

State Corporation Commission 2008 Fiscal Impact Statement

1. Bill Number: HB253

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

2. Patron: O'Bannon

3. Committee: Commerce and Labor

4. Title: **Health Insurance, Bureau of; establishes division within State Corporation Commission.**

5. Summary: Bureau of Health Insurance and Commissioner of Health Insurance. Establishes a new Bureau of Health Insurance under the State Corporation Commission, which would be responsible for administering Virginia's health insurance laws. The health insurance laws are defined as Chapters 34 (Provisions relating to Accident & Sickness Insurance), 35 (Accident & Sickness Insurance Policies), 36 (Medicare Supplement Policies), 42 (Health Services Plans), 43 (Health Maintenance Organizations), 56 (Virginia Health Savings Account Plan), and 58 (Managed Care Health Insurance Plans) of Title 38.2. Amendments to §§ 2.2-2503 and 2.2-2504 replaces the Bureau of Insurance with the Bureau of Health Insurance as a member of the Special Advisory Commission on Mandated Benefits. Amendments to § 2.2-2664 replaces the Bureau of Insurance with Health Insurance Commissioner as a member of the Virginia Interagency Coordinating Council. Amendments to § 2.2-5300 replaces the Bureau of Insurance with the Bureau of Health Insurance as a participating agency in the Early Intervention Services System. Adds language authorizing the State Corporation Commission to designate the Health Insurance Commissioner. Amendments to §§ 32.1-137.1 through 32.1-137.3, 32.1-137.5 and 32.1-137.6 replaces all references to Bureau of Insurance with Bureau of Health Insurance in VDH's Certificate of Quality Assurance of Managed Care Health Insurance Plan Licensees statutes (Article 1.1 of Chapter 5 of Title 32.1). Amendments to § 32.1-137.15 replaces all references to Bureau of Insurance with Bureau of Health Insurance in VDH's Utilization Review Standards and Appeals statute (Article 1.2 of Chapter 5 of Title 32.1). Amendments to § 32.1-330.3 (Operation of a pre-PACE plan or PACE plan; oversight by Department of Medical Assistance Services) replaces the Bureau of Insurance with the Bureau of Health Insurance as a member of the Transitional Advisory Group. Amendments to § 32.1-335 (Technical Advisory Panel) replaces the Bureau of Insurance with Health Insurance Commissioner as a member of the Technical Advisory Panel. Amendments to § 38.2-100 revises the definition of "Commissioner" to distinguish between which Chapters in Title 38.2 apply to the Commissioner of Insurance and which ones apply to the Health Insurance Commissioner. The amendments also add new definitions for "Health insurance commissioner" and "Health insurance laws of the Commonwealth." A new § 38.2-200.1 is added which sets forth the powers and duties of the Bureau of Insurance and the Bureau of Health insurance, and provides that the Commissioner of Insurance shall grant to the Health Insurance Commissioner reasonable access to expert staff. Amendments to § 38.2-229 provides that the Commissioner of Health Insurance is immune from liability. Amendments to § 38.2-305 designates the Bureau of Health Insurance as the

appropriate authority for the public to contact regarding complaints involving health insurance laws. Amendments to § 38.2-400 provides that the "Bureau of Insurance Special Fund" will be used to support both the Bureau of Insurance and the Bureau of Health Insurance. Amendments to § 54.1-2909 G requires the Director of the Board of Medicine to report the assessment of civil penalties to the Commissioner of Health Insurance. (Commissioner of Insurance is replaced with Commissioner of Health Insurance.)

6. Fiscal Impact Estimates: for the State Corporation Commission are not available. See line 8.

7. Budget Amendment Necessary: No

8. Fiscal Implications: House Bill 253 would create a Bureau of Health Insurance within the State Corporation Commission. The creation of a new bureau creates a significant number of challenges for the Commission. The Commission has no way of estimating the fiscal impact of the start-up of a new bureau within the Commission or what impact it would have on equipment, staff costs, time and resources. The legislation provides for the Health Insurance Commissioner to have reasonable access to appropriate expert staff within the Bureau of Insurance. Staff resources could be rationally leveraged and shared between two separate Insurance Bureaus to an extent. However, each Commissioner would need separate management and staff, creating the need for an unknown number of additional staff positions. Solving the conflict by creating a separate examination, auditing, actuarial, policy and rate review resources for each Commissioner would entail significant increases in regulatory costs for the Commission.

9. Specific Agency or Political Subdivisions Affected: State Corporation Commission and its Bureau of Insurance and Office of General Counsel

10. Technical Amendment Necessary: The Bureau of Insurance offered the patron the following technical amendments on House Bill 253:

1. The Health Insurance Commissioner may lack certain regulatory tools by which to carry out his authority as the following sections within Title 38.2 would remain within the purview of the Bureau of Insurance:

a. Provisions of a general nature which include important matters, e.g. §§ 38.2-202, 38.2-210, 38.2-212 and 38.2-214 (corporate governance provisions) and §§ 38.2-216 and 38.2-217 (corporate governance/financial provisions) and § 38.2-232 (consumer protection provision);

b. § 38.2-300 et seq. (policy form requirements including the authority to approve or disapprove filings);

- c. § 38.2-400 et seq. (determining the assessment);
- d. § 38.2-500 et seq. (advertising, certain marketing practices, unfair discrimination, rebates, and unfair claims practices); and
- e. § 38.2-600 (Privacy).

