

**REPORT OF THE  
JOINT COMMISSION ON HEALTH CARE**



**LONG-TERM CARE INSURANCE REPORTING/  
DISCLOSURE REQUIREMENTS STUDY**

**(HB 1511)**

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# **JOINT COMMISSION ON HEALTH CARE: 2000**

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# I.

## Authority for Study/Organization of Report

House Bill (HB) 1511, which was passed by the 2000 Session of the General Assembly, directs the Joint Commission on Health Care (JCHC) and the Bureau of Insurance (Bureau) to study two specific issues regarding long-term care insurance policies. The second enactment clause of HB 1511 directs the JCHC and the Bureau to:

- study the work of the National Association of Insurance Commissioners' study group on reporting requirements and comparative disclosures of information for long-term care insurance policies; and
- survey other states with respect to reporting requirements and disclosure of information.

HB 1511 requires the JCHC and Bureau to report to the members of the House Committee on Corporations, Insurance and Banking and the Senate Committee on Commerce and Labor prior to the 2001 Session of the General Assembly. A copy of HB 1511 is provided at Appendix A.

### **This Report Is Presented In Four Major Sections**

This first section discusses the authority for the study and the organization of the report. Section II provides background information on Virginia's current statutory and regulatory provisions related to long-term care insurance, reviews the provisions of HB 1511, and identifies a number of changes being made to the current regulations. The third section reviews the work of the National Association of Insurance Commissioners on potential revisions to its model regulations pertaining to long-term care insurance policies. Section III also summarizes the results of a survey of other states' reporting requirements and comparative disclosure of information related to long-term care insurance. Lastly, Section IV presents a series of policy options the Joint Commission may wish to consider in addressing the Commonwealth's current statutory and regulatory provisions regarding long-term care insurance reporting requirements and information disclosure.



## II. Current Long-Term Care Insurance Statutes And Regulations/Provisions Of House Bill 1511

### **Virginia's Statutory Provisions Related To Long-Term Care Insurance Policies Are Found In Chapter 52 Of Title 38.2 Of The *Code Of Virginia***

Long-term care insurance policies delivered or issued for delivery in Virginia must conform with the statutory provisions contained in Chapter 52 of Title 38.2 of the *Code of Virginia*. Section 38.2-5200 defines long-term care insurance as:

“any insurance policy or rider advertised, marketed, offered or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, personal care, mental health or substance abuse services, provided in a setting other than an acute care unit of a hospital.”

Figure 1 provides a brief description of the provisions of the *Code of Virginia* that pertain to long-term care insurance policies. The sections of the *Code of Virginia* which are most closely related to the issues being studied pursuant to HB 1511 are discussed in more detail in the following paragraphs. As noted in Figure 1, long-term care insurance policies also must comply with other provisions of Title 38.2 related to insurance policies generally.

**Figure 1**  
**Code Of Virginia Statutes Related To Long-Term Care Insurance**

| Code Section | Key Provision  |
|--------------|--|
| §38.2-5200   | Defines certain terms used in Chapter 52 <sup>1</sup>  |
| §38.2-5201   | Requires long-term care insurance policies/certificates to comply with other provisions of Title 38.2 related to insurance policies and certificates generally, except Article 2 of Chapter 34 (mandated benefits) and Chapter 36 (Medicare supplement policies) |
| §38.2-5202   | Authorizes the Commission to adopt regulations; regulations must recognize the unique aspects of long-term care insurance <sup>1</sup>   |
| §38.2-5203   | Identifies prohibited practices regarding long-term care insurance policies <sup>1</sup>   |
| §38.2-5204   | Defines “pre-existing condition,” and prohibits long-term care insurance policies from using a more restrictive definition   |
| §38.2-5205   | Prohibits long-term care insurance policies from conditioning benefits for institutional care on receipt of a higher level of such care or for any benefits on a prior hospitalization   |
| §38.2-5206   | Provides that long-term care benefits may be required to meet certain loss-ratio standards; requires a certificate by a qualified actuary as to the adequacy of the rates and reserves to be filed with the Commission   |
| §38.2-5207   | Requires long-term care insurance policies to disclose certain information in an “outline of coverage” <sup>1</sup>  |
| §38.2-5207.1 | Provides additional disclosure requirements for long-term care benefits included in a life insurance policy  |
| §38.2-5207.2 | Requires a monthly report to policyholder when long-term care benefits are paid through a life insurance policy by acceleration of death benefits  |
| §38.2-5208   | Requires that long-term care insurance policies allow policyholders to return the policy within 30 days of delivery with premium refund  |
| §38.2-5209   | Requires each long-term care policy have an “incontestability” provision that meets certain requirements <sup>2</sup>  |
| §38.2-5210   | Requires that long-term care insurance policyholders be offered the option of purchasing a nonforfeiture benefit <sup>2</sup>  |

**Notes:**

1. Code of Virginia section amended by House Bill 1511
2. New section added by House Bill 1511

**Source:** Joint Commission on Health Care staff analysis

## **Section 38.2-5207 Of The *Code Of Virginia* Requires Long-Term Care Insurance Policies To Disclose Certain Information To Applicants**

One of the key issues that HB 1511 directs the Joint Commission on Health Care and the Bureau of Insurance to study is the disclosure of information to policyholders. Section 38.2-5207 requires that an “outline of coverage” be provided to applicants for an individual policy. The State Corporation Commission (Commission) is required to prescribe a standard format. As required by §38.2-5207, the outline of coverage must include the following information:

- “A description of the principal benefits and coverage provided in the policy;
- A statement of the exclusions, reductions and limitations contained in the policy;
- A statement of the renewal provisions, including any reservation in the policy of a right to change premiums. Continuation or conversion provisions of group coverage shall be specifically described;
- A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be considered to determine governing contractual provisions;
- A description of the terms under which the policy may be returned and premium refunded; and
- A brief description of the relationship of cost of care and benefits.”

