

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  
DECEMBER 2008

January 12, 2009

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

The report contained herein has been prepared pursuant to §§ 2.2-2504 and 2.2-2505 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.

---

Timothy D. Hugo  
Chairman  
Special Advisory Commission on  
Mandated Health Insurance Benefits

**SPECIAL ADVISORY COMMISSION ON  
MANDATED HEALTH INSURANCE BENEFITS**

<b>MEMBERS OF THE GENERAL ASSEMBLY</b>	
Delegate Clifford L. Athey, Jr.	Senator George L. Barker
Delegate Timothy D. Hugo	Senator A. Donald McEachin
Delegate Terry G. Kilgore	
Delegate Donald W. Merricks	
<b>MEMBERS APPOINTED BY THE GOVERNOR</b>	
Elnora Allen	
Angela Benton	
Peter J. Bernard	
Dorothe S. Brodersen	
Dr. Renard Charity	
Dr. James F. Childress	
Phyllis L. Cothran	
Joe Kelliher	
Laura Lee Viergever	
<b>EX OFFICIO MEMBERS</b>	
Alfred W. Gross, Commissioner of Insurance	
Karen Remley, M.D., M.B.A. Commissioner of Health	

## TABLE OF CONTENTS

<b><u>SECTION</u></b>		<b><u>PAGE</u></b>
<b>AUTHORITY AND HISTORY</b>		1
<b>ISSUES CONSIDERED IN 2008</b>		
	HOUSE BILL 83 (Substitute) – COVERAGE FOR AUTISM SPECTRUM DISORDER	2
	HOUSE BILL 237 COVERAGE FOR HEARING AIDS FOR CHILDREN	5
	HOUSE BILL 615 AND HOUSE BILL 669 - COVERAGE FOR AMINO ACID-BASED FORMULAS AND ELEMENTAL FORMULAS	7
	HOUSE BILL 667 – COVERAGE FOR ALTERNATIVES TO SURGERY	9
	SENATE BILL 631 – COVERAGE FOR INFERTILITY TREATMENTS	11
<b>APPENDICES:</b>		
A	HOUSE BILL 83 (Substitute) HOUSE BILL 83 – Amended	
B	HOUSE BILL 237	
C	HOUSE BILL 615 AND HOUSE BILL 669	
D	HOUSE BILL 667	
E	SENATE BILL 631	

## **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 83 - COVERAGE FOR AUTISM SPECTRUM DISORDER**

The House Committee on Commerce and Labor referred House Bill 83 to the Advisory Commission during the 2008 Session of the General Assembly after adopting an amendment in the nature of a substitute to mandate coverage for the diagnosis and treatment of Autism Spectrum Disorder (ASD) in individuals under age 21. House Bill 83 was introduced by Delegate Robert Marshall.

The Advisory Commission held a public hearing on September 29, 2008 in Richmond to receive public comments on House Bill 83. In addition to patron Delegate Marshall and Delegate David Poisson, thirty individuals spoke in favor of the proposal. Representatives from Autism Speaks, the Kennedy-Krieger Institute, The Loudoun Project, The Spiritos School, The Allergy and Nutrition Clinic (northern Virginia), and several medical doctors, therapists, and other professionals involved with individuals on the autism spectrum addressed the Commission. Representatives from the Virginia Association of Health Plans (VAHP), the National Federation of Independent Business (NFIB), and the Virginia Chamber of Commerce (VCC) spoke in opposition of the bill.

In addition, written comments were received from Autism Speaks, the Virginia Nutritionists Association, and the Association for Science in Autism Treatment, and the Relationship Development Intervention (RDI) parent group. Seventy-three written letters and electronic letters were submitted from private citizens in support of the proposed legislation. Also, signatures from 265 residents from the tidewater and northern Virginia areas of the Commonwealth were submitted supporting House Bill 83. The VAHP, NFIB, and VCC submitted comments in opposition to the bill.

House Bill 83 would add § 38.2-3418.15 to the mandated benefits article and would amend § 38.2-4319 of the Code of Virginia to make it applicable to Health Maintenance Organizations (HMOs). The bill applies to insurers that issue group accident and sickness policies providing hospital, medical and surgical or major medical coverage on an expense-incurred basis; corporations providing group accident or sickness subscription contracts and HMOs providing a health care plan.

