REPORT OF THE
SPECIAL ADVISORY COMMISSION ON MANDATED
HEALTH INSURANCE BENEFITS

# HOUSE BILL 183 (1994) MANDATED COVERAGE FOR THE TREATMENT OF ATTENTION DEFICIT DISORDER

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA


# SENATE DOCUMENT NO. 12

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## SENATE

November 4, 1994

To: The Honorable George Allen
Governor of Virginia
and
The General Assembly of Virginia

The report contained herein has been prepared pursuant to §§ 9-298 and 9-299 of the Code of Virginia.

This report documents a study conducted by the Special Advisory Commission on Mandated Health Insurance Benefits to assess the social and financial impact and the medical efficacy of House Bill 183 (1994 Session) regarding a proposed mandated benefit for the treatment of attention deficit disorder.

Respectfully submitted,

Clarence A. Holland
Chairman
Special Advisory Commission on
Mandated Health Insurance Benefits

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## INTRODUCTION

During the 1994 Session of the General Assembly, the House Committee on Corporations, Insurance and Banking referred House Bill 183 to the Special Advisory Commission on Mandated Health Insurance Benefits (Advisory Commission) for review. House Bill 183 is patroned by Delegate Shirley F. Cooper.

The Advisory Commission held a hearing on April 18, 1994 in Richmond to receive public comment on House Bill 183. Nine speakers addressed the proposal. Three representatives from the Hyperactivity Attention Deficit Disorder Association (HADDA), a professor of psychiatry in pediatrics at MCV, a representative from Virginians for Mental Health Equity, a representative from Parents for Attention Deficit Disorder Education, and one concerned citizen spoke in favor of the bill. Representatives of Blue Cross and Blue Shield (BCBSVA) and the Virginia Association of Health Maintenance Organizations spoke in opposition of the measure. The Advisory Commission concluded its review of House Bill 183 on June 28, 1994.

## SUMMARY OF PROPOSED LEGISLATION

House Bill 183, if enacted, would require insurers, health services plans and health maintenance organizations (HMOs) to provide to Virginia policyholders coverage for the diagnosis and treatment of attention deficit disorder. As currently drafted, the bill does not contain a clinical definition of attention deficit disorder.

## ATTENTION DEFICIT HYPERACTIVITY DISORDER

Dorland's Medical Dictionary, 27th Edition defines attention-deficit hyperactivity disorder (ADHD) as "a controversial childhood mental disorder with onset before age seven characterized by fidgeting and squirming, difficulty in remaining seated, easy distractibility, difficulty awaiting one's turn and refraining from blurting out answers to questions before they have been completed, and inability to follow instructions, excessive talking, and other disruptive behavior." Dr. Donald A. Taylor, a pediatrician and neurologist representing HADDA, stated at the public hearing that "ADHD is a neurobiological condition which is related to inadequate activity of certain neuro-transmitters in the brain." He also noted that the diagnosis of ADHD is "based on the identification of certain groups of symptoms, including situationally inadequate attention span, excessive distractibility, impulsivity, and/or hyperactivity." According to at least one interested party, variation in assessment techniques sometimes results in mislabeling or misdiagnosis and patients suffering from ADHD may be wrongly classified as "learning disabled."

Treatment for ADHD is multidisciplinary, often including psychological and psychopharmacological interventions which compliment educational and behavioral efforts by schools and families. Drugs such as Ritalin (methylphenidate hydrochloride) are believed to temporarily counteract the patient's chemical imbalance. Drug therapy often ceases after two to four years. Proponents reported that untreated children can be very disruptive and usually have difficulty both academically and socially. Adults with ADHD reportedly have similar problems in the workplace. Treatment focuses on teaching the individual about their condition and how to compensate for it.

**CURRENT INDUSTRY PRACTICES**

The State Corporation Commission Bureau of Insurance surveyed 50 of the top writers of accident and sickness insurance in Virginia regarding House Bill 183. Thirty-two companies responded by April 14, 1994. Three of those indicated that they have little or no applicable health insurance business in force in Virginia and, therefore, could not provide the information requested. Of the 29 respondents that completed the survey, 21 (72%) reported that they currently provide the coverage required by House Bill 183 to their Virginia policyholders. Insurers typically restrict coverage to "medical services" and do not cover "educational" expenses.