Section 38.2-5207 also requires the Commission to adopt and publish a Long-Term Care Insurance Consumer Guide. This guide must be provided to the policyholder at the time of delivery of the policy or certificate.

## **The Passage Of House Bill 1511 Revised Several Statutory Provisions Related To Long-Term Care Insurance**

As noted in Figure 1, the passage of House Bill (HB) 1511 amended several sections of the *Code of Virginia* related to long-term care insurance and added two new sections. Figure 2 summarizes the key provisions of HB 1511.



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**Figure 2**

**Key Provisions of House Bill 1511**

| <b>Code Section</b>              | <b>Key Provision of Amended Section/New Section</b>  |
|----------------------------------|--|
| §38.2-5200 <sup>1</sup>          | Adds a definition for the term “qualified long-term care insurance policy” or “federally tax-qualified long-term care insurance contract”  |
| §38.2-5202 <sup>1</sup>          | Requires the State Corporation Commission to adopt regulations regarding long-term care insurance policies and certificates as it deems appropriate  |
| §38.2-5203 <sup>1</sup>          | Prohibits long-term care insurance policies from being issued based on medical or health status when the policy is issued by an agent or third-party administrator pursuant to the underwriting authority granted to the agent or third party administrator by the insurer; and prohibits an insurer who has paid benefits under a long-term care insurance policy from recovering benefit payments in the event the policy is rescinded |
| §38.2-5207 <sup>1</sup>          | Prohibits a long-term care insurance policy from being marketed as a <i>qualified</i> long-term care insurance policy unless the policy or contract contains a statement prominently disclosing that such policy <i>is</i> a qualified long-term care insurance policy   |
| §38.2-5209 <sup>2</sup>          | Requires that each long-term care insurance policy has an “incontestability” provision that meets certain requirements   |
| §38.2-5210 <sup>2</sup>          | Requires that long-term care insurance policyholders be offered the option of purchasing a nonforfeiture benefit   |
| 2 <sup>nd</sup> Enactment Clause | Directs Joint Commission on Health and Bureau of Insurance to study certain issues related to reporting requirements and comparative disclosures of information  |
| 3 <sup>rd</sup> Enactment Clause | Provides effective dates for certain provisions contained in the bill  |

**Notes:**

1. Amended section
2. New section

**Source:** Joint Commission on Health Care staff analysis

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## **The Bureau Of Insurance Has Promulgated Regulations Which Govern Long-Term Care Insurance That Is Sold In The Commonwealth; Virginia's Regulations Are Based On The National Association Of Insurance Commissioners' Model Regulations**

As authorized by the *Code of Virginia*, the Bureau of Insurance (Bureau) has promulgated regulations governing long-term care insurance. These regulations, which became effective on January 1, 1992, are provided in 14 VAC 5-200-10 through 14 VAC 5-200-210 of the Virginia Administrative Code. In addition to the provisions included in the regulations specific to long-term care insurance, insurers offering this type of insurance must also comply with other pertinent insurance regulations promulgated by the Bureau.

Virginia's long-term care insurance regulations, as promulgated by the Bureau, are based on the model regulations adopted by the National Association of Insurance Commissioners (NAIC). Virginia's regulations include most provisions of the NAIC model. A 1999 NAIC comparison of state long-term care insurance regulations indicates that Virginia's current regulations include some or all of the NAIC model language on 19 of the 25 components of the NAIC model regulations. (One component regarding penalty provisions noted by NAIC as not being in Virginia regulations is addressed in the *Code of Virginia*. As such, for purposes of this report, this component is considered as being consistent with NAIC.)

In addition to standard regulations such as definitions, applicability and scope, etc., Virginia's long-term care regulations include sections dealing with topics such as: (i) required disclosure provisions, (ii) prohibition of post-claims underwriting; (iii) minimum standards for home health benefits; (iv) requirement to offer inflation protection; (v) reporting requirements; (vi) reserve standards; (vii) loss ratios; and (viii) standards for marketing.

**Loss Ratio:** As discussed in Section III of this report, one of the model regulation changes being considered by NAIC relates to premium "loss ratios." Currently, Virginia regulations regarding loss ratios require that "benefits under individual long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least 60% calculated in a manner which provides for adequate reserving of the long-term care insurance risk." In short, this loss ratio regulation requires the insurer to pay out in benefits an amount that is at least 60% of the amount received in premium payments.

