REPORT OF THE

SPECIAL ADVISORY COMMISSION ON MANDATED HEALTH INSURANCE BENEFITS

TO THE GOVERNOR AND THE GENERAL ASSEMBLY AND THE HOUSE COMMITTEE ON COMMERCE AND LABOR AND THE SENATE COMMITTEE ON COMMERCE AND LABOR OF THE GENERAL ASSEMBLY OF VIRGINIA

COMMONWEALTH OF VIRGINIA
RICHMOND
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January 8, 2007

TO: The House Committee on Commerce and Labor
and
The Senate Committee on Commerce and Labor
Of the General Assembly of Virginia

The report contained herein has been prepared pursuant to § 2.2-2504 of the Code of Virginia.

This report documents the activities of the Special Advisory Commission on Mandated Health Insurance Benefits during the past twelve months.

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Chairman
Special Advisory Commission on
Mandated Health Insurance Benefits

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AUTHORITY AND HISTORY

The Special Advisory Commission on Mandated Health Insurance Benefits (Advisory Commission) was created in 1990 to evaluate the social and financial impact and medical efficacy of existing and proposed mandated health insurance benefits and providers. Sections 2.2-2503 through 2.2-2505 of the Code of Virginia provide for the establishment and organization of the Advisory Commission. Section 2.2-2503 requires that the Advisory Commission report to the Governor and the General Assembly on the interim activity and the work of the Commission no later than the first day of the regular session of the General Assembly.

House Bill 623- Treatment of Malignant Brain Tumors at National Cancer Institute Centers of Excellence

The House Committee on Commerce and Labor referred House Bill 623 to the Advisory Commission during the 2006 Session of the General Assembly. House Bill 623 was introduced by Delegate John M. O'Bannon III.

The Advisory Commission held a hearing on October 17, 2006 in Richmond to receive public comments on House Bill 623. Delegate John S. Reid introduced the bill. A representative of the Cullather Brain Tumor Quality of Life Center at St. Mary's Hospital (Cullather Center) and three concerned citizens spoke in favor of the bill. A representative of the Virginia Association of Health Plans (VAHP) spoke in opposition to the bill.

Written comments in support of the bill were provided by a representative of the Cullather Center and a concerned citizen. Written comments in opposition to the bill were submitted by VAHP and the Virginia Chamber of Commerce.

House Bill 623 would add § 38.2-3418.15 and would amend § 38.2-4319 in the Code of Virginia. The original language of the bill requires that insurers, corporations, and HMOs provide coverage for treatment of a malignant brain tumor at a National Cancer Institute (NCI) Center of Excellence within 300 miles of a patient's residence if the patient elects to have treatments performed at a center and the treatment is otherwise covered. The bill applies to insurers that issue individual and group accident and sickness policies that provide hospital, medical and surgical coverage on an expense incurred basis, corporations providing individual and group accident and sickness subscription contracts, and each HMO providing health care plans for health care services.

The bill prohibits insurers, corporations, and HMOs from imposing a copayment, fee, policy year or calendar year, or durational benefit limitation or maximum that is not equally imposed on all individuals in the same category. The bill applies to all policies, contracts, and plans delivered, issued for delivery, reissued, or extended in Virginia on or after January 1, 2007 when there is change in any term of the contract, or plan, or any change is made in the premium.

The bill does not apply to short-term travel, accident-only, limited or specified disease policies, or individual conversion policies or contracts, or policies or contracts designed for issuance to people eligible for Medicare, or any other similar coverage under state or federal plans.

Delegate O'Bannon indicated, prior to the public hearing, that the language of the bill was intended to require coverage at NCI cancer centers. Written comments provided for the hearing from proponents stated that the bill was intended to require coverage for the treatment of primary malignant brain tumors. Changes in the bill language were suggested by the proponents that would require coverage for second opinions, Phase I and Phase 2 clinical trials

otherwise covered by the policy if the covered patient elects to have treatment performed at a NCI comprehensive cancer center located within 300 miles of the patient's residence.

After the public hearing, Delegate O'Bannon requested by a letter dated November 9, 2006, that the bill be revised to limit its scope. Delegate O'Bannon requested the bill be changed to require coverage of a second opinion at a NCI comprehensive cancer center for primary malignant brain tumors. The revision would require coverage for Phase III clinical trials and would allow insurers and HMOs to negotiate with the comprehensive centers for any ongoing treatment. At the November 20, 2006 meeting of the Advisory Commission, Delegate O'Bannon stated that the revisions would not mandate a treatment regimen be covered after a second opinion was received.

The Advisory Commission voted 8 to 3 with one abstention against recommending the original bill language. The Advisory Commission considered making no recommendation to the General Assembly and the Senate and House Committees on Commerce and Labor because the research that was conducted, presented, and reviewed addressed the original bill language. Concern was expressed about the Advisory Commission's ability to provide an informed recommendation on the revised language offered by Delegate O'Bannon on November 20, 2006. A motion to make no recommendation on the bill was defeated by a vote of 5 to 4 with 3 abstentions.

Delegate O'Bannon withdrew the proposals from Advisory Commission review after the second vote.

House Bill 657 – Coverage for Habilitative Services for Children with Developmental Delay

The House Committee on Commerce and Labor referred House Bill 657 to the Advisory Commission during the 2006 session. House Bill 657 was introduced by Delegate Kenneth R. Plum.

On October 17, 2006, the Advisory Commission held a public hearing in Richmond to receive comments on House Bill 657. Delegate Plum spoke in favor of the proposed legislation. Written comments supporting House Bill 657 were received from six concerned citizens, parents and relatives of children with developmental delay who require habilitative services. Another comment in support of the need for coverage of habilitative services was received from an occupational therapist in Northern Virginia who works with children requiring habilitative care.

