

State Corporation Commission 2010 Fiscal Impact Statement

1. Bill Number: HB1367

House of Origin	<u> X </u>	Introduced	<u> </u>	Substitute	<u> </u>	Engrossed
Second House	<u> </u>	In Committee	<u> </u>	Substitute	<u> </u>	Enrolled

2. Patron: LeMunyon

3. Committee: Commerce and Labor

4. Title: **Health benefits plans providing coverage for treatment of autism spectrum disorder offered by foreign health insurers.**

5. Summary: Creates a new Chapter 64 in Title 38.2 to allow the offering of out-of-state health insurance plans by health insurers licensed in other states if the foreign health insurer offers a health benefits plan with substantially identical coverage for the treatment of autism in its domiciliary state and is in compliance with all the applicable laws and requirements in its domiciliary state. “Eligible health benefits plan” is defined as providing coverage for treatment of autism spectrum disorder.

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 Bureau of Insurance offered two technical amendments for House Bill 1367:

- Line 62 - Under § 38.2-6400 “domestic health insurer” should be amended to “licensed health insurer” to include both domestic and foreign licensed insurers. “Licensed health insurer” should replace “domestic health insurer” throughout the bill.
- Line 66 - Under § 38.2-6400 the definition of “foreign health insurer” should be amended as follows: “means an insurer domiciled and licensed to sell, offer, or provide health benefits plans in any other state.”

11. Other comments: The Bureau of Insurance offered the patron the following comments regarding financial solvency issues with House Bill 1367:

HB 1367 does not provide for any registration, certification or licensing of a foreign health insurer, which removes all ability of the Bureau of Insurance to perform financial oversight of these insurers. Specifically, a foreign health insurer is allowed access to the Virginia market provided it offers an eligible health benefits plan with substantially identical coverage for the treatment of autism in its domiciliary state and provided it is in compliance with all applicable laws, regulations and other requirements in its domiciliary state.

The Bureau would be unaware of which foreign health insurers are operating in the Commonwealth under this exemption to licensure under the bill. Under HB 1367, regulation of these plans would consist of complete deference to the foreign health insurer's domiciliary state in all financial matters. The Bureau would have no way to remove this foreign health insurer from the Virginia market even if the foreign health insurer were in hazardous financial condition. Additionally, this bill requires the Bureau to establish fair marketing standards and disclosure requirements as may be prescribed by regulation, but there is no method of enforcement nor is there any way for the Bureau to determine which eligible health benefits plans are being offered in the Commonwealth.

By contrast, insurers currently licensed to do business in Virginia are subject to an array of statutory financial standards in Title 38.2 that apply to the assessment of such critical areas as the insurer's investments, policy and claim reserve adequacy, capital requirements calibrated to the insurer's own risk exposures (i.e. risk-based capital), reinsurance coverage, and operating performance. In addition, licensed insurers are subject to regular reporting and examination requirements to ensure timely monitoring.

The application of such standards and requirements helps ensure appropriate margins against uncertainty, supports a degree of confidence against insolvency, and aims to target financially troubled insurers for attention long before the insurer reaches a state of "hazardous financial condition." Further, there are currently mechanisms in place for non-domiciliary states to perform the function of peer review and intervene in the case of a domiciliary state's inaction. Inaction by a state occurs when a state is faced with certain economic and political impediments to taking action against a domestic insurer. The inability of the Bureau of Insurance to apply statutory financial standards, and to participate in such a peer review system arguably weakens solvency protection for Virginia consumers substantially under this bill.

The Bureau of Insurance offered the patron two options for his consideration to address the aforementioned concerns. First, the patron could consider making the foreign health insurers (i.e. insurers, health maintenance organizations and health

service plans) subject to the same level of financial requirements as carriers licensed in Virginia. A new section could be added to the bill to make the foreign insurers subject to licensure to transact the business of insurance in this Commonwealth pursuant to Chapters 10, 12, 13, 14, 15, 17, 41, 42, 43, 55, 58 and 61 of Title 38.2 of the Code of Virginia.

As an alternative, the Bureau of Insurance suggested the patron consider revisions to § 38.2-6402 at Lines 107-111. This proposed disclosure would be included in policies and evidences of coverage and is similar to that for unlicensed surplus lines carriers (subsection B of § 38.2-4806 of the Code):

§ 38.2-6402 Required disclosures.