Proponents of the bill contend that although many insurers consider ADHD to be a medical condition, some insurers and HMO's classify the disorder to be a behavioral condition or a learning disability and deny coverage on that basis. Several proponents take exception to the practice of some insurers of classifying ADHD as a mental disorder. Mental health treatment coverage is often more limited than coverage for the treatment of physical illness. In addition, concern was expressed by several interested parties that some insurers require primary care physicians to treat ADHD, and in most cases will not cover visits to a specialist.

**FINANCIAL IMPACT**

BCBSVA estimates that the impact on premiums for such coverage is less than one tenth of one percent. Most respondents to the survey provided cost figures between $0.20 and $1.00 per month per policyholder or group certificate holder. One insurer indicated a monthly per policyholder or certificate holder cost of $6.54. BCBSVA also noted that attention deficit disorder is often treated with prescription medication and that such expenses are only covered if the patient has prescription drug coverage.

## SIMILAR LEGISLATION IN OTHER STATES

According to information published by the National Association of Insurance Commissioners, only the State of Louisiana expressly requires insurers to provide coverage for the diagnosis and treatment of attention deficit disorder. The Louisiana statute (Appendix B) took effect January 1, 1994 and contains a series of monetary limits that insurers may impose on coverage for the diagnosis and treatment of attention deficit disorders.

## REVIEW CRITERIA

SOCIAL IMPACT

a. *The extent to which the treatment or service is generally utilized by a significant portion of the population.*

According to the Virginia Department of Education's *Task Force Report on ADHD and the Schools*, the condition affects from 3-5% of the school population. A representative of HADDA reported that ADHD affects 2-5% of the general population.

b. *The extent to which insurance coverage for the treatment or service is already available.*

Of the 29 respondents that completed the survey, 21 (72%) reported that they currently provide the coverage required by House Bill 183 to their Virginia policyholders. BCBSVA reported that it makes coverage for necessary medical services for the treatment of attention deficit disorder. Proponents contend that some other insurers including BCBSVA's HMOs do not provide such coverage.

c. *If coverage is not generally available, the extent to which the lack of coverage results in persons being unable to obtain necessary health care treatments.*

Coverage is generally available; however, inconsistencies among insurers leave some without coverage. One proponent explained that while covered by BCBSVA's KeyCare, her son's ADHD was classified as a medical disorder, thus making him eligible for benefits. When her husband's company switched to Healthkeepers, a BCBSVA HMO, her son's ADHD was classified as a learning disability, thus making him ineligible for benefits.

d. *If the coverage is not generally available, the extent to which the lack of coverage results in unreasonable financial hardship on those persons needing treatment.*

Coverage is generally available; however, inconsistencies among insurers leaves some policyholders without coverage. The case cited under the criterion listed above is one example. Specific information on the cost of treatment was not submitted to the Advisory Commission during its review.

e. *The level of public demand for the treatment or service.*

It has been reported by the Virginia Department of Education's Task Force *Report on ADHD and the Schools* that from 3-5% of the school population suffer from ADHD. Although BCBSVA was unable to determine how many cases of ADHD it has covered, it reported that the number was very low.

f. *The level of public demand and the level of demand from providers for individual and group insurance coverage of the treatment or service.*

The level of public demand for this coverage is unknown. There is considerable argument that some patients are classified as possessing a learning disability, conduct disorders, or anti-social behaviors when in fact they have ADHD. As with many health insurance benefits, it is accepted that many policyholders are not knowledgeable about the specific terms of their coverage until they are diagnosed with a disease that requires a specific treatment.

g. *The level of interest of collective bargaining organizations in negotiating privately for inclusion of this coverage in group contracts.*

The level of interest of collective bargaining organizations in negotiating privately for inclusion of this coverage in group contracts is unknown.

h. *Any relevant findings of the state health planning agency or the appropriate health system agency relating to the social impact of the mandated benefit.*

The Advisory Commission is not aware of any such findings of a state health planning agency or appropriate health system agency relating to the social impact of this proposal.