**The Bureau Of Insurance Is Revising Its Long-Term Care Insurance Regulations To Conform With The Provisions Of House Bill 1511; Other Revisions Also Are Being Included Which Will Make Virginia's Regulations More Consistent With The Current NAIC Model**

The passage of HB 1511 requires the Bureau to amend its long-term care insurance regulations to implement certain provisions of the legislation. Among the changes prompted by the passage of HB 1511 are regulations that will address the required offering of nonforfeiture benefits and the requirement that long-term care insurance policies include an incontestability provision.

In addition to the regulatory changes required by HB 1511, the Bureau also is drafting revisions to adopt additional provisions of NAIC's current model regulations, including new regulations regarding an unintentional lapse provision and benefit trigger standards. The new regulation being added pursuant to HB 1511 regarding nonforfeiture benefits also is recommended by NAIC. Other existing provisions (e.g., loss ratio, filing requirements, and standards for marketing) are being revised to include additional NAIC language which will make Virginia's regulations more closely aligned with the NAIC model. Several of the regulatory changes being addressed by the Bureau were suggested by the AARP.

### **III.**

## **National Association Of Insurance Commissioners' Work On Revising Model Regulations/Reporting And Comparative Information Disclosure Requirements In Other States**

### **The National Association Of Insurance Commissioners (NAIC) Is In The Process Of Revising Its Long-Term Care Insurance Model Regulations In Response To State Regulators' Concerns Regarding Premium Rate Increases**

The NAIC is the national organization of insurance regulators from all 50 states, the District of Columbia and the four U.S. territories. The NAIC provides a forum for the development of uniform policy when uniformity is appropriate, and provides staff support to insurance commissioners.

NAIC staff indicate that a number of state insurance regulators had raised concerns in recent years regarding the manner in which some long-term care insurance companies were imposing premium rate increases. One such concern has been that some companies offer policies with a low initial premium that attracts buyers, and then increase the premium substantially during the next several years. This rating practice is particularly problematic for senior citizens, many of whom are on fixed incomes.

In response to these concerns, NAIC has been working on revising its model regulations to provide states with suggested language to address such rating practices. The NAIC's Health Insurance and Managed Care (B) Committee adopted in June, 2000 a set of proposed revisions to the long-term care insurance model regulations. Final adoption of the proposed revisions by NAIC's Executive Committee is expected to occur on August 17, 2000.

The proposed revisions to the model regulations focus on two major areas: (i) changes to the manner in which premium rates are calculated by carriers and approved by state insurance regulators; and (ii) extensive new requirements for information that must be disclosed to an applicant. The following paragraphs provide additional details regarding these two proposed revisions.

### **The Proposed Revisions To NAIC's Long-Term Care Insurance Model Regulations Would Provide Incentives For Insurers To Adequately Price Long-Term Care Policies**

**Rate Setting:** The current NAIC model regulation requires that long-term care insurance policies have an expected loss ratio of at least 60%. The proposed revisions would eliminate the 60% loss ratio on the initial premium filed by the carrier, but would impose an 85% loss ratio on any premium increase requested by the insurer, and a 58% loss ratio on the initial premium amount. This change will provide a strong incentive for the insurer to file an initial premium that will be more stable in future years, and will not require the frequency and amount of increase that has concerned some state regulators across the country.

**New Regulatory Authority:** The proposed revisions also would provide insurance commissioners with the authority to require the insurer to reimburse policyholders for any unnecessary rate increases (i.e., increases that did not meet the loss ratios described above). In addition, the revisions would authorize the insurance commissioner to prohibit the insurer from filing and marketing comparable coverage for a period up to five years if the commissioner determines the insurer has “exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance...”

### **The Proposed Revisions To NAIC’s Long-Term Care Insurance Model Regulations Also Would Require Insurers To Disclose Extensive Information To Applicants On Premium Rates**

The other major component of the proposed revisions to NAIC’s model long-term care insurance regulations focuses on consumer information. The proposed revisions would require extensive new information that insurers would have to provide to applicants regarding premium rates. Figure 3 identifies the disclosure requirements contained in Section 9 of the proposed revisions.

Perhaps the most significant provision of the proposed revisions in this area is the requirement that a premium rate history for the past ten years be provided to consumers. This will enable consumers to know the degree to which an insurer has raised premiums on similar policies in any state.

### **NAIC Believes The Proposed Revisions Will Be Of Significant Benefit To Consumers; In General, The Long-Term Care Insurance Industry Is Supportive Of The Changes**

The Chairman of NAIC’s Health Insurance and Managed Care (B) Committee indicated that “[R]ate increases on long-term care policies are a big problem because the average buyers are in their 60s, and consumers are least able to afford any premium increase as they get older. We believe these amendments

will go a long way toward solving that problem.” The long-term care insurance industry, in general, is reported to be supportive of the proposed revisions. Representatives of the two major trade associations for long-term care insurers, the Health Insurance Association of America and the American Council of Life Insurers, indicated their organizations are supportive of the proposed amendments.