A. Any and all certificates and evidences of coverage provided to enrollees, subscribers or insured members under a ~~Each~~ eligible health benefits plan provided by a foreign health insurer in the Commonwealth, and ~~each application for the health benefit plan, any and all applications or enrollment forms used in connection with such plans, shall disclose the~~ in plain language, using at least 14-point bold type, the following:

1. The differences between the eligible health benefits plan issued by the foreign health insurer and an accident and sickness insurance policy issued by a ~~domestic~~ licensed health insurer pursuant to Chapter 34 (§ 38.2-3400 et seq.) of this title , and

2. ~~such~~ Such related information as the Commission may prescribe by regulation.

B. A notice in a form prescribed by the Commission shall be given to the policyholder/planholder under the provisions of a health benefits plan procured pursuant to this chapter. The notice shall contain, but not be limited to, statements that the health benefits plan is being procured from a foreign health insurer that is not licensed or regulated by the Commission and that there is no protection under the Virginia Life, Accident and Sickness Insurance Guaranty Association, established under Chapter 17 (§ 38.2-1700 et seq.) of this title, against financial loss to claimants or policyholders/planholders because of the insolvency of an unlicensed foreign health insurer. The notice shall be given prior to acceptance of the health benefits plan. In addition, a copy of the notice shall be affixed to the health benefits plan provided or issued to the policyholder/planholder and to insured members, subscribers or certificateholders in the evidence of coverage.

The Bureau of Insurance also suggested that the patron require that the disclosure language outlined above be included in the marketing materials used by the foreign health insurers to

market their eligible health benefit plans in § 38.2-6403 of the bill. Methods of enforcement by the Bureau of Insurance would be questionable since insurers are neither licensed nor registered under the bill.

The Bureau of Insurance offered the patron of House Bill 1367 the following comments on the market and consumer issues with the bill:

1. Virginia's domestic insurers may arguably be placed at a competitive disadvantage by not being allowed to offer products marketed by Chapter 64 plans. Foreign insurers with fewer mandates and lesser regulatory requirements may trend toward dominating the Virginia market. In fact, insurance organizations may be incentivized to "forum shop" to organize in jurisdictions with lax regulation and enforcement, particularly in regard to activities outside the home jurisdiction itself, i.e. the issue of extraterritorial non-enforcement.
2. There are numerous consumer protections afforded under Virginia law that would not extend to purchasers of a product issued under this proposal unless the foreign insurer's state of domicile had similar requirements and exercised oversight and enforcement over contracts issued to all non-residents. These protections are evident in current product and underwriting/rating requirements as well as in the requirements pertaining to market behavior; the specific details of all these requirements are too numerous to cover exhaustively in this memorandum. A few examples include a requirement for interest added to late claim payments; prohibitions against certain prescription drug denials; standards for fair business practices associated with contracts between insurers and providers; ensured access to certain specialty providers; requirements pertaining to freedom of choice among pharmacy providers; advance notification to policyholders of premium rate increases in excess of 35%; a mandated offer for a point of service option for HMO enrollees; and a requirement on licensed insurers to offer two basic health care plans in the small employer market.
3. Policies issued under this proposal would not be subject to Virginia's requirements governing managed care health insurance plans (MCHIPs), which include significant consumer services. The Office of the Virginia Managed Care Ombudsman and the External Appeals Office were created under Chapter 59 of Title 38.2 to assist consumers in their efforts to appeal adverse medical claim decisions made by the MCHIPs. Both of these functions have served Virginia's consumers by providing a fair and balanced method of resolving difficult medical issues. While the home jurisdiction of a Chapter 64 licensee may provide for similar mechanisms for persons resident or covered under policies issued in its jurisdiction, it is unclear whether or not a Virginia resident covered under a policy issued by a Chapter 64 licensee in Virginia could avail him- or herself of such mechanisms.
4. Other significant areas of "MCHIP" oversight that would not apply to Chapter 64 licensees under this proposal include quality standards regarding the delivery of health care services, access to health care providers, and comprehensive standards regarding the MCHIP's complaint system. Some of these are enforced by the Bureau of Insurance and some by the Virginia Department of Health (see Chapter 58 of Title 38.2 and Chapter 1 of Title 32.1 respectively).

Again, the home jurisdiction of a Chapter 64 plan may have similar standards but it is unclear how and to what extent that insurer's chosen state of domicile would or could assert its authority in Virginia where care is rendered.

5. Virginia health insurance mandates would not apply to Chapter 64 plans.

6. The Insurance Agents chapter (Chapter 18 of Title 38.2) is excluded in HB 1367, which means that there is no regulation of agents as to licensure, qualifications and activities of agents in the sale of out-of-state products.

On February 9, 2010, HB 1367 was carried over to the 2011 Session by the House Committee on Commerce and Labor.

Date: 02/16/10 V. Tompkins

cc: Secretary of Commerce and Trade

Secretary of Health and Human Resources