



## Summary of Certain 2015 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, 2015 (except as otherwise indicated):

### General Changes:

- ✓ **Renewal Rate Caps for Policies Transferred Pursuant to Agent Book Transfer.** HB 2357 amends and reenacts §38.2-1906 of the Code of Virginia by clarifying that an insurer may cap the renewal rates for policies that have been transferred by an agent from one insurer to another insurer pursuant to an agent book transfer, to the same extent that such rates may be capped for policies acquired by an insurer from another insurer pursuant to the statute.

### Property and Casualty:

- ✓ **New Notice Methods; Commercial Liability, Homeowners, and Automobile Insurance Policies.** SB 697 and HB 1357 amend the Code of Virginia (§§ 38.2-231, 38.2-2113, and 38.2-2208) authorizing insurers to send nonrenewable and cancellation notices pertaining to commercial liability, homeowners, or motor vehicle insurance policies by any first-class mail tracking method used or approved by the United States Postal Service in addition to the previously accepted registered and certified mail options. Note that the previously permitted delivery methods “certificates of mailing” and “certificates of bulk mailing” are no longer permissible.
- ✓ **Removal of Self-storage Unit Insurance Compensation Limit.** HB 1742 amends the Code of Virginia (§38.2-1884) removing the per-customer dollar limit on the amount of incidental compensation an employee or representative of a lessor of self-storage units may receive in connection with the sale of self-storage insurance (previously limited to \$10 per customer).

- ✓ **Motor Vehicle Liability Insurance; Underinsured Motorist Claims; Settlement Procedures; Subrogation.** SB 1190 and HB 181 amend and reenact § 38.2-2206 and adds § 8.01-66.1:1 to the Code of Virginia establishing a procedure by which an injured person or personal representative may settle a claim with a liability insurer or insurers and the liability insurer's or insurers' insured for the available limits of the liability insurer's coverage without prejudice to any underinsured motorist benefits or claim. Upon payment of the liability insurer's available limits, the liability insurer has no further duties to its insured and the underinsured motorist benefits insurer shall have no right of subrogation or claim against the underinsured motorist. However, if the underinsured motorist unreasonably fails to cooperate with the underinsured motorist benefits insurer in the defense of any lawsuit brought by the injured person or his personal representative, the underinsured motorist may again be subjected to a claim for subrogation by the underinsured motorist benefits insurer. The measure also provides that an insurer paying underinsured motorist benefits to an insured shall have no right of subrogation against any person who settled with the underinsured motorist benefits insurer's insured pursuant to this new procedure unless the underinsured motorist failed to reasonably cooperate in the defense of any lawsuit brought against him. The underinsured motorist benefits insurer is required to pay the reasonable costs and expenses related to procuring the insured's cooperation. If the underinsured motorist cooperates with the underinsured motorist benefits insurer, or if his failure to do so was not unreasonable, then the court may award him his costs, including attorney fees, in defending the subrogation action. The provisions of the bill apply to policies issued or renewed on or after January 1, 2016.

## **Life and Health:**

- ✓ **Reporting Requirements; Credit Life and Credit Accident and Sickness Insurance.** SB 729 amends and reenacts §38.2-3730 of the Code of Virginia removing the requirement that insurers must file annual reports regarding credit life and credit accident and sickness insurance with the State Corporation Commission. However, these reports must still be filed with the National Association of Insurance Commissioners.
- ✓ **Expanded Hypothecation of Assets Requirements.** SB 748 expands and reenacts §§ 38.2-4214, 38.2-4319, 38.2-4408 and 38.2-4509 of the Code of Virginia to now apply provisions regulating the hypothecation of assets to health services plans, health maintenance organizations and insurers offering dental or optometric services plans. Specifically, the bill requires insurers to maintain a certain amount of free and unencumbered admitted

assets and to report information regarding transactions that encumber assets to the State Corporation Commission.

- ✓ **Preauthorization for Drug Benefits Requirements.** SB 1262 and HB 1942 amend the Code of Virginia by adding an article (§ 38.2-3407.15:2) requiring provider contracts under which an insurance carrier or its intermediary has the right or obligation to require preauthorization for a drug benefit to include specific provisions governing the preauthorization process. These provisions must address (i) acceptance by carriers of telephonic, facsimile, or electronic submission of prior authorization requests that are delivered from e-prescribing systems, electronic health record systems, and health information exchange platforms that utilize certain standards; (ii) time limits for communicating to the prescriber that a request is approved, denied, or requires supplementation; (iii) providing reasons for denial of a request; (iv) honoring a prior authorization approved by another carrier; (v) use of a tracking system for prior authorization requests; and (vi) making formularies, drug benefits subject to prior authorization, prior authorization procedures, and certain forms available through the carrier's website. The measure also requires the Virginia Association of Health Plans, the Medical Society of Virginia, and the Virginia Academy of Family Physicians to convene a workgroup to identify common evidence-based parameters for carrier approval of certain prescription drugs.
  
