

SUMMARY OF CERTAIN 2010 VIRGINIA INSURANCE LAW AMENDMENTS

The Virginia General Assembly has enacted amendments or additions to several portions of the Code of Virginia related to insurance. The following is a brief summary of some of the amendments that may be of interest which went into effect July 1, 2010 (unless otherwise dated):

General Changes:

- **Rate Filings; Trade Secrets.** An exemption has been provided that makes certain rate information not subject to public inspection and copying if it qualifies as a trade secret under the Uniform Trade Secrets Act. The burden is on the insurer or filer to establish that the information is a trade secret. (§38.2-1907).
- **Penalties; Restitution.** The general penalties and restitution payments statute has been amended to authorize the State Corporation Commission to require restitution in the amount of the direct actual financial loss if a person improperly withholds, misappropriates or converts any money or property received in the course of doing business. Previously, the Commission only had discretion to order restitution in the event an insurer had charged an excessive rate or discriminatory premium or failed to pay undisputed amounts under the insurance policy (§38.2-218).
- **Countersignature Requirements.** The statute prohibiting insurance companies from declaring a policy invalid due to lack of signature or countersignature of an agent or company representative has been repealed (§38.2-323 repealed).

Property & Casualty:

- **Home Service Contract Providers.** Any home service contract provider with a net worth in excess of \$100 million is exempt from the licensing requirements of home service contract providers (Amendments to §§ 38.2-2617, 38.2-2618, and 38.2-2619).
- **Underinsured Motorist Coverage.** Amendments to §38.2-2206 permit a liability insurer to be relieved of the costs of defending the owner or operator in a claim after the insurer makes an irrevocable written offer to pay the limits of its policy and notifies any insurer providing underinsured motorist coverage with respect to the claim. The liability insurer retains the duty to defend its insured and remains liable for all legal costs incurred prior to making the irrevocable offer of its limits. If underinsured motorist coverage is provided by more than one insurer, the cost to defend shall be assumed in the same order of priority as applies to payments of underinsured benefits. The underinsured motorist insurer must have been served 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. These provisions do not apply in the event of either a jury verdict being returned in an amount equal to or less than the total liability coverage available for payment or a dispositive ruling dismissing the plaintiff's complaint, and do not apply to costs incurred in connection with an appeal.

Life and Health and Other:

- **Pharmacy Benefits; Freedom of Choice.** Amendments to §§ 38.2-3407.7; 38.2-4209.1; and 38.2-4312-1 allows insurers, HMOs, providers of preferred subscription contracts, and health plans for state employees to select a single and exclusive mail order pharmacy provider for the delivery of a covered person's pharmacy services.
- **Utilization Review.** Effective October 1, 2010, §§32.1-137.13 through 32.1-137.15 of the Code of Virginia have been amended to clarify that a health care provider may seek reconsideration or appeal of an adverse decision for utilization review, and that written notification of an adverse decision must include instructions for requesting reconsideration or an appeal.
- **Credit Life Insurance Disclosures.** Amendments to §§ 38.2-3724 and 38.2-3735 specify the types of contracts for which notice is required to advise a debtor of his right to a refund if the insurance is terminated prior to its maturity date or the debt is paid off early. The notice is required for contracts paid in advance or by a single premium.
- **Group Life Insurance.** Amendment to §38.2-3323 permits a group life insurance policy to be extended to any other person with whom the insured group member has an insurable interest as defined in §§ 38.2-301 and 38.2-302 as agreed upon by insurer and group policy holder.
- **Life and Annuities Licenses.** Amendments to §§ 38.2-1815; 38.2-1825; and 38.2-1869 removes the requirement that a nonresident insurance agent obtain an underlying life and annuities license from the Bureau of Insurance before applying for a variable contract license.
- **Group Health Insurance; Continuation of Coverage.** Amendments to §38.2-3541 expand the ability of a person who becomes ineligible for coverage under a group policy to continue coverage by extending the maximum length of coverage from 90 days to 12 months, allowing monthly premiums, and requires group policyholder to provide notice of option to persons insured.
- **Group Health Insurance; Enrollment.** Addition of §38.2-3541.2 and amendments to §§ 38.2-4214 and 38.2-4319 require group health insurance policies, health services plans, and health care plans to offer enrollment

opportunities for employees and dependents who are eligible for but not enrolled in such policies upon losing eligibility for or becoming eligible for premium assistance under the Commonwealth's Medicaid or FAMIS program.

- **Virginia Life, Accident and Sickness Insurance Guaranty Association.** Amendments to §§38.2-1442 and 38.2-1700 through 38.2-1715 update and expand the scope of the Guaranty Association.
- **Health Insurance; Small Employer Plans.** Amendments §§ 38.2-3406.1 and revisions to 38.2-4319 now allow HMOs to offer and sell to small employer groups health care plans that do not include all of the mandated health insurance benefits.
- **HSAs; Exempt From Creditor Process.** Addition of §38.5604 exempts moneys paid into or out of, assets and income of an HSA from creditor process.
- **Health Services Plan; Program For Residents of Other State.** Addition of §38.2-4229.2 provides that if another state passes a law that requires a health services plan in Virginia to provide benefits for residents of another state, the State Corporation Commission is authorized to investigate to determine the state's law on health services plans in Virginia, and if the law has a harmful impact on the residents of Virginia, the Commission shall issue an order to protect Virginia residents.
- **COBRA.** Amendment to §38.2-3541.1 was enacted effective upon passage to comply with the American Recovery and Reinvestment Act of 2009 so that the time period for continuation of coverage has been revised from 9 months to include "any additional period specified by the Act as later amended."

Please note that this is just a summary of certain legislative changes. It is not a complete list or interpretation of the insurance related legislative amendments in Virginia in 2010. If you have any questions or would like additional information, please contact Scott Sorkin or Richard Bland at ssorkin@blandsorkin.com or rbland@blandsorkin.com or www.blandsorkin.com