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### Figure 3

#### **NAIC Proposed Revisions To Long-Term Care Insurance Model Regulations: Key Provisions Of The Required Disclosure Of Rating Practices To Consumers At Time Of Application Or Enrollment**

- *A statement that the policy may be subject to rate increases in the future*
- *An explanation of potential future premium rate revisions*
- *A description of when premium rate or rate schedule adjustments will be effective*
- *Information regarding each premium rate increase on this policy form or similar policy forms over the past ten years for this state or any other state that, at a minimum, identifies:*
  - *The policy forms for which the rates have been increased,*
  - *The calendar years when the form was available for purchase, and*
  - *The amount or percent of each increase*

**Source:** Joint Commission on Health Care staff analysis of NAIC proposed revisions to Long-Term Care Insurance Model Regulation (6/13/00)

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#### **The Bureau Of Insurance Surveyed Other States Regarding Their Long-Term Care Insurance Reporting Requirements And Disclosure Of Information**

House Bill 1511 directs the Joint Commission on Health Care and the Bureau of Insurance (Bureau) to “survey other states with respect to measures in other states that address reporting requirements and comparative disclosures of information for long-term care insurance policies.” In response to this directive, the Bureau surveyed the insurance departments in all 49 other states via an e-mail survey. JCHC staff drafted the initial survey document which then was reviewed by a representative of the AARP as well as Bureau staff. The draft

survey was modified to incorporate suggestions made by AARP. (A copy of the survey is attached at Appendix B.) The Bureau sent the survey to the respective insurance regulators in other states; received the responses, and tabulated the results. Thirty-eight states (including Virginia) responded to the survey which produced a 76% response rate.

**Very Few States Currently Require Insurers Marketing Long-Term Care Insurance To Disclose Premium Rate History Information To Applicants; Seventeen Of The 38 States Report That Insurers Are Required To File Premium Rate History Information With The Insurance Department**

As previously noted, one of the major features of the proposed revisions to NAIC's long-term care insurance regulations is a requirement that insurers provide applicants with premium rate history information over a 10-year period. Of the 38 states responding to the Bureau survey, only three states, California, Colorado, and Montana require carriers to provide premium rate history information on long-term care insurance to applicants.

Seventeen of the 38 states reported that insurers are required to file premium rate history information with the insurance department. Virginia is among the 21 states which currently do not require insurers to file premium rate history information. Figure 4 illustrates those states which require premium rate history information to be filed with the insurance department.

For those 17 states which require premium rate history information, 11 states require information to be provided on all long-term care products that are offered; 5 states require the information be provided only on certain products (One state did not respond to the survey question.) Twelve of the 17 states require insurers to file premium history information on only those products offered in their state; 4 states require the information to be filed with respect to all products, including those offered in other states. (One state did not respond to the question.) Regarding the number of years of premium rate history that must be filed, 9 states require that all years be filed, California requires 10 years; Texas requires 5 years; Arkansas, Colorado, and Indiana require 3 years; Louisiana reported carriers must file information annually. (Two states did not respond to the survey question.)

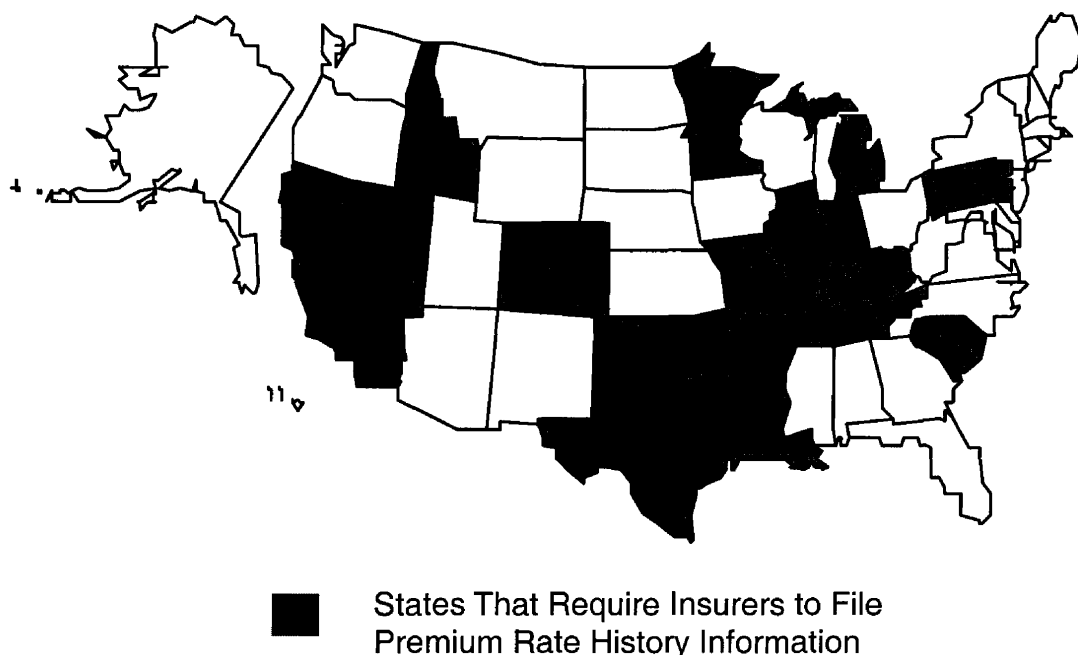
Of those 21 states which do not require insurers to file premium rate history information, 4 states indicated they plan to collect the information in the future; 7 states indicated they do not plan to collect this type of information, and

10 states (including Virginia) indicated they were uncertain as to whether the information will be collected in the future.

