

State Corporation Commission 2010 Fiscal Impact Statement

1. **Bill Number:** HB720

House of Origin X Introduced ___ Substitute ___ Engrossed

Second House ___ In Committee ___ Substitute ___ Enrolled

2. **Patron:** Peace

3. **Committee:** Commerce and Labor

4. **Title:** **Health benefits plans offered by foreign health insurers.**

5. **Summary:** Creates a new Chapter 64 in Title 38.2 entitled “Health Insurance Choice.” The new chapter authorizes foreign health insurers licensed to sell health benefit plans in any other state to sell Health Insurance Choice benefit plans (individual and group) to residents of Virginia if the foreign health insurer meets certain requirements.

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 comments:

- The definition of the term “domestic health insurer” used in proposed Chapter 64 at Line 22 is inconsistent with the definition of “domestic company” contained in § 38.2-100 of the Code of Virginia. The Bureau suggested that the word “Domestic” be stricken in the definition on Line 22 and the word “Licensed” be inserted.
- The Bureau of Insurance does not issue certificates of authority under Title 38.2. These certificates would fall under Title 13.1 (Corporations), which is administered by the Office of the Clerk of the Virginia State Corporation Commission. The certificate of authority to transact business in Virginia under Title 13.1 is only a registration by a non-Virginia entity to conduct business in Virginia generally. The certificate of authority is not an insurance license, or a registration of a foreign insurance company as a regulated insurance provider; the issuance of any such licenses or registrations would be administered by the Bureau of Insurance of the State Corporation Commission. Therefore, the Bureau suggested that except for the general certificate authority requirement in § 38.2-6401 A 2, references to requirements for a “certificate of authority” be amended

to reflect requirements of “registration” for a Chapter 64 company, e.g. §§ 38.2-6402, and 38.2 6404.

11. Other comments: House Bill 720 is identical to 2008 Senate Bill 1331. The Bureau of Insurance offered the following comments to the patron of House Bill 720:

Solvency Regulation

HB 720 provides limited financial standards for the Chapter 64 foreign health insurers to receive and maintain a certificate of authority and thus removes much of the Bureau’s authority with respect to the effective financial oversight of such insurers, both at the time the insurer applies for a certificate of authority and after issuance of the certificate. Specifically, the proposal provides that a Chapter 64 company only be subject to the baseline minimum capital and surplus requirements of Chapter 10 of Title 38.2 and a determination that the insurer is not in hazardous financial condition, a general criterion that is not placed into any context of specific standards. 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.

It should be noted generally that 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.” Staying regulatory action until an insurer reaches such a hazardous state potentially endangers solvency protection for consumers. Further, there are mechanisms in place for states to intervene and perform the function of peer review in the case of another state’s inaction. Inaction by a state occurs when a state is faced with certain economic and political consequences involved with taking action against a domestic insurer. The inability of the Bureau of Insurance to apply statutory financial standards and to conduct peer reviews arguably weakens solvency protection for consumers substantially.

House Bill 720 makes Chapter 64 companies subject to the applicable provisions of Chapter 17 of Title 38.2, the Virginia Life, Accident and Sickness Insurance Guaranty Association chapter (Guaranty Fund Act). The general purpose of the Guaranty Fund Act is to provide limited protection for the unpaid life and health claims of covered insureds in the event of the insolvency of a member insurer. Coverage for shortfalls in claim payments is supported through assessments on member insurers. Member insurers are defined currently as those “licensed” as insurers by Virginia to do business, not those simply licensed in their home jurisdictions, i.e. Chapter 64 companies. House Bill 720 currently requires Chapter 64 companies to “participate” in the Guaranty Fund. It is unclear, therefore, whether any provisions of Chapter 17 would be applicable to Chapter 64 companies. Would Chapter 64 companies be subject, for example, to paying all assessments to cover the insolvencies of all member insurers?

In addition, the Guaranty Fund Act is currently not applicable to licensed health maintenance organizations. Enrollees of health maintenance organizations are currently covered by an alternative set of solvency protection mechanisms set forth in Chapter 43 of Title 38.2. The terms of protection were crafted with the operational realities of health maintenance organizations in mind, including the treatment of health care providers. Coverages of enrollee claim shortfalls in the event of an insolvency are supported by members, in this case, licensed health maintenance organizations. Under the proposal, however, Chapter 64 companies encompass both indemnity insurers as well as health maintenance organizations, and both forms of organizations are placed under Chapter 17, the Guaranty Fund Act.

Finally, current members of the Virginia Life, Accident and Sickness Insurance Guaranty Association may raise the issue of moral hazard in regard to Chapter 64 companies. Arguably Chapter 64 would place less stringent financial requirements on Chapter 64 companies than those borne by fully licensed and Virginia-domiciled insurers. Thus it could be argued that the competitive advantages enjoyed by less secure Chapter 64 companies would be further enhanced by a leveling safety net whose costs are equally borne by them and those more secure carriers subject to full licensing requirements.

The Bureau of Insurance offered the patron two options for addressing the issues raised above:

1. Consider making the foreign unlicensed companies (i.e. insurers, health maintenance organizations and health service plans) subject to the same level of financial requirements as carriers licensed in Virginia, we suggest the amendment outlined below.

On Line 71, after “2,” strike and insert as follows:

~~Is in a hazardous financial condition, as determined by an examination by the Commissioner conducted in accordance with the Financial Analysis Handbook of the National Association of Insurance Commissioners~~ Has not complied with all financial condition requirements applicable to foreign insurers licensed 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;

Option 2

As an alternative to the first option, the Bureau suggested revisions to § 38.2-6403 at Lines 84-92. This proposed disclosure included in a new subdivision 3 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):

§ 38.2-6403. Required disclosures.

A. Any and all certificates and evidences of coverage provided to enrollees, subscribers or insured members under a ~~Each~~ health benefits plan provided by a foreign health insurer to a resident of 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 health benefits plan issued by the foreign health insurer and a policy in accordance with the requirements of this title applicable to 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, using at least 14-point bold type to describe the differences that relate to underwriting standards, premium rating, preexisting conditions, renewability, portability, and cancellation; and*

2. *An explanation of which state's laws govern the issuance of, and requirements under, the health benefits plan offered under this chapter.*

3. 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 registered by the Commission to provide or issue such plan, but that the foreign health insurer is not licensed or regulated by the Commission. 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.

Since the question of guaranty fund coverage was not clear, the Bureau advised the patron that if coverage was not his intention, such lack of coverage should also be disclosed to covered persons.

Market and Consumer Issues

- 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) 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 companies 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 companies in Virginia could avail him- or herself of such mechanisms.
- 3) Other significant areas of "MCHIP" oversight that would not apply to Chapter 64 companies 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.
- 4) Virginia health insurance mandates would not apply to Chapter 64 plans.
- 5) The Insurance Agents chapter (Chapter 18 of Title 38.2) is excluded in HB 536, 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.

Date: 01/24/10/V. Tompkins

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