FINANCIAL IMPACT

a. *The extent to which the proposed insurance coverage would increase or decrease the cost of treatment or service over the next five years.*

No information was provided by either proponents or opponents that would suggest that enactment of this bill would either increase or decrease the cost of treatment for ADHD over the next five years.

b. *The extent to which the proposed insurance coverage might increase the appropriate or inappropriate use of the treatment or service.*

Proponents stated that some patients are denied coverage if the insurer classifies ADHD as a learning disability or anti-social behavior. Proponents also argued that some insurers classify ADHD as a mental health problem, thus limiting the amount of coverage available for treatment. No information was provided regarding a possible increase in the inappropriate use of such treatment.

c. *The extent to which the mandated treatment or service might serve as an alternative for more expensive or less expensive treatment or service.*

The range of services covered by this bill were not identified as substitutes for more or less expensive treatments of the same conditions.

d. *The extent to which the insurance coverage may affect the number and types of providers of the mandated treatment or service over the next five years.*

It is unlikely that the proposed coverage would significantly affect the number and types of providers of the mandated treatments because it is apparent that many insurers already provide such coverage and because the number of insureds needing such treatment is relatively small.

e. *The extent to which insurance coverage might be expected to increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders.*

It is unlikely that this proposed coverage will significantly increase or decrease the administrative expenses of insurance companies and the premium and administrative expense of policyholders because it would apply to all

policyholders equally and is not likely to result in a significant increase in claim submissions because of its limited scope.

*f. The impact of coverage on the total cost of health care.*

The impact on the total cost of health care is not expected to be significant.

MEDICAL EFFICACY

*a. The contribution of the benefit to the quality of patient care and the health status of the population, including the results of any research demonstrating the medical efficacy of the treatment or service compared to alternatives or not providing the treatment or service.*

Opponents did not challenge the medical efficacy of the treatment of ADHD.

*b. If the legislation seeks to mandate coverage of an additional class of practitioners:*

*1) The results of any professionally acceptable research demonstrating the medical results achieved by the additional class of practitioners relative to those already covered.*

Not applicable.

*2) The methods of the appropriate professional organization that assure clinical proficiency.*

Not applicable.

EFFECTS OF BALANCING THE SOCIAL, FINANCIAL AND MEDICAL EFFICACY CONSIDERATIONS

*a. The extent to which the benefit addresses a medical or a broader social need and whether it is consistent with the role of health insurance.*

House Bill 183 addresses a medical need to treat individuals suffering from attention deficit disorder. The coverage is consistent with the role of health insurance.

b. *The extent to which the need for coverage outweighs the costs of mandating the benefit for all policyholders.*

The cost of mandated coverage has been estimated to be very low. BCBSVA estimates that the impact on premiums for such coverage is less than one tenth of one percent. Respondents to the insurer survey projected monthly premium costs in the range of $0.20 and $1.00 per month per policyholder or certificate holder to comply with House Bill 183. One insurer indicated a monthly per policyholder or certificate holder cost of $6.54.

c. *The extent to which the need for coverage may be solved by mandating the availability of the coverage as an option for policyholders.*

The cost of a mandated offer of coverage would be expected to be higher due to adverse selection by those who had reason to believe they might need such treatment in the future. In the case of group coverage, the decision whether to select the optional coverage or not would lie with the master contract holder and not the individual insureds. Therefore, it is possible that many insureds would not benefit from such a requirement.

## RECOMMENDATION

The Advisory Commission voted unanimously (9-Yes, 0-No) on May 16, 1994 to recommend that House Bill 183 not be enacted.

## CONCLUSION

Some insurers exclude from coverage ADHD based on the individual insurer's classification of the disorder. In some instances, ADHD is classified as a medical disorder and is fully covered by the insurer. In other instances, ADHD is classified as an educational, emotional, or social disorder or a mental illness thereby eliminating or limiting the amount of available coverage. This occurrence indicates that there are inconsistencies in the definition and interpretation of ADHD. However, based on the information obtained during the course of its review, the Advisory Commission concluded that coverage for ADHD is already generally available.

