COMMONWEALTH OF VIRGINIA

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STATE CORPORATION COMMISSION

BUREAU OF INSURANCE

June 15, 1990

ADMINISTRATIVE LETTER
1990-7

TO: All Insurance Companies, Health Services Plans Health Maintenance Organizations, and Other Interested Parties

RE: Legislation enacted by the 1990 Session of the General Assembly of Virginia

Attached are summaries of certain statutes enacted or amended and re-enacted by the General Assembly of Virginia during the 1990 Session.

The **effective date of these statutes is July 1, 1990 except** as otherwise indicated in the attachment.

Each organization to which this letter is being sent should review the attachment carefully and see that notice of these laws is directed to the proper persons (including its appointed representatives) to ensure that appropriate action is taken to effect compliance with these new legal requirements. Please note that this document is a summary of legislation and is neither a legal review and interpretation nor a full description of legislative amendments made to insurance-related laws during the 1990 Session. Each organization is responsible for legal review of the statutes pertinent to its operations.

Sincerely yours,

Steven T. Foster
Commissioner of Insurance

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Attachment

(All Bills Effective July 1, 1990 Unless Otherwise Noted)

Property and Casualty Insurance

House Bill 305

Report on Competition, Availability and Affordability

This bill amends §38.2-1905.1 by requiring the Commission to submit its report on competition, availability, and affordability every two years instead of every year. The report must be submitted to the General Assembly no later than December 31st of the second year of any biennium. The Commission is then required to hold its hearing no later than September 30th of the year immediately following the year the report is submitted. §38.2-1912 is also amended to increase from one year to twenty-seven months the length of time a delayed effect rate ruling may be in effect.

House Bill 338 and Senate Bill 70

Definition of Birth-Related Neurological Injury

These bills amend the definition of "birth-related neurological injury" under §38.2-5001 so that it will be more clinically correct. The proposed changes are not intended to expand the definition beyond the original intent but only to more accurately describe the infants who were intended to be covered under the provisions of the original act.

House Bill 626

Loss Cost Rate Filings

This bill amends Chapter 19 of the insurance code by prohibiting rate service organizations from filing final advisory rates on behalf of their members, subscribers, or service purchasers. Instead, rate service organizations will be allowed to file prospective loss costs and supplementary rate information. This data may not include provisions for profit and expenses, other than loss adjustment expenses, nor may it include final rates, minimum premiums, or minimum premium rules. Insurers may modify the prospective loss costs based on their own loss experience, expenses, and profits.

The bill also adds a new section to Chapter 19 which gives the Attorney General the power to investigate any person that appears to be engaging in any act or practice prohibited by §38.2-1916.

A witness may challenge an investigative demand issued by the Attorney General by petitioning the Commission to modify or set aside such demand. Any person who neglects or refuses to attend, testify, answer lawful inquiries, or produce documents in accordance with the investigative demand shall be subject to penalties under §38.2-218. Any person who commits perjury, false swearing, or contempt shall be guilty of a misdemeanor and subject to fine or imprisonment. Any insurer, rate service organization, or other person that knowingly or willfully violates any provision of §38.2-1916 shall be punished by a penalty of not more than $100,000 and may be subject to license suspension or revocation. The Commission may require an insurer, rate service organization, or other person to make restitution to any person or public agency, including the Commonwealth, injured in its business or property by reason of a violation of §38.2-1916.

House Bill 627

Rate Filings

This bill amends §38.2-1906 by requiring insurers that apply for a rate revision for a line deemed noncompetitive (subject to the delayed effect of rates provisions of §38.2-1912) to submit additional information with their rate filings if coverage to which the rate filing applies is reinsured with an affiliated company. The additional information may include such premium, loss, and expense data reported on a net basis as the Commission deems necessary. Under §38.2-1912 every insurer is required to certify in its rate filing if coverage is reinsured with an affiliated company. §38.2-1912 is also amended to allow the Commission to order the provisional use of a requested rate reduction while it reviews the insurer's rate filing. §38.2-1910 is amended to allow the Commission to require an insurer whose rates have been disapproved to refund interest, at a rate set by the Commission, on any excess premiums collected.

House Bill 736

Refund of Excessive Premiums

This bill amends §38.2-1910 by providing that if the Commission disapproves a rate, it may require in its order that the insurer refund the excessive portion of premiums collected as far back as one year from the date of the request for a review and anytime thereafter until the date of the order. Current language only allows the refund of excess premiums collected one year prior to the date of the order.

