 (Senate Bill 1387)

The bill adds § 13.1-400.10 (Automobile Clubs), which provides an exemption to legal entities from the automobile club licensing requirements in the chapter. This exemption applies if the legal entity contracts with an automobile club that is licensed in Virginia to provide emergency road and towing service to the legal entity’s customers.

Chapter 306 (Senate Bill 916)

The bill amends § 38.2-1715 (Life, Accident & Sickness Insurance Guaranty Association {Association}) to require posting of its summary document prepared pursuant to subsection B of § 38.2-1715 on the Association’s website.

Chapter 329 (House Bill 1538)

The bill amends § 38.2-3420 (Accident and Sickness Insurance) to exempt multiple employer welfare arrangements (MEWAs) that are comprised of banks and their plan-sponsoring organization, and their respective employees, from Title 38.2. A “plan-sponsoring organization” is defined, in part, as an association that sponsors a MEWA comprised only of banks which have been in existence for at least five years and were formed for a purpose other than obtaining insurance.

Chapter 498 (House Bill 2286)

The bill amends various provisions of the Insurance Agents (§§ 38.2-1800 et seq.) chapter and amends and enacts various provisions of the Surplus Lines and Insurance Law chapter (§§ 38.2-4800 et seq.) in accordance with provisions of the federal Nonadmitted and Reinsurance Reform Act of 2010. The bill eliminates the requirement that a surplus lines broker be licensed in Virginia unless the broker is selling, soliciting, or negotiating contracts of insurance for insureds whose home state is Virginia. The bill states that surplus lines premium taxes will be collected for risks for which the home state is Virginia. The bill also establishes uniform eligibility requirements for the approval of nonadmitted or unlicensed insurers.

Chapter 618 (House Bill 1586) and Chapter 636 (Senate Bill 1015)

The bill amends § 38.2-1903.1 by making professional liability insurance policies eligible for the exemptions that currently exist for most types of policies written for large commercial risks. The bill also eliminates the requirement that insurers issuing policies under the exemption for large commercial risks report annually to the Commission on the number of exempted policyholders.

Chapter 623 (House Bill 2437)

The bill amends § 9.1-185.8 (Bail Bondsmen) to require premiums charged by bail bondsmen to be no less than 10 percent and no more than 15 percent of the amount of the bond. Bail bondsmen shall not loan money with interest for the purpose of helping another obtain a bail bond. A bail bond premium is defined as the amount of money paid to a licensed bail bondsman for the execution of a bail bond.

Chapter 682 (Senate Bill 1482)

The bill amends § 38.2-1705 (Life, Accident & Sickness Insurance Guaranty Association {Association}) to establish new procedure by which the Association would dispose of any surplus funds on hand with respect to an insurer insolvency. The bill requires the Association to reimburse member insurers for assessment costs not otherwise amortized and offset and then to pay the remaining surplus to the Commission for deposit in the Commonwealth's general fund.

Chapter 758 (House Bill 1459) and Chapter 759 (Senate Bill 771)

The bill amends § 8.01-581.15 (Medical Malpractice) to increase the cap on the amount an injured person may receive from a judgment in a medical malpractice action for acts occurring after July 1, 2012. The new cap as of July 1, 2012 will be \$ 2.05 million, and the cap will increase annually on July 1 by \$50,000 through July 1, 2031. (Refer to Administrative Letter 2011-03 for further guidance).

Chapter 788 (House Bill 1928)

The bill substantially revises various provisions of Title 38.2 regarding independent external review of a health carrier's final adverse determination regarding covered benefits. The bill also revises some provisions of Title, 32.1, Article 1.1 and Article 1.2. The bill also enacts a new chapter that requires a health carrier to establish an internal appeals process and adds requirements for external review consistent with the requirements set forth in the federal Patient Protection and Affordable Care Act (PPACA). The provisions of the bill expire on July 1, 2014.

Chapter 823 (House Bill 2434)

The bill expresses the intent of the Virginia General Assembly that the Commonwealth create and operate its own health benefits exchange or exchanges, and, at a minimum, the exchange will meet the relevant requirements of the federal PPACA. The Governor, through the Secretary of Health and Human Resources, and with the Bureau of Insurance, will work with the General Assembly, relevant experts and stakeholders to provide recommendations for consideration by the 2012 General Assembly regarding the structure and governance of the Virginia Exchange. The recommendations are due by October 1, 2011. The bill expires on July 1, 2014.

Chapter 850 (Senate Bill 1124)

The bill amends various provisions of Title 38.2 and adds new provisions in the Surplus Lines Insurance Law (§§ 38.2-4800 et seq.) to transfer the responsibility for the administration of gross premium taxation from the Commission to the Department of Taxation. The provisions become effective for the taxable year on or after January 1, 2013, except for the provisions in subdivisions A 1 through A 4 of § 38.2-4809 and § 38.2-4809.1 of the act, regarding the tax on surplus lines insurance policies, which are effective on July 1, 2011.

Chapter 876 (House Bill 2467) and Chapter 878 (Senate Bill 1062)

The bill adds a provision to the Accident and Sickness Insurance chapter (§§ 38.2-3400 et seq.) and amends § 38.2-4319 (HMOs) to require health insurers, health care subscription plans, and health maintenance organizations to provide coverage for the diagnosis of autism spectrum disorder (ASD) and treatment for ASD in individuals from age two to six. There is an annual maximum benefit of \$35,000 or greater for coverage of applied behavior analysis. The mandate to provide coverage shall not apply to individual or small employer group policies, contracts, or plans. The bill will not apply to an insurer, corporation, or health maintenance organization, or to the state employee health benefit plan if the costs associated with coverage for behavioral health treatment exceed one percent of premiums charged over the experience period. **The bill is effective January 1, 2012.**

Chapter 882 (House Bill 1958)

The bill conforms health insurance provisions of the Accident and Sickness Insurance chapter (§§ 38.2-3400 et seq.) with corresponding provisions of the federal PPACA which became effective on September 23, 2010. The provisions include (i) requirements that policies providing dependent coverage for a child provide such coverage until the child reaches age 26; (ii) limitations on annual and lifetime dollar limits on essential benefits; (iii) a prohibition on the rescission of health insurance

policies except in cases of fraud or misrepresentation of a material fact; (iv) requirements that nongrandfathered plans cover preventive services without out-of-pocket cost-sharing for the insured; (v) requirements that nongrandfathered plans permit covered persons to designate any participating primary health care professional who is available to accept the covered person and prohibitions of such plans requiring authorizations or referrals for obstetrical or gynecological care by in-network health care professionals specializing in obstetrics or gynecology; (vi) prohibitions on nongrandfathered plans imposing preexisting condition exclusions for enrollees who are under 19 years of age, except a grandfathered plan providing individual health insurance coverage; and (vii) prohibitions on nongrandfathered plans charging higher cost-sharing for emergency services that are obtained out of a plan's network and from requiring preauthorization for emergency services. The provisions expire July 1, 2014.

NOTE: If a health carrier providing individual health insurance coverage offers child only policies, the carrier must offer (i) coverage continuously throughout the year; or (ii) a limited open enrollment period each calendar year from April 1-May 31 or from October 31-November 30.