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**Figure 4**

**States Which Require Insurers To File Premium Rate History Information On Long-Term Care Insurance Policies To The Insurance Department**



**Source:** Bureau of Insurance Survey of Other States

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**Most States That Require Premium Rate History Information Report That The Data Are Collected For Internal Use Only By The Insurance Department**

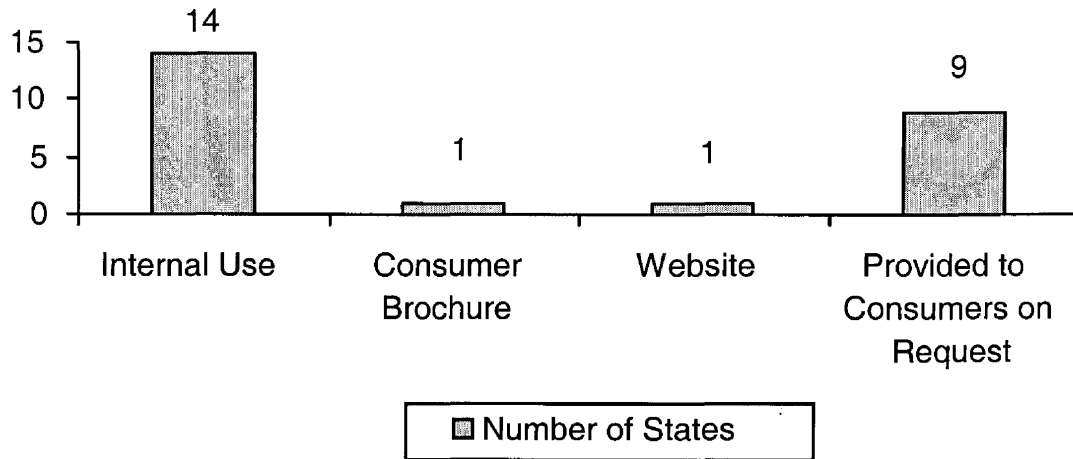
The majority of states (14) that require premium rate history information to be filed with the insurance department collect the information for internal use only. In most instances, the data are used to determine if the rates being charged for the coverage meet that particular state's standards. A number of these states reported that the information is provided to consumers only upon request; one state indicated the information is used for a department website while another state indicated the information also is used for consumer brochures. Figure 5 illustrates how the premium rate information is used in these states.



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**Figure 5**

**Other States' Uses Of Premium Rate History Information Collected  
On Long-Term Care Insurance Policies**



**Note:** States were asked to check all that apply, total exceeds the number of states that collect premium information

**Source:** Bureau of Insurance Survey of Other States

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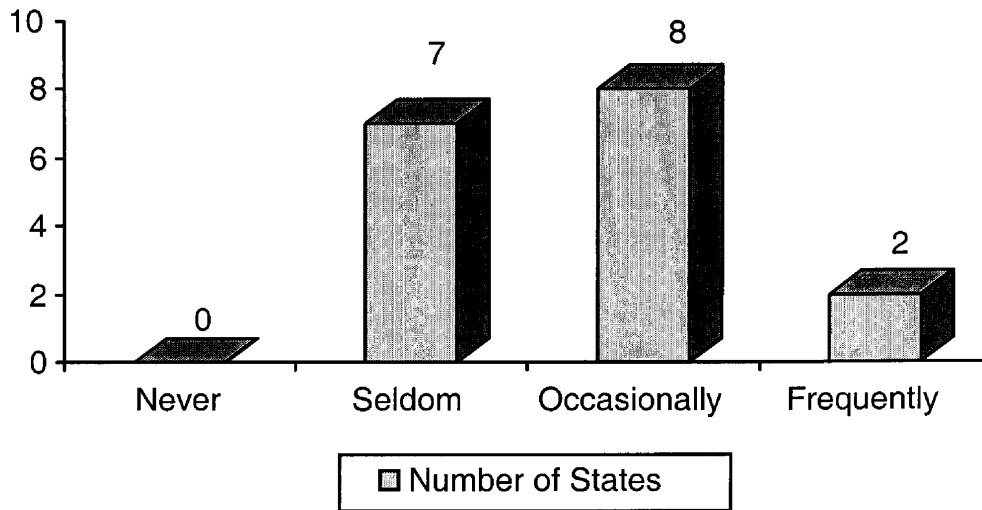
**Most States Report That Premium Rate History Information Is Requested  
Either Seldom Or Occasionally By Consumers**

As shown in Figure 6, most states which require insurers to file premium rate history information indicate that the information is requested either seldom or occasionally by consumers.