House Bill 844

Birth-Related Neurological Injury Fund

This bill adds a provision to Chapter 50 which entitles a participating physician to a refund of one-half of his or her annual assessment if the physician retires before July 1 of a particular calendar year. This provision applies to physicians retiring on and after January 1, 1989.

The bill also adds a new section which requires medical malpractice insurers to give an actuarially justified premium credit to physicians and hospitals that participate in the Birth-Related Neurological Injury Compensation Program.

House Bill 884

Homeowners Terminations

This bill amends §38.2-2114 by prohibiting an insurer from cancelling or non-renewing a policy written to insure an owner-occupied dwelling because the insured is a foster parent and foster children live at the insured dwelling.

House Bill 921

Motor Vehicle Accidents

This bill amends §38.2-2212 by prohibiting insurers from nonrenewing a motor vehicle insurance policy solely because of two or fewer not-at-fault accidents within a 3-year period. It also amends § 38.2-1905 to prohibit an insurer from increasing its insured's premium or charging points due to a not-at-fault motor vehicle accident. This includes removing or reducing a credit or moving an insured from one price tier to another. The provisions of § 38.2-1905 regarding a right to review by the Commissioner apply to premium increases due to loss of credits or price tier changes as a result of a motor vehicle accident as well as points assigned under safe driver insurance plans.

House Bill 1050

Point Assignments

This bill amends §38.2-1905 by prohibiting insurers from assigning accident points on or after January 1, 1991 to a vehicle other than the vehicle customarily driven by the operator responsible for incurring the points.

House Bill 1095

Premium Misquotes

This bill adds a new section to Chapter 19. It provides an insured/applicant with the right to cancel his insurance policy on a pro rata basis when the actual premium exceeds the quoted premium (given in writing) by at least 10 percent. The earned premium following cancellation is then calculated on the original quoted premium instead of the actual premium. These provisions do not apply to any premium increase resulting from omitted information or incorrect information furnished by the insured/applicant. A premium misquote will not result in a violation of §38.2-1906 which requires rates to be filed with the Commission.

Senate Bill 72

Birth-Related Neurological Injury Fund

This bill extends coverage under §38.2-5009 of the Virginia Birth-Related Neurological Injury Compensation Act to injured infants delivered by a participating physician or born at a participating hospital. Current law requires that both the physician and hospital participate in the program in order to extend coverage of the Act to the infant. Under §38.2-5002 the bill also permits an injured infant to commence a civil action against any nonparticipating physician or hospital provided that participating physicians and hospitals may not be made parties to any such action or related actions. However, the injured infant's action against a nonparticipating hospital or doctor forecloses any claim under the Act, regardless of the civil suit's outcome. Finally, if the infant makes a claim under the Act, the Birth-Related Neurological Injury Compensation Program is subrogated to any rights the infant may have had against any nonparticipating physician or hospital. The bill also conforms the definition of "birth-related neurological injury" referenced in §38.2-5008 to the amendment of such definition established in Senate Bill 70.

Senate Bill 115

Workers' Compensation

This bill amends §65.1-104.2 by allowing workers' compensation group self-insurance pools to offer employer's liability coverage to their members in addition to the statutory benefits required by the Workers' Compensation Act. Employer's liability protects the employer in situations where an employee not covered under

the workers' compensation laws can sue for damages under common law liability. Insurance policies covering workers' compensation include employer's liability under Coverage B.

Senate Bill 203

Claims-Made Policies

This bill gives the Commission the authority to issue regulations governing claims-made liability policies. These regulations may include provisions pertaining to the pricing of tail coverage, premium installment plans, and coverage in case of death, disability, or retirement of the insured. All insurers will be given notice of a public hearing prior to implementation of the regulation.

Senate Bill 380

Birth-Related Neurological Injury Fund

This bill amends §38.2-5018 to allow any reasonable expenses incurred by the Industrial Commission for the Birth-Related Neurological Injury Compensation Fund to be paid by the Fund.

Senate Bill 407

Flood Insurance

This bill authorizes the State Corporation Commission under §38.2-401.1 to make assessments against all licensed insurance companies which write any type of flood insurance as defined in §38.2-137. The bill does not apply to premium income for policies written pursuant to the National Flood Insurance Act of 1968 or policies providing comprehensive motor vehicle insurance coverage. The bill provides that 100 percent of the total assessments collected annually will be paid into the Flood Prevention and Protection Assistance Fund pursuant to §10.1-603.17.

