

## State Corporation Commission 2004 Fiscal Impact Statement

**1. Bill Number** HB1455

<b>House of Origin</b>	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron** Athey

**3. Committee** Commerce and Labor

**4. Title** Insurance; pharmacies; freedom of choice.

**5. Summary/Purpose:** Adds to the list of prohibited actions by insurers the imposing of any condition or communication that would influence a choice of pharmacy, including actions designed or intended to divert a person to a mail order pharmacy, owned by the insurer, its affiliate or affiliate's pharmacy benefit manager (PBM), under certain circumstances. The bill also adds provisions that prohibit an insurer or PBM from imposing on, or requiring a pharmacy any non-price term, or condition not required of all pharmacies in VA whether or not the benefits are furnished by pharmacists who are non-preferred providers, or any payment, compensation, or reimbursement structure that results in or would tend to result in a violation of § 59.1-9.7; the artificial depression of prices; the establishment or unilateral change of reimbursement rates to a pharmacy that are below the pharmacy's costs, or prevailing market rates or direct or indirect discrimination that lessens competition, or tends to create a monopoly or injure, destroy or prevent competition in pharmacy as defined in § 54.1-3300. The bill adds as a prohibited condition, directly or indirectly, the paying or accepting rebates, discounts, or other forms of disclosed or undisclosed incentives between or among insurers, insurers' PBMs or a pharmacy, including pharmacies that are an affiliate of the insurer or PBM, in a manner that violates state or federal law. The bill also prohibits requiring or inducing a person to use a mail order pharmacy for maintenance medications for over one month, unless the pharmacy that the person selects has not agreed to accept the same rates, terms, conditions and co-payments that are applicable to mail order pharmacies that have contracts with the insurer or PBM. The bill does not prohibit an insurer or its PBM from establishing a different reimbursement structure for maintenance medications that does not violate the section or state or federal law. The bill amends subsection E § 38.2-3407.7 to make the section apply to a pharmacy that wishes to provide pharmaceutical benefits under the section. The bill provides that violations of subsections B or C or subdivisions D3 or 4 are violations of § 59.1-9.7. Changes are made in § 38.2-4209.1 and § 38.2-4312.1 that are consistent with the changes in § 38.2-3407.7 to make them applicable to health services plans and HMOs.

**6.** Fiscal Impact Estimates are unavailable (see Line 8).

**7. Budget amendment necessary:** No

**8. Fiscal implications:** As a result of House Bill 1455, insurers would be required to re-file forms with the State Corporation Commission Bureau of Insurance and enter into additional

provider contracts with community pharmacies. As to the impact on community pharmacies, pharmacy benefit managers and mail-order pharmacies, the Bureau would assume that all three entities would be impacted by the enactment of this legislation, but we have no way to assess the impact of this legislation on their businesses.

**9. Specific agency or political subdivisions affected:** State Corporation Commission Bureau of Insurance

**10. Technical amendment necessary:** No

**11. Other comments:** It is the understanding of the Bureau of Insurance that House Bill 1455 will be amended at the conclusion of negotiations among interested parties.

**Date:** 02/05/04 /V. Tompkins

cc: Secretary of Health and Human Resources