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**Figure 6**

**State Responses To The Survey Question Regarding How Frequently Consumers Request Premium Rate History Information**



**Source:** Bureau of Insurance Survey of Other States

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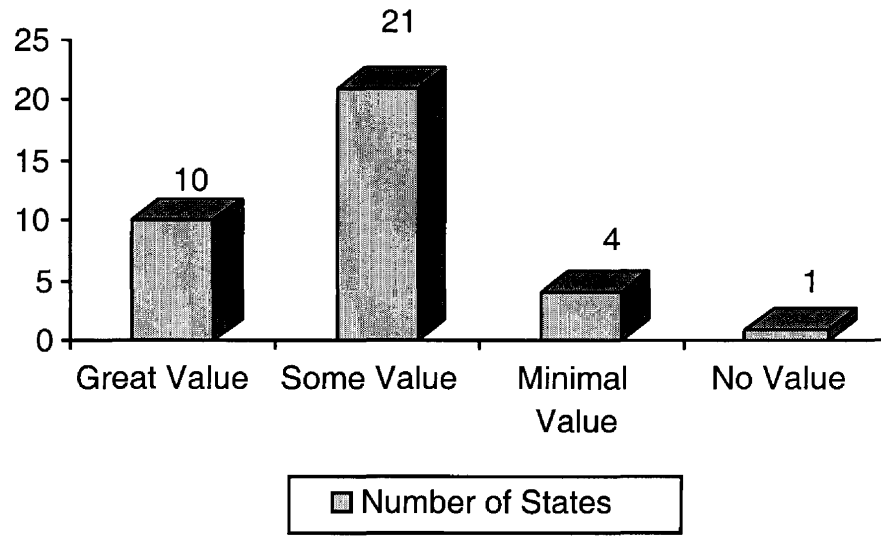
**Most States Believe Premium Rate History Information Has Value For Consumers**

All states that responded to the Bureau survey were asked whether premium rate history information has value for consumer decision-making. As seen in Figure 7, the majority of states felt the information is of “great value” or “some value.”

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**Figure 7**

**State Responses To The Survey Question Regarding The Value Of  
Premium Rate History Information For Consumers**



**Note:** Two of the 38 states did not respond to this survey question

**Source:** Bureau of Insurance Survey of Other States

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## IV. Policy Options

The following Policy Options are offered for consideration by the Joint Commission on Health Care. They do not represent the entire range of actions that the Joint Commission may wish to pursue.

**Option I          Take no action**

**Option II          Introduce legislation to implement in Virginia the proposed revisions to the National Association of Insurance Commissioners' (NAIC) long-term care insurance model regulation. The legislation could implement the regulations related to: (i) the premium rate filing/approval process; (ii) the requirement that premium rate history information be provided to applicants; or (iii) both the premium rate filing/approval process and premium rate history information for applicants.**

(This option assumes that NAIC will adopt finally the proposed revisions to the model regulation.)

**Option III          Request the Bureau of Insurance, via a letter from the Chairman of the Joint Commission on Health Care, to assist JCHC staff: (i) monitor the implementation of the revisions to the NAIC regulations, (ii) document the experiences of other states which have implemented the revised regulations, and (iii) make recommendations as to whether Virginia should adopt the revised NAIC model regulations. A report would be presented to the House Committee on Corporations, Insurance and Banking, the Senate Committee on Commerce and Labor, and the Joint Commission on Health Care. JCHC staff and the Bureau would involve other interested parties in the study.**

## **APPENDIX A**

# VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

## CHAPTER 559

*An Act to amend and reenact §§ 38.2-5200, 38.2-5202, 38.2-5203, and 38.2-5207 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 52 of Title 38.2 sections numbered 38.2-5209 and 38.2-5210, relating to long-term care insurance.*

[H 1511]

Approved April 6, 2000

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 38.2-5200, 38.2-5202, 38.2-5203, and 38.2-5207 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 52 of Title 38.2 sections numbered 38.2-5209 and 38.2-5210 as follows:**

§ 38.2-5200. Definitions.

As used in this chapter:

"Applicant" means in the case of an individual long-term care insurance policy, the person who seeks to contract for such benefits, or in the case of a group long-term care insurance policy, the proposed certificateholder.

"Certificate" means any certificate or evidence of coverage issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this Commonwealth.

"Group long-term care insurance" means a long-term care insurance policy delivered or issued for delivery in this Commonwealth to any group which complies with § 38.2-3521.1.

"Long-term care insurance" means any insurance policy or rider advertised, marketed, offered or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, personal care, mental health or substance abuse services, provided in a setting other than an acute care unit of a hospital. Such term includes group and individual annuities and life insurance policies or riders that provide directly or that supplement long-term care insurance. *Such term shall also include qualified long-term insurance contracts.* Long-term care insurance may be issued by insurers, fraternal benefit societies, health services plans, health maintenance organizations, cooperative nonprofit life benefit companies or mutual assessment life, accident and sickness insurers to the extent they are otherwise authorized to issue life or accident and sickness insurance. Health maintenance organizations, cooperative nonprofit life benefit companies and mutual assessment life, accident and sickness insurers may apply to the Commission for approval to provide long-term care insurance.

"Policy" means any individual or group policy of insurance, contract, subscriber agreement, certificate, rider or endorsement delivered or issued for delivery in this Commonwealth by an insurer, fraternal benefit society, health services plan, health maintenance organization or any similar organization.