- ✓ **Updating Maximum Allowable Cost Pricing Lists for Health Insurance.** HB 2031 amends the Code of Virginia by adding an article (§ 38.2-3407.15:2) requiring any contract between a health insurance carrier and its intermediary, pursuant to which the intermediary has the right or obligation to establish a maximum allowable cost, and any provider contract between a carrier and a participating pharmacy provider or its contracting agent, pursuant to which the carrier has the right or obligation to establish a maximum allowable cost, to contain specific provisions that require the intermediary or carrier to update the maximum allowable cost list, and verify the availability of the drugs on such list. Specifically, such contracts are required to contain specific provisions that require the intermediary or carrier to (i) verify, not less frequently than once every seven days, that the drugs on the maximum allowable cost list are available to participating pharmacy providers from at least one regional or national pharmacy wholesaler and that the amount for each drug is not obsolete and promptly revise the maximum allowable cost if necessary to comply with these required contractual provisions; (ii) provide a process for each participating pharmacy provider to readily access the maximum allowable cost list specific to that provider; and (iii) prohibit the intermediary or carrier from terminating or failing to renew its contractual relationship with a participating pharmacy provider for invoking its rights under any of these required contractual provisions. Such contracts are also required to contain provisions

that require the intermediary or carrier to provide a process for an appeal, investigation, and resolution of disputes regarding maximum allowable cost drug pricing.

- ✓ **Mental Health and Substance Use Disorder Parity Requirements.** HB 1747 amends the Code of Virginia by enacting certain articles (§§ 38.2-3412.1, 38.2-3418.17, 38.2-4300, 38.2-4319, and 38.2-5800) which conform state law requirements regarding coverage for mental health and substance abuse disorders to federal law. Specifically, the bill requires that group and individual health insurance coverage must provide mental health and substance use disorder benefits. Such benefits must be in parity with the medical and surgical benefits contained in the coverage in accordance with federal law, even where those requirements would not otherwise apply directly. The measure further requires the Bureau of Insurance to develop reporting requirements regarding denied claims, complaints, and appeals involving such coverage and to compile the information into an annual report.
  
- ✓ **Mandated Coverage Expansion for Autism Spectrum Disorder.** HB 1940 amends the Code of Virginia by enacting an article (§ 38.2-3418.17) requiring health insurers, health care subscription plans, and health maintenance organizations to provide coverage for the diagnosis and treatment of autism spectrum disorder in individuals from ages two through ten (previously only required coverage for ages two through six). The expansion applies to insurance policies, subscription contracts, and health care plans delivered, issued for delivery, reissued, or extended on or after January 1, 2016. The measure does not apply to policies, contracts, or plans issued in the individual market or the small group market which, effective January 1, 2016, will include employers with no more than 100 employees.
  
- ✓ **Reimbursement for Services Under Vision Care Plans.** HB 1444, effective January 1, 2016, amends and reenacts certain articles (§§ 38.2-3407.19, 38.2-4214, 38.2-4319, and 38.2-4509) of the Code of Virginia prohibiting a participating provider agreement between a vision care plan carrier and an optometrist/ophthalmologist from establishing the fee or rate that the optometrist/ophthalmologist is required to accept for the provision of health care materials or services. The bill also prohibits the agreement from requiring that an optometrist/ophthalmologist accept the reimbursement paid by the vision care plan carrier as payment in full, unless the services or materials are covered services or materials under the applicable vision care plan. Reimbursements by a vision care plan carrier are required to be reasonable. Reasonableness is defined as the negotiated fee or rate that is set forth in the participating provider agreement and is acceptable to the provider. Vision care plans

shall not require an optometrist or ophthalmologist to use a particular optical laboratory, manufacturer of eyeglass frames or contact lenses, or third-party supplier as a condition of participation in a vision care plan. Changes to a participating provider agreement shall be submitted in writing to the optometrist or ophthalmologist at least 30 days prior to their effective date. Provisions of this measure that relate to covered materials also apply to licensed opticians practicing in the Commonwealth.

- ✓ **Amended Definition of “Telemedicine Services.”** SB 1227 and HB 2063 amend the definition of “telemedicine services” (Code of Virginia §§ 38.2-3418.16 and 54.1-3303) to now encompass the use of electronic technology or media, including interactive audio or video, for diagnosing or treating a patient or consulting with other health care providers regarding a patient’s diagnosis or treatment. The definition does not include an audio-only telephone. Specifically, the new definition allows for the formation of a bona-fide practitioner-patient relationship using “telemedicine services” for the purpose of prescribing Schedule VI controlled substances.

Please note 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 2015. If you have any questions or would like additional information, please contact Scott Sorkin or Richard Bland at [ssorkin@blandsorkin.com](mailto:ssorkin@blandsorkin.com) or [rbland@blandsorkin.com](mailto:rbland@blandsorkin.com).