Life and Health

House Bill 280

Commissions for Intra-company Replacement of Accident and Sickness Insurance

This bill amends §38.2-502 of the Unfair Trade Practices Act to

include misrepresentation for the purpose of inducing replacement of an insurance policy as a prohibited act. The bill also adds a new section, §38.2-516, which states that commission or other compensation paid to insurance agents who replace an existing accident and sickness policy with a policy issued by the same insurer and providing substantially similar benefits to those provided by the replaced policy shall not exceed the renewal commission or other compensation that would have been paid to the agent had the replaced policy continued in force. The determination of whether the new policy and the replaced policy provide substantially similar benefits will be left to the insurer, subject to periodic review by the Bureau.

House Bill 328

Private Review Agents

This bill adds a new chapter to the insurance title, Chapter 53, Private Review Agents. The chapter requires private review agents to be certified when conducting utilization review of health care services. The bill does not apply to accident and sickness insurers, health service plans, health maintenance organizations, preferred provider organizations or hospital service corporations conducting reviews solely for their own subscribers, policyholders, members or enrollees. It does, however, apply when such entities are providing utilization review services on a third-party contractual basis. Applicants for the two-year certification must comply with the standards for approval by submitting to the Commission a description of procedures for evaluating services, procedures for reconsideration of determination, personnel descriptions and qualifications, procedures and policies to ensure the confidentiality of medical records, and to assure telephone access during normal business hours. Certification can be denied or revoked if the applicant or certificate holder does not meet the standards in the chapter or regulation. The Commission shall adopt a regulation providing for minimum standards to perform a review, procedures for review agent consultation with treating physicians, guidelines for patient record confidentiality and fees required from private review agents.

House Bill 386

Forms Deemed Approved

This bill amends §38.2-316 to require that an insurer notify the Commission, in writing, that the insurer deems its form approved. The insurer may not begin using the form until ten days after the notice to the Commission has been received by the Commission.

House Bill 402

Medicare Supplement Insurance

This bill amends §38.2-3608 of the Medicare Supplement Insurance chapter to provide that the Commission may issue regulations including provisions regarding marketing practices, compensation arrangements and reporting practices of insurers. This change is necessary to allow the Commission the authority to revise the Medicare Supplement Insurance Regulation to comply with federal guidelines.

House Bill 535

Mammograms

This bill corrects the error in 1989 legislation requiring mammogram coverage "biannually" which means twice a year; the word is changed to "biennially" which means every two years as was intended.

House Bill 595

Long-Term Care Insurance

This bill amends several sections of Chapter 52, Long-Term Care Insurance. The changes to this chapter expand the definition of long-term care insurance to include annuities and riders to life policies, require specific disclosures to individuals who purchase Long-Term Care insurance; prohibit policies covering skilled nursing care only, reduce the preexisting conditions period to six months, eliminate prior institutionalization requirements, require a standard outline of coverage, and extend the free look period to 30 days for all policies.

House Bill 597

Credit Life Insurance

This bill amends §38.2-3700 of the Credit Life and Credit Accident and Sickness Insurance chapter to remove the exception for age-rated classes of insurance from the chapter. Age-rated policies must meet the rate and policy provision requirements of Chapter 37.

House Bill 598

Long-Term Care Insurance Loss Ratios

This bill amends §38.2-5206 of the Long-Term Care Insurance Chapter to provide that long-term care benefits may be required to meet loss ratio standards now in effect or to be developed in the future.

House Bill 1106 (Senate Bill 478)

Advisory Commission on Mandated Benefits

This bill creates a Special Advisory Commission on Mandated Health Insurance Benefits. The language is contained in §§ 9-297 through 9-300 of the Code of Virginia. The Advisory Commission is to advise the Governor and the General Assembly on the social and financial impact of current and proposed mandated benefits and providers. Ten members of the Commission are to be appointed by the Governor. Four members are to be selected from the legislature. The Commissioner of Health and the Commissioner of Insurance are ex officio members. The Special Advisory Commission shall develop and maintain a system of data collection to assess the impact of benefits and providers; advise and assist the Bureau of Insurance regarding mandates; and prescribe the format, content and timing of information to be submitted to the Advisory Commission. All proposals to the General Assembly for mandates will be referred to the Advisory Commission.

House Bill 1107 (Senate Bill 479)

Mandated Benefit Cost Reporting

This bill requires insurers, health services plans and health maintenance organizations to report mandated benefit cost and utilization information to the State Corporation Commission on an annual basis beginning with calendar year 1991. The reports must be submitted by May 1 following the reporting period and must be in the form required by the Commission. The Commission must consolidate and summarize the reports and present them to the General Assembly. The Commission will promulgate a Regulation providing detailed reporting requirements.