*"Qualified long-term care insurance policy" or "federally tax-qualified long-term care insurance contract" means an individual or group insurance policy or contract that meets the requirements of § 7702 B (b) of the Internal Revenue Code of 1986, as amended. Such term shall also include the portion of a life insurance policy or contract that provides long-term care insurance coverage by rider or as part of the contract and that satisfies the requirements of §§ 7702 B (b) and 7702 B (e) of the Internal Revenue Code of 1986, as amended.*

§ 38.2-5202. Promulgation of regulations; standards for policy provisions.

A. The Commission may adopt regulations to establish specific standards for policy provisions of long-term care insurance policies. These standards shall be in addition to and in accordance with applicable laws of this Commonwealth. The standards shall address terms of renewability, nonforfeiture provisions if applicable, initial and subsequent conditions of eligibility, continuation or conversion, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms and may address any other standards considered appropriate by the Commission.

*B. The Commission shall promulgate such regulations regarding long-term care insurance policies and certificates as it deems appropriate.*

~~B.~~ C. Regulations issued by the Commission shall:

1. Recognize the unique, developing and experimental nature of long-term care insurance;
2. Recognize the appropriate distinctions necessary between group and individual long-term care insurance policies;
3. Recognize the unique needs of both those individuals who have reached retirement age and those preretirement individuals interested in purchasing long-term care insurance products; and
4. Recognize the appropriate distinctions necessary between long-term care insurance and accident and sickness insurance policies, prepaid health plans, and other health service plans.

§ 38.2-5203. Prohibited provisions.

No long-term care insurance policy may:

1. Be cancelled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificateholder;
2. Contain a provision establishing any new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; ~~or~~
3. Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care;
4. *Be issued based on medical or health status when the policy is issued by an agent or third-party administrator pursuant to the underwriting authority granted to the agent or third-party administrator by the insurer; or*
5. *Provide that an insurer who has paid benefits under a long-term care insurance policy or certificate may recover the benefit payments in the event that the policy or certificate is rescinded.*

§ 38.2-5207. Disclosure.

In order to provide for fair disclosure in the sale of long-term care insurance policies:

1. An outline of coverage shall be delivered to an applicant for an individual long-term care insurance policy at the time of application for an individual policy. In the case of direct response solicitation, the insurer shall deliver the outline of coverage upon the applicant's request, but regardless of request shall make such delivery no later than at the time of policy delivery. The Commission shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of an outline of coverage. In the case of agent solicitations, an agent shall deliver the outline of coverage prior to the presentation of an application or enrollment form. In the case of direct response solicitations, the outline of coverage shall be presented in conjunction with any application or enrollment form.

Such outline of coverage shall include:

- a. A description of the principal benefits and coverage provided in the policy;
  - b. A statement of the exclusions, reductions and limitations contained in the policy;
  - c. A statement of the renewal provisions, including any reservation in the policy of a right to change premiums. Continuation or conversion provisions of group coverage shall be specifically described;
  - d. A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions;
  - e. A description of the terms under which the policy may be returned and premium refunded; and
  - f. A brief description of the relationship of cost of care and benefits.
2. A certificate delivered or issued for delivery in this Commonwealth shall include:
    - a. A description of the principal benefits and coverage provided in the policy;
    - b. A statement of the exclusions, reductions and limitations contained in the policy; and
    - c. A statement that the group master policy should be consulted to determine governing contractual provisions.
  3. The Commission shall adopt and publish a Long-Term Care Insurance Consumer Guide. After adoption and publication by the Commission, a copy of the Consumer Guide shall be provided at the time of delivery of the policy or certificate.

4. *No long-term care insurance policy or certificate shall be marketed as a qualified long-term*

care insurance policy or federally tax-qualified long-term care insurance contract unless the policy or contract contains a statement prominently disclosing that such policy or certificate is a qualified long-term care insurance policy or federally tax-qualified long-term care insurance contract.

*§ 38.2-5209. Incontestability.*

*Each long-term care policy or certificate shall include an incontestability provision that includes the following:*

*1. For a policy or certificate that has been in force for less than six months, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is material to the acceptance of coverage.*

*2. For a policy or certificate that has been in force for at least six months but less than two years, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is both material to the acceptance of coverage and that pertains to the condition for which benefits are sought.*

*3. After a policy or certificate has been in force for two years, it is not contestable upon the grounds of misrepresentation alone, and such policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.*

*4. In the event of the death of the insured, this section shall not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care. In such event, the contestability of the remaining death benefits under such a life insurance policy shall be governed by the provisions of § 38.2-3305 or § 38.2-3326. In all other situations, this section shall apply to life insurance policies that accelerate benefits for long-term care.*

*§ 38.2-5210. Nonforfeiture benefit.*

*A long-term care insurance policy or certificate shall not be delivered or issued for delivery in this Commonwealth unless the policyholder or certificateholder has been offered the option of purchasing a policy including a nonforfeiture benefit, as provided in regulations promulgated by the Commission. The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy or certificate. If the policyholder or certificateholder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that shall be available for a specified period of time following a substantial increase in premium rates.*