2. Appeals of final adverse decisions are proposed to be made to the Health Bureau (Line 346), which suggests that the Health Bureau is responsible for external appeals as prescribed by Chapter 59. However, the definition of “Commissioner” (Line 487) implies that the Bureau of Insurance has responsibility over Chapter 59. This apparent conflict would need to be addressed.

3. On Line 505, after “42” the statutory citation should read (Section 38.2-4200 et seq.).

4. House Bill 253 could call into question whether the Health Insurance Commissioner or the Commissioner of Insurance is the chief insurance regulator in Virginia, which would have implications for representation on and enforcement of the Interstate Insurance Product Regulation Compact (Chapter 62 of Title 38.2).

11. Other Comments: At the request of the patron, the Bureau of Insurance also provided general comments on House Bill 253:

The Bureau pointed out that there may be ambiguity as to whether insurers licensed under Chapter 10 of Title 38.2, but writing health insurance products, should come under the jurisdiction of the Health Bureau. Proposed amendments to § 38.2-100 beginning at line 487 of the bill assign Chapter 10 to the “insurance laws,” while including only the licensing chapters for health service plans and health maintenance organizations in the definition of “health insurance laws,” i.e. Chapter 42 and 43 respectively, to be administered by the Health Bureau.

If the proposed legislation as written applies only to health service plans and health maintenance organizations, then policyholders/consumers would have their health carriers subject to different regulatory regimes simply due to what class of company issued the coverage. As such, House Bill 253 would create a dual system within the State Corporation Commission in which entities licensed under Chapter 10 would be subject to different requirements than entities licensed under Chapters 42 and 43, even though the products offered may be similar or even identical. On the other hand, however, if the intention is to sweep health coverage provided by insurers licensed under Chapter 10 under the jurisdiction of the Health Bureau, there would be other significant difficulties.

Insurers licensed under Chapter 10 may be authorized to write various product lines in addition to their authority to offer health insurance products. For example, 87% of Chapter 10 companies licensed for health insurance are also licensed to write life products. Further, 33% of all property and casualty companies are licensed to write health insurance. Consequently, the regulation of such insurers must focus on the operations of the whole legal entity, not on the offering of individual product lines. Multiline insurers, for example, do not segregate their assets, liabilities, and capital by individual products.

Regulatory requirements regarding investments, capital rules, receivership and other financial matters must, therefore, remain related to the entire legal entity writing all authorized lines. Dual jurisdiction shared by the two insurance commissioners would not seem feasible. That would be the result, for example if an insurer writing both life and health insurance, or a property/casualty insurer writing health insurance, were placed into receivership pursuant to Chapter 15 of Title 38.2? Who would be in charge of marshalling what assets and prioritizing for what liabilities? For similar reasons, the reach of the Bureau's current administration of on-site financial and market conduct examinations extends to the total operations and capacity of a licensed entity. In regard to the Bureau's administration of laws and investigations regarding agents, many agents and agencies offering health products are also authorized to offer other insurance products. Any dual system of regulation would be problematic here as well.

The patron indicated that the concept of a Health Bureau is modeled after a Rhode Island law. Unlike Virginia's competitive marketplace with numerous suppliers, Rhode Island has only two health benefit plans providing general health coverage to the public along with a single Medicaid health benefit plan. None are authorized to issue non-health products.

The Bureau pointed out to the patron that the State Corporation Commission is a regulatory agency and careful consideration should be given to whether this proposal charges the new Health Insurance Commissioner with duties that unduly impinge on the prerogatives of the legislature to make public policy regarding health insurance and the structure of the health care market. Proposed § 38.2-200.1 B 4 and B 5 (Lines 559-563) imposes duties on the Health Insurance Commissioner to encourage policies and developments to improve the efficiency, quality, access and outcomes of health care services without statutory guidance as to what specific policy objectives are intended or the means to achieve them. Such policy initiative and development seems to go beyond the proper purview of a regulatory agency. Staff has also expressed concern with the apparent introduction of an advocacy role into the statutory responsibilities of the Commission. As a division within the Commission, the Bureau of Insurance is charged with administering the insurance statutes in an unbiased way and to do so by balancing the interests of consumers with the duty to regulate Virginia's businesses responsibly.

The Bureau of Insurance staff gave the patron suggestions for possible alternatives to the creation of a Bureau of Health Insurance. The Bureau suggested that the patron consider expanding the authority of the Office of Consumer Counsel in the Attorney General's Office. The Office of Consumer Counsel currently has the authority to protect the interests of consumers before the Commission, and an expanded function for health insurance could be funded by an assessment of

appropriate insurers. The Bureau also suggested that the scope of the Bureau's outreach and education responsibilities could be expanded and formalized. The level of consumer service reviews could be enhanced and the responsibilities of the Managed Care Ombudsman expanded. Finally, the Bureau has a large reservoir of technical expertise, and its role could be increased in providing technical assistance to the Joint Commission on Health Care, the Virginia Department of Health, the Department of Medical Assistance Services as well as other agencies and bodies that play a role in the delivery and financing of health care services.

The bill has been continued to 2009.

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cc: Secretary of Commerce and Trade
Secretary of Health and Human Resources