The bill defines the following terms:

“Applied behavior analysis (ABA)” is the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relations between environment and behavior.

“Autism Spectrum Disorder (ASD)” is defined as any of the pervasive developmental disorders known as (i) autistic disorder, (ii) Asperger’s Syndrome, or (iii) Pervasive Developmental Disorder - Not Otherwise Specified, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

“Diagnosis of autism spectrum disorder” means medically necessary assessments, evaluations, or tests to diagnose whether an individual has an autism spectrum disorder.

“Habilitative or rehabilitative care” means professional, counseling, and guidance services and treatment programs, including applied behavior analysis, that are necessary to develop, maintain, and restore, to the maximum extent practicable, the functioning of an individual.

“Pharmacy care” in House Bill 83 is defined as medications prescribed by a licensed physician and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

“Psychiatric care” means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.

“Psychological care” means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices.

“Therapeutic care” means services provided by licensed or certified speech therapists, occupational therapists, or physical therapists.

“Treatment for autism spectrum disorder” includes the following care prescribed, provided, or ordered for an individual diagnosed with one the autism spectrum disorders by a licensed physician or a licensed psychologist who determines the care to be medically necessary: (i) habilitative or rehabilitative care; (ii) pharmacy care; (iii) psychiatric care; (iv) psychological care; and (v) therapeutic care.

The bill states that, except for inpatient services, an insurer will have the right to request a review of treatment of an individual receiving service for an ASD once every 12 months unless the insurer, corporation or HMO and the individual’s licensed physician or licensed psychologist agrees that a more frequent review is necessary. The cost of obtaining a review shall be covered under the policy, contract or plan, and does not apply to inpatient services.

Proposed coverage for ASD shall neither be different or separate from coverage applicable to any other illness, condition, or disorder for purposes of determining deductibles, benefit year, or lifetime durational limits, benefit dollar limits, lifetime episodes or treatment limits, co-payment and coinsurance factors,

and benefit year maximum for deductibles and co-payment and coinsurance factors.

The bill does not apply to (i) short-term travel, accident only, limited or specified disease policies, (ii) short-term non-renewable policies of not more than six months' duration, (iii) policies, contracts, or plans issued in the individual market or small group markets to employers with 25 or fewer employees, (iv) policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans. The bill applies to insurance policies, contracts and health care plans delivered, issued for delivery, reissued or extended on and after January 9, 2009.

Delegate Marshall sent revised language to the Advisory Commission prior to the September 29, 2008 meeting and requested that the language be considered by the Advisory Commission. The language was referred to as House Bill 83 - Amended in the review process. Delegate Marshall filed the bill for the 2009 session of the General Assembly, and the bill was drafted as House Bill 1588.

In addition to providing coverage for the diagnosis and treatment of autism spectrum disorder for those under the age of 21, House Bill 83-Amended adds that the insurer can not terminate or otherwise alter coverage solely because an individual is diagnosed with ASD or has been treated for ASD. House Bill 83-Amended adds two additional disorders to the list of conditions in the ASD definition (Rett syndrome and childhood disintegrative disorder). Also, House Bill 83-Amended adds 1) a limit to the coverage, capping the annual maximum benefit at \$36,000; 2) a COLA for inflation beginning 1/1/2011 based on CPI-U; and 3) a requirement that provisions of the bill are in addition to the provisions in the early intervention mandate, § 38.2-3418.5.

On November 19, 2008, the Advisory Commission recommended enacting coverage for autism, House Bill 83, as amended in September 2008 (Yes- 6, No- 4). The vote was contingent on language being added to the bill to recognize the need to make changes to comply with the federal Mental Health Parity and Addiction Equity Act of 2008.

The Advisory Commission expressed concern for those Virginia consumers who are in need ASD treatments and services, and would benefit from the provisions of House Bill 83. The Advisory Commission members had questions about evidence-based treatments, alternative treatments, and discussed issues regarding the most effective mechanism of providing assistance to those families affected by autism and autism-related treatments.