At the public hearing, a representative from VAHP spoke in opposition to the bill. Correspondence opposing House Bill 657 was received from VAHP and the Virginia Chamber of Commerce.

House Bill 657 would amend and reenact § 38.2-4319 and would add § 38.2-3418.15 to the Code of Virginia to require each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical or 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 (HMO) providing a health care plan for health care services to provide coverage for medically necessary habilitative services for persons younger than 19 years.

Subsection B of the proposed legislation defines "habilitative services" as "health and social services directed toward increasing and maintaining the physical, intellectual, emotional, and social functioning of developmentally delayed individuals, include occupational, physical, and speech therapy; assistance training; supervision and monitoring in the areas of self-care; sensory and motor development, interpersonal skills, communication, and socialization; and reduction or elimination of maladaptive behavior." "Habilitative services" does not include services for which coverage is provided or required to be provided pursuant to § 38.2-3418.5, the early intervention mandate.

The proposed legislation also defines "Medically necessary habilitative services" as habilitative services that are certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services (MHMRSAS) as designed to help an individual attain or retain the capability to function age appropriately within the individual's environment and shall include habilitative services that enhance functional ability without effecting a cure.

The bill states that an insurer, corporation, or HMO subject to this section shall not be required to provide coverage for medically necessary habilitative

services to the extent that such services are provided through the individual's school; however, this exclusion from coverage shall not alter or diminish the obligation of an insurer, corporation, or HMO to provide coverage for medically necessary habilitative services that are not provided through the individual's school.

The bill requires each insurer, corporation, or HMO subject to the section to provide notice annually to its insureds, and enrollees about the coverage required.

The bill does not apply to short-term travel, accident only, limited or specified disease policies, or individual conversion policies or contracts, nor to policies designed for issuance to persons eligible for Medicare or similar coverage under state or federal governmental plans or to short-term nonrenewable policies of not more than six months' duration.

On November 20, 2006, the Advisory Commission voted to recommend against enacting the mandate of coverage for habiltative services for children (12 to 1). The Advisory Commission members expressed several concerns, including the difficulty of defining the scope of the bill, the complexity of conditions requiring remediation, and the uncertainty of knowing the extent to which other mechanisms or means currently address the issues associated with the proposed legislation.

House Bill 1405- Intensity Modulated Radiation Therapy (IMRT)

The House Committee on Commerce and Labor referred House Bill 1405 to the Advisory Commission during the 2006 Session of the General Assembly. House Bill 1405 was introduced by Delegate Robert J. Wittman.

The Advisory Commission held a hearing on October 17, 2006 in Richmond to receive public comments on House Bill 1405. In addition to the patron, Delegate Robert J. Wittman, four doctors and a medical physicist spoke in favor of the bill. Representatives from the VAHP and Anthem Blue Cross Blue Shield spoke against House Bill 1405.

Written comments in support of the bill were provided by the American College of Radiation Oncology, Associates in Medical Physics, Bethesda Regional Cancer Treatment Center, Comprehensive Physics and Regulatory Services, Ltd., Congressional Representative Jo Ann Davis, the County of Lancaster, Eastern Virginia Medical School Department of Radiation Oncology and Biophysics, Farmington Regional Radiation Therapy Services, Hematology-Oncology Associates of Fredericksburg, Inc., Mountain Regional Cancer Centers, Senator John H. Chichester, 21st Century Oncology, the Town of Montross, the Town of Warsaw, University of Louisville Health Science Center, Valley Regional Cancer Center, Virginia Cancer Institute, Westmoreland County Board of Supervisors, and eight concerned citizens. A representative from the America Cancer Society also commented on House Bill 1405. The VAHP and the Virginia Chamber of Commerce submitted comments in opposition to the bill.

House Bill 1405 would add § 38.2-3418.15 to the Code of Virginia. The bill would require insurers 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; corporations providing individual or group accident and sickness subscription contracts; and HMO's providing health care plans for health care services to provide coverage for treatment by intensity modulated radiation therapy (IMRT), including solid compensator-based IMRT, of breast cancer, brain tumors, prostate cancer, lung cancer, bladder cancer, cancer of the pancreas and other upper abdominal sites, spinal cord tumors, head and neck cancer, adrenal tumors, pituitary tumors, and other solid tumors in situations in which extremely high precision is required in order to spare essential surrounding normal tissue, when such treatment is performed pursuant to protocol dose volume constraints approved by the institutional review board of any United States medical teaching college or the NCI.

The bill prohibits insurers, corporations, or HMOs from imposing copayments, fees, policy year or calendar year, or durational benefit limitations or maximums on persons for these benefits or services that are not equally imposed on all individuals in the same benefit category.

The bill applies to insurance policies, contracts, or plans delivered, issued for delivery, reissued, or extended in the Commonwealth on or after July 1, 2007, or at any time thereafter when any term is changed or a premium adjustment is made. The bill does not apply to short-term travel, accident-only, limited or specified disease policies, or individual conversion policies, or contracts designed for persons eligible for coverage under Title XVIII of the Social Security Act (Medicare), or any other similar coverage under state or federal government plans.

On November 20, 2006, the Advisory Commission voted (9 to 3) to recommend against the enactment of House Bill 1405. The members of the Advisory Commission believed that based upon the information presented, reimbursement for most IMRT treatments is available; if coverage is denied, patients have the opportunity to file appeals to their insurer or HMO and may also request an external appeals review in many instances. The members believed a mandate is not necessary at this time.