House Bill 1108 (Senate Bill 480)

Limited Mandated Benefit Policies

This bill allows insurers and health services plans to issue limited mandated benefit policies that do not cover all of the

mandated benefits required by the insurance code. These policies can be offered to individuals, families and groups of less than 50 members who have been without health care coverage for the past 12 months. These policies or contracts must include managed care provisions to control costs, certain primary health care and essential medical care benefits such as 30 days inpatient hospitalization/year, prenatal care, obstetrical care and well-baby care. The prospective policyholder must be fully informed of the limitations of the coverage. The Commission will have the authority to approve the rates, including group rates, and records of enrollment claim costs, premium income, utilization and other relevant information must be reported to the Commission.

House Bill 1109 (Senate Bill 481)

Technical Advisory Panel to Medicaid

This bill amends §32.1-335 regarding the Technical Advisory Panel of the Department of Medical Assistance Services. The Panel is to study the technical and operational considerations related to requiring employers who do not provide minimum health benefits to make a contribution to the Indigent Health Care Trust Fund.

Senate Bill 13

Notice of Termination of Health Insurance Coverage

This bill amends §§38.2-3542, 38.2-4214, and 38.2-4319 to require that employers providing group health care plans, (coverage by health maintenance organizations), must provide their employees 15 days notice prior to terminating employer-sponsored health coverage.

Senate Bill 43

Interest on Accident and Sickness Claims Proceeds

This bill adds §38.2-3407.1 to provide that insurers must pay interest, at the legal rate, on accident and sickness claims proceeds paid later than 15 days following the insurer's receipt of proof of loss. This bill does not apply to claims where the payment will be made directly to providers under a negotiated arrangement. The bill does not apply to health maintenance organizations.

Senate Bill 116

Defense against Claims

This bill amends §38.2-3304 to provide that statements made on a life insurance policy application form may be used to defend a claim if the application is endorsed upon or attached to the policy when it is issued or delivered. Prior to this bill the statement in the application could be used only when the application was endorsed upon or attached to the policy when it was issued. The bill also requires that each policy contain a provision that the policy, or policy and application if endorsed upon or attached to the policy when issued or delivered, constitute the entire contract. This requires the revision or endorsement of all life policies currently approved.

Senate Bill 131

Child Health Coverage

This bill requires insurers, Blue Cross/Blue Shield plans and health maintenance organizations to offer and make available coverage for "child health supervision services". Child health supervision services is defined to mean the periodic review of a child's physical and emotional status by a physician or under a physician's supervision. Benefits are to include a complete physical examination, developmental assessment, anticipatory guidance, appropriate immunizations and laboratory tests at birth, two months, four months, six months, nine months, twelve months, fifteen months, eighteen months, and annually from two years to six years. Deductibles, co-payments, coinsurance or other dollar limit provisions shall not apply to this coverage. Rates for the coverage must be reasonable considering (i) the insurer's expenses to provide the coverage, (ii) cost-savings realized through preventive diagnostic care (iii) a reasonable profit and (iv) other considerations deemed appropriate by the Commission. The bill does not apply to insurers, or health maintenance organizations with (i) less than 1,000 individuals/ insureds covered in Virginia or (ii) less than $500,000 in VA premiums. The bill also does not apply to specified disease, hospital indemnity or other limited benefit policies. Affected contracts need to be revised to provide this coverage.

Financial Regulation

House Bill 372

Rehabilitation of Certain Health Plans

This bill adds §§38.2-4214.1, 38.2-4408.1, and 38.2-4509.1 which provide that the rehabilitation, liquidation, or conservation of a health services plan, legal services plan, or dental or optometric plan shall be subject to the general rehabilitation, liquidation and conservation statutes that apply to all insurers transacting business in the Commonwealth.

House Bill 395

Valuation of Life Insurers' Reserves

This bill codifies in §38.2-3126 the date by which life insurance companies must submit reserve valuation data to the State Corporation Commission. This data must be submitted on or before the last day of February of each year. The bill also deletes the requirement in §38.2-3127 that a foreign or alien life insurer file its valuation certificate the same time it files its annual statement.

House Bill 396

Loss Reserves of Title Insurers

This bill amends §38.2-4609 by requiring title insurance companies to establish loss adjustment expense reserves in addition to loss reserves for payment of claims.