After reviewing data from other states with mandates for the treatment of ASDs and reviewing other substantive follow up information, the Advisory



Commission voted to recommend House Bill 83–Amended as it was presented by Delegate Marshall at the September 29, 2008 meeting.

NOTE: The Advisory Commission’s deliberations and subsequent vote were based on the provisions incorporated in draft language of House Bill 83 - Amended, which parallel the provisions of House Bill 1588 (2009).

## **HOUSE BILL 237 – COVERAGE FOR HEARING AIDS AND RELATED SERVICES FOR CHILDREN FROM BIRTH TO AGE 18**

The House Committee on Commerce and Labor referred House Bill 237 to the Advisory Commission during the 2008 Session of the General Assembly. House Bill 237 was introduced by Delegate John A. Cosgrove.

The Advisory Commission held a hearing on October 27, 2008 in Richmond to receive public comments on House Bill 237. In addition to the patron, a concerned citizen and her daughter spoke in favor of the bill. The Deaf and Hard of Hearing Services Center (DHHSC), Inc., Audiology Hearing Aid Associates, and Speech Language Hearing Association of Virginia (SHAV) provided written comments in support of House Bill 237. Written comments in opposition to House Bill 237 were received from VAHP and VCC. The NFIB also provided written comments on House Bill 237.

House Bill 237 would amend Section 38.2-4319 and add Section 38.2-3418.15 to the Code of Virginia. The bill requires insurers to provide coverage for hearing aids and related services for children from birth to age 18. The bill applies to 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 HMOs providing health care plans for health care services. House Bill 237 requires policies to include coverage for the payment of the cost of one hearing aid per hearing impaired ear every 24 months, up to \$1,500 per hearing aid. The insured may choose a higher-priced hearing aid and may pay the difference in cost above \$1,500, with no financial or contractual penalty to the insured or to the provider of the hearing aid. The bill also provides that no insurer, corporation, or HMO shall impose upon any person receiving benefits pursuant to this section any co-payment, fee, or condition that is not equally imposed upon all individuals in the same benefit category. The bill defines hearing aid as “any wearable, non-disposable instrument or device designed or offered to aid or compensate for impaired human hearing and any parts, attachments, or accessories, including ear molds, but excluding batteries and cords.” Hearing aids are not to be considered durable medical equipment. The bill states that related services include ear molds, initial batteries, and other necessary equipment, maintenance, and adaptation training.

The bill does not apply to short-term travel, accident only, limited or specified disease policies, or contracts designed for persons with Medicare, or any other similar coverage under state or federal governmental plans or to short-term non-renewable policies of not more than six months’ duration.

The Advisory Commission voted on November 19, 2008 to recommend against the enactment of House Bill 237 (Yes-9, No-0, and Abstain-1). The

Advisory Commission members believe that based upon the information presented, hearing aids significantly improve the quality of life for children. However, some members were concerned with the language of House Bill 237 regarding the time frame for replacements, and the providers covered by the bill. In addition, the state programs to assist children needing hearing aids have expanded in recent years and there appears to be more information available to assist families with making connections to obtain services.

## **HOUSE BILL 615 AND HOUSE BILL 669 – COVERAGE OF AMINO ACID-BASED FORMULAS AND ELEMENTAL FORMULAS**

The House Committee on Commerce and Labor referred House Bill 615 and House Bill 669 to the Advisory Commission during the 2008 Session of the General Assembly. House Bill 615 was introduced by Delegate Kristen J. Amundson and House Bill 669 was introduced by Delegate Robert G. Marshall.

The Advisory Commission held a hearing on September 29, 2008 in Richmond to receive public comments on House Bill 615 and House Bill 669. In addition to the patrons, a dietitian and four concerned citizens spoke in favor of House Bill 669. A doctor and a concerned citizen spoke in favor of House Bill 615. A representative of the VAHP spoke in opposition to House Bill 615 and House Bill 669. Children's Milk Allergy and Gastrointestinal Coalition (MAGIC) provided written comments in support of the bills. Written comments in opposition to the bills were provided by VAHP and VCC. The NFIB also provided written comments on House Bill 615 and House Bill 669.

