

State Corporation Commission 2010 Fiscal Impact Statement

1. Bill Number: HB10

House of Origin X Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Marshall, R.G.

3. Committee: Commerce and Labor

4. Title: **Health Care Freedom Act; individual's right and power to participate in health care system, etc.**

5. Summary: Adds the Virginia Health Care Freedom Act. Provides that a law cannot restrict a person's natural right and power of contract to secure the blessings of liberty to choose private health care systems or private plans. A law cannot interfere with a person's or entity's right to pay medical services if the services are legal. A law cannot impose a penalty, tax, fee or fine to decline or contract for health coverage or participate in any health system or plan, except when a court requires a person or entity to do so in a judicial dispute.

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 term "person," which is referenced in Lines 13 and 14 of the bill, is defined broadly in § 38.2-100 of the Virginia Insurance Title to include several parties beyond simply an individual:

"Person" means any association, aggregate of individuals, business, company, corporation, individual, joint-stock company, Lloyds type of organization, organization, partnership, receiver, reciprocal or interinsurance exchange, trustee or society.

Some of such entities listed would include licensees regulated pursuant to various provisions of the Insurance Title. These provisions include protections to support the solvency and financial soundness of entities offering health care coverage to Virginia consumers. To be able to demonstrate compliance, licensees offering health care coverage may have to maintain certain levels of health insurance or reinsurance against their own risks, for example, fully-insured multiple employer welfare arrangements or health maintenance organizations (HMOs) with lower capital levels. Including such licensees within the scope of the present proposal because of

the broad definition of “person” set forth in Section 38.2-100 may create a potential conflict with regulatory requirements related to solvency.

The Bureau of Insurance recommended to the patron that since the objective was to reference the “individual’s” or an “individual or the employer’s” right to purchase or decline of health care services or coverage, the Bureau suggested use of the term “individual” or “an individual or employer” as a substitute for “person” in Lines 13 and 14 of the bill.

Also, because the term “health care plan” is associated exclusively with an HMO (see § 38.2-4300), the Bureau of Insurance suggested a revision at Line 17 to clarify that the conditions addressed in this proposed section are applicable to any kind of health insurance product offered by any type of insurance carrier:

38.2-302.1. Virginia Health Care Freedom Act.

*No law shall restrict ~~a person's~~ **the** natural right and power of contract **of an individual or an individual's employer** to secure the blessings of liberty to choose private health care systems or private plans. No law shall interfere with the right of ~~a person~~ **an individual or an individual's employer** or entity to pay for lawful medical services to preserve life or health, nor shall any law impose a penalty, tax, fee, or fine, of any type, to decline or to contract for health care coverage or to participate in any particular health care system or plan **for health insurance coverage**, except as required by a court where an individual or entity is a named party in a judicial dispute. Nothing herein shall be construed to expand, limit or otherwise modify any determination of law regarding what constitutes lawful medical services within the Commonwealth.*

11. Other comments: The patron offered an amendment in the nature of a substitute to HB 10 when it was heard in House Commerce and Labor Subcommittee #2 on January 28. The subcommittee voted 8-2 to recommend the bill to the full committee.

Date: 01/30/10/V. Tompkins
cc: Secretary of Health and Human Resources