House Bill 618

Reciprocal Insurance

This bill amends §38.2-1222 by allowing an advisory committee in a domestic reciprocal insurer to be referred to as "board of directors" or by such other name as it chooses. The bill further provides in §38.2-1223 that the execution of subscriber agreements by subscribers to nonassessable reciprocals is not mandatory; that the subscriber agreement and power of attorney on file at the State Corporation Commission, and any subsequent modifications thereto, are deemed binding, by operation of law, on each subscriber to a nonassessable reciprocal. Under current law, the execution of subscriber agreements and powers of

attorney by members of both assessable and nonassessable reciprocals is mandatory. However, this change will not alter the obligation of a reciprocal's original subscribers to execute the original subscription agreement and power of attorney. §38.2-1224 is amended to provide that any modification of the subscriber's agreement or power of attorney must be filed with the attorney and the Commission, and must be provided to each subscriber within 90 days of the change.

House Bill 703

Valuation of Real Estate

This bill amends §38.2-1309 by providing for a method of valuation of real estate held by an insurer to be an amount not exceeding the acquisition cost which includes a write-down of that part of the insurer's cost of its interest in the property which is allocable to any improvements. It also authorizes the Commission to allow, based on acceptable appraisals, a valuation up to but not in excess of fair market value.

Senate Bill 74

Annual Statement

This bill authorizes the State Corporation Commission in §38.2-1300 to require insurers to file annual financial statements in machine-readable format.

Senate Bill 75

Investment Limits for Domestic Insurers

This bill amends §38.2-1413 by allowing domestic insurance companies to invest more than five percent of their total assets in any institution whose assets are insured by a federal deposit insuring agency, to the extent of such deposit insurance coverage. Under §38.2-1400, the bill also subjects foreign insurers to the investment restrictions set forth in the insurance title, unless such insurers' domiciliary jurisdictions regulate their investment authority.

Senate Bill 142

Health Maintenance Organizations

This bill amends §§38.2-4300, 38.2-4303, 38.2-4310, 38.2-4315 and 38.2-4317.1, and adds a new section numbered §38.2-4307.1. The

bill requires HMOs to file notice with the State Corporation Commission within 30 days whenever the transactional dollar value of certain loan or investment activities exceeds one percent of assets or five percent of net worth, whichever is less. If the cost of such activities exceeds five percent of assets or 25 percent of net worth, whichever is less, prior notice must be given to the SCC. This bill also authorizes the State Corporation Commission to require HMOs to provide information about their financial health and solvency, in addition to such information required in annual reports. Finally, the bill provides that a participating provider who has contracted with an HMO that has become insolvent shall not be paid from the proceeds of special assessments of solvent HMOs collected by the SCC for the benefit of the insolvent plan's enrollees.

Senate Bill 471

METs

This bill amends §§38.2-3420 through 38.2-3424 and adds a new section numbered §38.2-3425. The bill clarifies the scope of the State Corporation Commission's authority over persons offering health care services which are not otherwise regulated as accident and sickness insurers, health services plans, health maintenance organizations or dental/optometric service plans. The bill provides the Commission with regulatory authority over these persons to the extent that such persons are not regulated by another governmental agency. Additionally, the bill provides that such persons must furnish notice to the SCC whenever it ceases to be regulated by another governmental agency. Finally, the bill directs all persons or entities soliciting membership in health care service organizations not otherwise regulated by the SCC to disclose that such plan of coverage is not protected under the Commonwealth's insurance guaranty fund. Exempt from this article are plans which provide health insurance coverage pursuant to §2.1-20.1 (health care plans for state employees).

Miscellaneous

House Bill 401

Fees Charged for Insurance

This bill amends §38.2-310 by clarifying the prohibition against any person charging or receiving fees, compensation, or consideration for insurance or for the procurement of insurance that is not included in the premium or stated in the policy.

House Bill 863

Agents and Consultants

This bill amends §38.2-1805 by prohibiting an insurer or licensed agent from permitting an agent to accept payment in arrears on life or accident and sickness insurance policies, subject to certain exceptions. The changes in §38.2-1809 require all licensed agents and consultants to retain their records relative to insurance transactions for the three previous calendar years. The State Corporation Commission may inspect these records without prior notice during normal business hours. §38.2-1816 is amended to require the Commission to approve only the examination content outline of the insurance agents' prelicensing study course.

House Bill 1094

Adverse Underwriting Decisions

This bill amends §38.2-612 by adding a new section which makes it unlawful for an agent or insurer to base an adverse underwriting decision on the fact that an applicant was previously insured with a particular company or purchased it from a particular agent.

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Agents are also reminded of House Bill No. 1633 enacted last year which requires any person or corporation transacting the business of insurance under an existing assumed or fictitious name to provide the Bureau with this information in writing no later than July 1990.