House Bill 615 and House Bill 669 would amend Section 38.2-4319 and add Section 38.2-3418.15 of the Code of Virginia.

House Bill 615 requires insurers to provide coverage for the provision of amino acid-based elemental formulas for the diagnosis and treatment of Immunoglobulin E and non-Immunoglobulin E mediated allergies to multiple food proteins, food protein-induced enterocolitis syndrome, eosinophilic disorders, and impaired absorption of nutrients caused by disorders affecting the absorptive surface, functional length, and motility of the gastrointestinal tract. The bill applies to 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 HMOs providing health care plans for health care services.

House Bill 615 requires coverage for the amino acid-based elemental formulas when the prescribing or ordering physician has issued a written order that the formula is medically necessary for the treatment, regardless of the delivery method. House Bill 615 prohibits insurers, corporations or HMOs from imposing any co-payment, fee, policy year or calendar year, or durational benefit limitation or maximum for benefits or services that is not equally imposed on all individuals in the same benefit category.

House Bill 669 requires insurers to provide coverage for the expense of amino acid-based formulas whose protein source has been extensively or completely hydrolyzed. The bill applies to 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 HMOs providing health care plans for health care services.

House Bill 669 only applies if the formula is prescribed by a licensed physician. A managed care health insurance plan may require the physician to be a member of the plan's network. The physician must supply supporting documentation that the formula is required to treat a diagnosed inborn error of amino or organic acid metabolism or a diagnosed disease or disorder of the gastrointestinal tract that leads to malnutrition or malabsorption due to inflammation, protein sensitivity, or inborn errors of digestion. The formula must be the primary source of nutrition.

House Bill 669 prohibits insurers, corporations or HMOs from imposing any co-payment, coinsurance, deductible amounts, policy year, calendar year, lifetime, or durational benefit limitation or maximum for benefits or services that is not equally imposed on all terms and services covered under the policy, contract, or plan. The bills apply to policies, contracts and plans delivered, issued for delivery, reissued, or extended in the Commonwealth on or after January 1, 2009, or any time thereafter when any term of the policy, contract, or plan is changed or premium is adjusted. The bills do 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 person eligible for Medicare, or similar coverage under state or federal government plans.

Delegate Amundson and Delegate Marshall asked that action on House Bill 615 and House Bill 669 be deferred until 2009. The Advisory Commission agreed to defer the bills until 2009. Delegate Amundson indicated her intention to introduce legislation in the 2009 Session to address concerns raised during the review of House Bill 615 and House Bill 669. She indicated that the revised legislation that she will introduce will be similar to the legislation in effect in Maryland that addresses coverage of foods and food products for the treatment of inherited metabolic diseases.

## **HOUSE BILL 667 - COVERAGE FOR ALTERNATIVES TO SURGERY**

The House Committee on Commerce and Labor referred House Bill 667 to the Advisory Commission during the 2008 Session of the General Assembly. House Bill 667 was introduced by Delegate Robert G. Marshall.

The Advisory Commission scheduled a public hearing for September 29, 2008 in Richmond to receive comments on the bill. At the meeting, Delegate Marshall advised the Advisory Commission that it was not necessary to hear House Bill 667 because of the similarity of the intent of the bill with House Bill 669 that would mandate coverage for amino acid-based formulas and House Bill 615 that would mandate coverage for amino acid-based elemental formulas. No individuals or representatives of any organizations indicated a desire to speak at the meeting. Written comments in opposition to the bill were received from VAHP. Written comments in opposition to any new mandated benefits were received from VCC and comments on the adverse impact of mandated benefits on the number of insureds in small businesses were received from NFIB.

House Bill 667 would add Section 38.2-3407.9:03 to the Accident and Sickness Provisions of the Code of Virginia. The bill applies to insurers issuing individual or group accident and sickness policies providing hospital, medical and surgical or major medical coverage on an expense incurred basis, corporations providing individual or group subscription contracts; and HMOs providing health care plans. The bill requires those insurers, corporations, and HMOs to provide coverage for nonsurgical treatment if they cover surgical treatment of a medical condition or disease. The nonsurgical treatment must be less expensive; less dangerous; not experimental or investigational; generally recognized by the regional medical community as appropriate for the condition or disease; and not less efficacious than the surgical treatment.

