

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 2009

January 11, 2010

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**

MEMBERS OF THE GENERAL ASSEMBLY	
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	
MEMBERS APPOINTED BY THE GOVERNOR	
Elnora Allen	
Angela Benton	
Dorothe S. Brodersen	
Dr. Renard Charity	
Dr. James F. Childress	
Phyllis L. Cothran	
Joe Kelliher	
Joyal M. Mulheron	
Michael Robinson (appointed 7/09)	
Laura Lee Viergever	
EX OFFICIO MEMBERS	
Alfred W. Gross, Commissioner of Insurance	
Karen Remly, M.D., M.B.A., Commissioner of Health	

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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 2191 AND SENATE BILL 1458 – COVERAGE FOR TELEHEALTH SERVICES

The House Committee on Commerce and Labor referred House Bill 2191 to the Advisory Commission during the 2009 Session of the General Assembly. House Bill 2191 was introduced by Delegate Clarence C. Phillips. Senator William C. Wampler, Jr. introduced Senate Bill 1458, and it was referred to the Advisory Commission with identical language as House Bill 2191.

The Advisory Commission held a public hearing on June 29, 2009 in Richmond to receive public comments on House Bill 2191 and Senate Bill 1458. In addition to patron Delegate Clarence E. Phillips, nine individuals spoke in favor of the proposal. Representatives from the Office of Telemedicine at the University of Virginia Health System (UVA), the Virginia Stroke Systems Task Force, the American Telemedicine Association, the Virginia Telemedicine Network, the Virginia Community Healthcare Association, the Northern Neck Middle Peninsula Telehealth Consortium and Southwest Virginia Health Authority spoke in support of the bill. Representing the Virginia Commonwealth University (VCU) Office of Telemedicine was a professor of Surgery, who serves as an Editor-in-Chief of the Journal of Telemedicine and E-Health (and fellow), and who is also a member of the American College of Chest Physicians. Also, a local physician in private practice for more than thirty years spoke in favor of the bill.

Written comments supporting the bill were received from the American Telemedicine Association, the Virginia Telemedicine Network, the Virginia Community Healthcare Association and the Virginia Rural Health Association. The Medical Society of Virginia wrote a letter of support, as well as the Virginia Stroke System of Care Task Force (VSSTF). Congressman Rick Boucher, 9th District (Virginia), conveyed his support for telemedicine services in a letter dated October 29, 2009. The Joint Commission on Health Care (JCHC) also submitted a letter of support of a mandate for coverage of telemedicine services. Two letters were submitted from private citizens in support of the proposed legislation.

Representatives from the Virginia Association of Health Plans (VAHP) and the National Federation of Independent Business (NFIB) spoke in opposition to the bill. The VAHP and the NFIB also submitted comments opposing the bill.

House Bill 2191 and Senate Bill 1458 would add §38.2-3418.15 to the mandated benefits article and amend §38.2-4319 to make it applicable to health maintenance organizations (HMOs). These bills require insurers to provide coverage for the treatment of telehealth services 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.

“Telehealth services” means the use of interactive audio, video, or other telecommunications technology by a health care provider to deliver health care services within the scope of the provider's practice at a site other than the site where the patient is located, including the use of electronic media for consultation relating to the health care diagnosis or treatment of the patient, transfer of medical data, and medical education. "Telehealth services" do not include an audio-only telephone conversation, electronic mail message, or facsimile transmission between a health care provider and a patient.

An insurer, corporation, or HMO cannot exclude a service for coverage solely because the service is provided through telehealth and is not provided through face-to-face consultation or contact between a health care provider and a patient for services appropriately provided through telehealth services.

No insurer, corporation, or HMO can impose any annual or lifetime dollar maximum on coverage for telehealth services other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy, or impose upon any person receiving benefits pursuant to this section any co-payment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services, that is not equally imposed upon all terms and services covered under the policy, contract, or plan.

The requirements of the bills apply to all insurance policies, contracts, and plans delivered, issued for delivery, reissued, or extended in the Commonwealth on and after January 1, 2010, or at any time thereafter when any term of the policy, contract, or plan is changed or any premium adjustment is made.

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

On November 17, 2009, the Advisory Commission voted unanimously (10 – 0) to defer House Bill 2191 and Senate Bill 1458 until 2010. Delegate Philips presented amended language that would emphasize telemedicine services and asked the Advisory Commission to defer the bill, and review the revised language in 2010. Specifically, the substitute language would narrow the scope of the proposed mandate. A telemedicine service may apply to more specialized applications that usually involve a medical team or other medical professionals. Telehealth services consist of a broad range of various applications and practices.

HOUSE BILL 2337– COVERAGE FOR AMINO ACID-BASED ELEMENTAL FORMULAS

The House Committee on Commerce and Labor referred House Bill 2337 to the Advisory Commission during the 2009 Session of the General Assembly. House Bill 2337 was introduced by Delegate Kristen J. Amundson.

Delegate Amundson was also the patron of House Bill 615 that proposed mandated coverage for the expense of amino acid-based elemental formulas in 2008. She requested that the Advisory Commission defer the bill until 2009. Delegate Amundson indicated her intention at the time to introduce legislation in the 2009 Session to address concerns raised during the review of House Bill 615.

The Advisory Commission held a hearing on June 29, 2009 in Richmond to receive public comments on House Bill 2337. Delegate Amundson spoke in favor of the bill. A representative of the VAHP spoke in opposition to House Bill 2337. Written comments in support of the bill were provided by Children's MAGIC, seven citizens, and two physicians. The VAHP and Virginia Chamber of Commerce (VCC) provided written comments in opposition to House 2337.

House Bill 2337 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 the provision of amino acid-based elemental formulas, regardless of the method of intake, for the diagnosis and treatment of Immunoglobulin E and non Immunoglobulin E mediated allergies to multiple food proteins for enrollees under age 10, severe food protein induced enterocolitis syndrome, eosinophilic disorders as evidenced by the results of a biopsy, and impaired absorption of nutrients caused by disorders affecting the absorptive surface, functional length, and motility of the gastrointestinal tract. The bill applies to 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; corporations providing individual or group accident and sickness subscription contracts; and HMOs providing health care plans for health care services. House Bill 2337 provides that the ordering physician must issue a written order stating that the amino acid-based elemental formula is medically necessary for the treatment of a disease or disorder noted in the bill. House Bill 2337 also provides that a private review agent, acting on behalf of an insurer, nonprofit health service plan, or HMO, may review the ordering physician's determination of the medical necessity of the amino acid-based elemental formula for the treatment of the disease or disorder.

House Bill 2337 prohibits insurers, corporations or HMOs from imposing any copayment, 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 2337 applies to policies, contracts and plans delivered, issued for delivery, reissued, or extended in the Commonwealth on or after January 1, 2010, or any time thereafter when any term of the policy, contract, or plan is changed or premium is adjusted. 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 government plans.

Similar bills addressing formulas have been reviewed by the Advisory Commission four times during the past ten years. In the past, the members of the Advisory Commission agreed that mandated coverage for medicated formulas was not necessary and recommended that other action be taken.

The Advisory Commission voted unanimously (10 to 0) on November 17, 2009 to recommend against the enactment of House Bill 2337. The Advisory Commission members believed that based upon the information presented and reviewed, a mandate for the coverage of amino acid-based elemental formulas is not necessary at this time.