

State Corporation Commission 2007 Fiscal Impact Statement

1. Bill Number HB3137

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron Fralin

3. Committee Commerce and Labor

4. Title Expedited review of final adverse health coverage decisions.

5. Summary/Purpose: Revises the requirements for an expedited review of expedited appeals of final adverse decisions of managed care health insurance plans. Requires that for a patient whose condition would be terminal without the treatment being appealed, the impartial health entity (IHE) shall issue its written recommendation affirming, modifying, or reversing the final adverse decision no later than one business day following the receipt by the impartial health entity of all necessary information. Requires that if the regular process for the issuance of a written ruling will delay the rendering of treatment for a patient whose condition would be terminal without the treatment, the Commissioner of Insurance or his designee shall issue a final ruling affirming, modifying, or reversing the final adverse decision no later than one business day following the receipt of the recommendation. Failure by the utilization review entity to comply with the written ruling of the Commissioner or his designee within three days of an expedited ruling shall also be deemed a knowing and willful violation of the section.

6. No Fiscal Impact on the State Corporation Commission

7. Budget amendment necessary: No

8. Fiscal implications: None on the State Corporation Commission

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

10. Technical amendment necessary: The State Corporation Commission Bureau of Insurance suggested to the patron a technical change at Line 44 so that all required turn-around times within the external appeals process are measured in business days as opposed to calendar days, as follows:

...ruling, or within three business days of an expedited ruling shall be deemed a knowing and willful violation of this section.

11. Other comments: The Bureau of Insurance offered comments to the patron concerning HB 3137, which would require an IHE to issue a written recommendation affirming, modifying or reversing a final adverse decision within one business day of receipt of all information necessary to make the recommendation in cases involving patients whose condition would be terminal without the treatment in question. Despite the urgency in cases involving potentially life-saving

procedures, the Bureau expressed concern that an absolute deadline of one business day would provide an insufficient period of time for an IHE to conduct a fair and adequate review of an appeal. In the experience of the Bureau's external appeals staff, appeals of this nature are generally quite complex, often are quite case-specific, and may require physician consultations as well as extensive reviews of medical literature. Accordingly, the quality of the review would be compromised by such a limited time period.

Since the External Appeals process has been in effect in Virginia, Bureau staff believes that the recommendations made by the IHEs have been of consistently high quality, with well-documented and well-researched information supporting the recommendations. The Bureau of Insurance has also found IHEs to be responsive and prompt in issuing recommendations. In 2006, for example, the recommendations involving expedited appeals were issued, on average, within four days (actually three days if one case involving a physician's request for an extension is removed from the calculation).

The proposed revisions at Lines 30-34 call for the Commissioner to issue a written ruling affirming, modifying or reversing the final adverse decision "no later than one business day following the receipt of such recommendation" in cases involving patients whose conditions would be terminal without the treatment. There is currently a requirement within the Commission's external appeals regulation for immediate action on the part of the Commissioner of Insurance, although the number of days for immediate review is not specified (see *Rules Governing Independent External Review of Final Adverse Utilization Review Decisions*, 4 VAC 5-215-80 5 a, b).

In addition to the concerns raised with regard to the timeline of the process, there is no definition of "terminal condition" in the bill (i.e. is death expected to occur within a week, a month, six months). Determinations about life expectancy with or without certain treatments are very often determinative components of the review itself and would, therefore, be unknown until the recommendation was issued. The Bureau of Insurance staff recommended that a definition of "terminal condition" be added to the bill.

Date: 01/25/07/ V. Tompkins

cc: Secretary of Health and Human Resources