The language of House Bill 667 requiring coverage of "any nonsurgical treatment of a medical condition" could include hundreds of medical situations and numerous treatments. The patron of the legislation informed the Advisory Commission by letter of June 30, 2008 that the intent of House Bill 667 was to address situations where a feeding tube would have to be inserted surgically in a child to obtain coverage for amino acid-based formulas because coverage was not provided for orally administered formulas. Amended language was not received from the patron prior to analysis of the bill. Therefore, the analysis prepared for the Advisory Commission review and the report address the broader language of the bill as it was referred to the Advisory Commission.

Delegate Marshall asked that House Bill 667 be deferred until 2009 along with House Bill 669. He indicated at the November 19, 2008 meeting that House Bill 667 was intended to complement House Bill 669 that would mandate coverage for amino acid-based formulas. Delegate Marshall asked that House Bill 669 be deferred until 2009 along with legislation introduced by Delegate

Amundson (House Bill 615) that would require coverage for amino acid-based elemental formulas.

The Advisory Commission agreed to defer House Bill 667 until 2009.

## **SENATE BILL 631 - COVERAGE FOR INFERTILITY TREATMENTS**

The Senate Committee on Commerce and Labor referred Senate Bill 631 to the Advisory Commission to be reviewed during the 2008 Session of the General Assembly. Senate Bill 631 was introduced by Senator Patricia Ticer.

The Advisory Commission held a public hearing to receive comments on Senate Bill 631 on October 27, 2008 in Richmond, VA. In addition to the bill's patron, eight speakers addressed the proposal, including the main proponents, RESOLVE: The National Infertility Association (RESOLVE). The VAHP opposed the bill. Written comments supporting the bill were received from 17 families and RESOLVE. The VAHP submitted written comments opposing the bill, as well as VCC, and NFIB.

Senate Bill 631 adds 38.2-3418.15 to the mandated benefits article and amends §38.2-4319 in the Code of Virginia to make it applicable to HMOs.

The bill requires insurers to provide coverage for treatments for infertility. The bill applies to insurers proposing to issue individual or group accident and sickness policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; corporations providing individual or group subscription contracts; and HMOs providing health care plans.

The bill defines "infertility" as the inability to conceive after one year of unprotected sexual intercourse. Infertility treatment does not include reversal of vasectomy or tubal ligation. "Treatment for infertility" includes, but is not limited to the following procedures performed on a covered individual who is less than 50 years old: in vitro fertilization (IVF), embryo transfer, artificial insemination, gamete intrafallopian tube transfer (GIFT), intracytoplasmic sperm injection, zygote intrafallopian transfer (ZIFT), and low tubal ovum transfer. Treatment must be required only if the covered individual has not undergone four complete oocyte retrievals except that if a live birth follows a complete oocyte retrieval, then two more oocyte retrievals must be covered. "Treatment for infertility" does not include the reversal of a vasectomy or a tubal ligation.

Reimbursement for treatment for infertility must be determined according to the same formula by which charges are developed for other medical and surgical procedures. The coverage must have durational limits, deductibles, and coinsurance factors that are no less favorable than for physical illness generally. The bill applies to policies, contracts or plans delivered, issued for delivery, or extended in the Commonwealth on and after July 1, 2008, or at any time thereafter when any term of the policy, contract or plan is changed or premium adjustments are made. The bill does not apply to short-term travel, accident only, limited or specified disease, or policies or contracts designed for issuance to persons eligible for Medicare, or similar coverage under state or federal



government plans, or short-term nonrenewable policies of no more than six months' duration.

The Advisory Commission voted unanimously (10-0) to recommend against the enactment of Senate Bill 631 on November 19, 2008. The Advisory Commission expressed concern for those Virginia consumers who need infertility treatments and would benefit from the provisions of Senate Bill 631. However, the Advisory Commission members had questions about the cost impact of the bill on individual and group policyholders and the resulting impact on the number of people insured. After reviewing data from other states with mandates for infertility and reviewing other follow-up information, the Advisory Commission voted to not recommend Senate Bill 631.