**2. That the Joint Commission on Health Care and the Bureau of Insurance of the State Corporation Commission shall study the work of the National Association of Insurance Commissioners' study group on, and survey other states with respect to, measures in other states that address reporting requirements and comparative disclosures of information for long-term care insurance policies. The Commission and Bureau shall present their report to the members of the House Committee on Corporations, Insurance and Banking and the Senate Committee on Commerce and Labor prior to the 2001 Session of the General Assembly.**

**3. That the provisions of this act shall apply to any long-term care insurance policy or certificate delivered, issued for delivery, or renewed in this Commonwealth on or after July 1, 2000. However, the requirements of § 38.2-5210 shall take effect sixty days following the first to occur of (i) the promulgation of regulations by the State Corporation Commission providing for required nonforfeiture benefits or (ii) January 1, 2001.**



**APPENDIX B**

The Bureau of Insurance is directed by House Bill 1511, which was enacted by the 2000 session of the Virginia General Assembly, to "survey other states with respect to, measures in other states that address reporting requirements and comparative disclosures of information for long-term care insurance policies." It would be appreciated if you can respond to the following questions so that we can compile the information that our legislature has requested.

1. Does your state require carriers marketing long-term care insurance to disclose premium rate history information to applicants? Yes\_\_ No\_\_

2. Does your state require carriers marketing long-term care insurance to file premium rate history information with the insurance department? Yes\_\_ No\_\_ ( If "Yes," please respond to questions 3-7; if "No," please skip to Question 8.)

3. Does your state require premium rate information only on certain long-term care insurance products or on all long-term care insurance products? Only Certain Products \_\_ All Products \_\_ If only certain products, please describe the products.

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4. Does your state require premium rate information only on products that a given carrier markets in your state or also on products the carrier offers in other states? Only in-state products \_\_ Products offered in-state and in other states \_\_

5. How many years of premium rate history must be filed? \_\_\_\_Years

6. How is the premium rate history used by the department?

(Check all that apply.)

Internal use only\_\_\_\_

Consumer information brochures/pamphlets\_\_\_\_

Department website\_\_\_\_

Provided to consumers upon request\_\_\_\_

Other\_\_\_\_Please explain \_\_\_\_\_

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7. How often does the department receive requests for the premium rate information?

Never\_\_ Seldom\_\_ Occasionally\_\_ Frequently\_\_

8. If your state is not currently collecting premium rate information, do you plan to do so in the future? Yes \_\_\_ No \_\_\_ Uncertain \_\_\_
9. Does your department believe premium rate history information has value for consumer decision-making?  
Great Value \_\_\_ Some Value \_\_\_ Minimal Value \_\_\_ No Value \_\_\_

**APPENDIX C**



## JOINT COMMISSION ON HEALTH CARE

### SUMMARY OF PUBLIC COMMENTS: Long-Term Care Insurance Reporting/Disclosure Requirements Study HB 1511

#### Organizations Submitting Comments

A total of 3 organizations submitted comments in response to the HB 1511 report on long-term care insurance reporting and disclosure requirements study:

- Alzheimer's Association, Northern Virginia Chapter
- AARP
- Virginia Association of Nonprofit Homes for the Aging

#### Policy Options Included in the HB 1511 Issue Brief

**Option I**            **Take No Action**

**Option II**            **Introduce legislation to implement in Virginia the proposed revisions to the National Association of Insurance Commissioners' (NAIC) long-term care insurance model regulation. The legislation could implement the regulations related to: (i) the premium rate filing/approval process; (ii) the requirement that premium rate history information be provided to applicants; or (iii) both the premium rate filing/approval process and premium rate history information for applicants.**

(This option assumes that NAIC will adopt finally the proposed revisions to the model regulation.)

**Option III**            **Request the Bureau of Insurance, via a letter from the Chairman of the Joint Commission on Health Care, to assist JCHC staff: (i) monitor the implementation of the revisions to the NAIC regulations, (ii) document the experiences of other states which have implemented the revised regulations, and (iii) make recommendations as to whether Virginia**

**should adopt the revised NAIC model regulations. A report would be presented to the House Committee on Corporations, Insurance and Banking, the Senate Committee on Commerce and Labor, and the Joint Commission on Health Care. JCHC staff and the Bureau would involve other interested parties in the study.**

### **Overall Summary of Comments**

The Alzheimer's Association (Northern Virginia Chapter) and AARP expressed support for Option II. The Virginia Association of Nonprofit Homes for the Aging supported Option III.

### **Summary of Individual Comments**

#### **Alzheimer's Association, Northern Virginia Chapter**

The Alzheimer's Association, Northern Virginia Chapter, commented in support of Option II, and specifically mentioned that the legislation should address both the premium rate filing/approval process and premium rate history information for applicants.

#### **AARP**

The AARP commented that implementation of good standards for long-term care insurance is a high priority of AARP in Virginia as well as nationally. AARP indicated that it strongly supports Option II. The AARP comments also noted that this action would provide "marked improvements in the regulatory oversight of this product, as well as for people shopping for long-term care insurance." Further, AARP commented that the Commonwealth should make current premium information available as soon as possible on the Bureau of Insurance's website.

#### **Virginia Association of Nonprofit Homes for the Aging (VANHA)**

VANHA commented in support of Option III.

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# **JOINT COMMISSION ON HEALTH CARE**

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