# 1994 SESSION

LD4102160

## HOUSE BILL NO. 183

Offered January 14, 1994

*A BILL to amend and reenact § 38.2-4319 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-3418.2, relating to insurance coverage for attention deficit disorder.*

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Patrons—Cooper, Christian, Crittenden, Darner, Keating, Puller and Van Landingham; Senator: Lucas

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Referred to Committee on Corporations, Insurance and Banking

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Be it enacted by the General Assembly of Virginia:

1. That § 38.2-4319 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-3418.2 as follows:

*§ 38.2-3418.2. Coverage for attention deficit disorder.*

*A. Each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis, each corporation providing individual or group accident and sickness subscription contracts, and each health maintenance organization providing a health care plan for health care services shall provide coverage under such policy, contract or plan delivered, issued for delivery or renewed in this Commonwealth for diagnosis and treatment of attention deficit disorder.*

*B. The provisions of this section shall not apply to short-term travel, accident-only, limited or specified disease policies, or to short-term nonrenewable policies of not more than six months' duration.*

§ 38.2-4319. Statutory construction and relationship to other laws.

A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-200, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.) of this title, 38.2-1057, 38.2-1306.2 through 38.2-1310, Article 4 (§ 38.2-1317 et seq.) of Chapter 13, 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3411.2, 38.2-3418.1, *38.2-3418.2,* 38.2-3419.1, 38.2-3431, 38.2-3432, 38.2-3500, 38.2-3525, 38.2-3542, and Chapter 53 (§ 38.2-5300 et seq.) of this title shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200) of this title except with respect to the activities of its health maintenance organization.

B. Solicitation of enrollees by a licensed health maintenance organization or by its representatives shall not be construed to violate any provisions of law relating to solicitation or advertising by health professionals.

C. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful practice of medicine. All health care providers associated with a health maintenance organization shall be subject to all provisions of law.

D. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to offer coverage to or accept applications from an employee who does not reside within the health maintenance organization's service area.

# Louisiana Statute

§215.15. Attention deficit/hyperactivity disorder, coverage, diagnosis

A. Any hospital, health, or medical expense insurance policy, hospital or medical service contract, employee welfare benefit plan, health and accident insurance policy, or any other insurance contract of this type, including a group insurance plan, or any policy of group, family group, blanket, or franchise health and accident insurance, and a self-insurance plan, which is delivered or issued for delivery in this state on or after January 1, 1994, shall include benefits payable for diagnosis and treatment of attention deficit/hyperactivity disorder as provided in this Section. These benefits shall be payable under the same circumstances and conditions as benefits are paid under those policies, contracts, benefit plans, agreements or programs for all other diagnoses, illnesses, or accidents.

B. The diagnosis and treatment for attention deficit/hyperactivity disorder shall be covered when rendered or prescribed by a physician or other appropriate health care provider licensed in this state and received in any physician's or other appropriate health care provider's office, any licensed hospital, or in any other licensed public or private facility, or portion thereof, including but not limited to clinics and mobile screening units. However, benefits for attention deficit/hyperactivity disorder provided for an initial diagnosis shall not exceed six hundred dollars. Services rendered on an out-patient basis shall not exceed fifty dollars per visit with a physician or other appropriate health care provider and total benefits shall be limited to ten thousand dollars during a person's lifetime, and shall not exceed twenty-five hundred dollars in any given year. The limitation on benefits payable for attention deficit/hyperactivity disorder shall be minimum levels of coverage and nothing in this Section shall prohibit insurers from offering benefits in excess of the coverage provided for in this Subsection.

C. This Section shall apply to any new policy, contract, program, or plan issued on or after January 1, 1994. Any policy, contract, or plan in effect prior to January 1, 1994, shall convert to conform to the provisions of this Section on or before the renewal date thereof but in no event later than January 1, 1995.

D. The provisions of this Section shall not apply to individually underwritten, guaranteed renewable limited benefit, supplemental health insurance policies.

*Acts 1993, No. 376, §1.*