

State Corporation Commission 2007 Fiscal Impact Statement

1. Bill Number HB3160

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron Marshall, D.W.

3. Committee Committee on Commerce and Labor

4. Title Health insurance; policies to protect the uninsured.

5. Summary/Purpose: Authorizes health insurers (including health plans and health maintenance organizations) to offer "Protect the Uninsured" (PTU) policies to small employers with 50 or less employees. Such small employers may offer the PTU policies to their employees who have been uninsured for the preceding six months. Coverage provided under PTU policies will be determined at the discretion of the health insurers issuing the policies. PTU policies are not required to include state-mandated health benefits. Health insurers may offer PTU policies to small employers, and that the health insurer shall determine the coverage to be provided in the PTU policy. The health insurer is required to give the Commission notice of the coverage to be provided. The health insurer may only change the coverage provisions annually. All eligible employees of the small employer are to be offered the PTU coverage. The health insurer may also offer any PTU policy, approved for sale, in the small group market. This section also sets forth the health insurers authority to establish requirements regarding premiums and the number or percentage of employees that must be enrolled. Sets forth the requirements for policy form approval with the Commission, and authorizes the Commission to disapprove the continued use of a PTU policy that does not meet certain requirements. PTU policies shall be subject to the requirements of Title 38.2 that are applicable to accident and sickness insurance policies, individual or group accident and sickness subscription contracts, or health care plans for health care services. The provisions of the bill are made applicable to health services plans and health maintenance organizations.

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:

- In § 38.2-3419.6 A, Line 111 of the bill, a typographical error exists in the first sentence: "~~A~~ A PTU policy..."

- Section 38.2-3419.3 B requires an insurer to “give notice” to the Commission of “the elements of the PTU coverage to be provided in the policy”. However, § 38.2-3419.5 A appears to require that policy forms must be approved by the Commission. It is not necessary to give notice to the Commission if the forms must be submitted to the Commission for approval.
- The ‘Notices’ section of HB 3160, § 38.2-3419.7, is broken down into subsections, which include inconsistent terms. Subsection A uses the term “small employer.” Subsections B and C use the term “policyholder”. Is there an intended distinction between these two terms? If not, then the Bureau of Insurance suggests that the same term should be used for consistency.
- Also with regard to § 38.2-3419.7 B, Bureau staff suggested a more detailed disclosure for HB 3160. Instead of requiring a statement that “the PTU policy does not provide some or all state-mandated health benefits,” it may be preferable for the disclosure to list any mandate that the PTU policy does not cover.
- Subsection D of 38.2-3419.7 includes a requirement that the health insurer retain signed disclosure statements obtained from each small employer/policyholder. Language is also included that the health insurer will “...on request from the Commissioner, provide the signed disclosure statement to the Bureau of Insurance.” A PTU policy, including the disclosure statement, would already be subject to the examination statutes found in Chapter 13 of Title 38.2, so this requirement is unnecessary.

11. Other comments: The State Corporation Commission Bureau of Insurance offered comments to the patron on House Bill 3160. The definition of ‘eligible individual’ at § 38.2-3419.2 is not consistent with the definition of ‘eligible individual’ found at § 38.2-3431, which also pertains to group health insurance. The use of a term that is defined differently elsewhere in Title 38.2 could potentially lead to confusion. Bureau staff suggested that a different term be used, while retaining the same definition, such as “PTU-eligible individual.”

The definition of “uninsured individual,” also found at § 38.2-3419.2, includes criteria for making a determination that the individual is uninsured. The Bureau suggested clarification as to how or by whom that determination would be made. For example, how would the determination be made that an individual had no other potential source of health insurance coverage, such as coverage through a spouse’s policy?

As currently drafted in §§ 38.2-3419.3 A and 38.2-3419.4 B, a health insurer may offer PTU policies to small employers. The federal Health Insurance Portability and Accountability Act (HIPAA), as well as other sections of Title 38.2 of the Code of Virginia (specifically § 38.2-3432.2 A 1), require that a health insurer must offer all approved products to every small employer. To address this issue, Bureau staff suggested to the patron that the wording in subsection A (Line 78) could be changed as follows, which would provide for the optional *development* of a PTU policy, but a mandatory offer to all small employers:

A. ~~Any~~ A health insurer may offer a PTU policy to small employers in the Commonwealth as provided in this article. If a PTU policy is offered to small employers in the Commonwealth, such policy shall be offered to all small employers. No coverage under this article shall exclude an employer based solely on the nature of the employer's business.

Section 38.2-3419.6 D 2 establishes that no health insurer is required to offer PTU policies if “the Commission determines that acceptance of an application or applications would result in the health insurer being declared an impaired insurer.” However, no mechanism is provided which would allow the Commission to make this determination. Bureau staff advised the patron that at the time a policy is issued, an insurer cannot determine what the future claims expense associated with the policy will be. Secondly, the term ‘impaired’ is defined in Chapter 17, (the Life, Accident and Sickness Insurance Guaranty Association chapter) as “a solvent member considered by the Commission to be potentially unable to fulfill its contractual obligations.” Bureau staff advised the patron that such a determination of impairment would be difficult for the Commission to make, even if a mechanism for making the determination existed.

It should also be noted that a health maintenance organization (HMO) must furnish medically necessary basic health care services. To the extent, therefore, that a particular service is medically necessary and qualifies as a basic health care service (refer to § 38.2-4300), the HMO must provide or arrange for the service. An HMO would be prohibited from offering a PTU health plan with any coverage exclusion or limitation which would otherwise qualify as a basic health care service.

Date: 01/28/07 V. Tompkins

cc: Secretary of Commerce and Trade

Secretary of Health and Human Resources