

**SMALL BUSINESS COMMISSION**  
**Tuesday, October 21, 2008**  
**Richmond, Virginia**

The Small Business Commission ("Commission") met in Richmond, Virginia, on October 21, 2008, and was presided over by the Commission's co-chairmen, Delegate Jeffrey M. Frederick and Senator W. Roscoe Reynolds. The meeting focused on the cost and availability of health insurance for small businesses.

**Presentations.**

**I. VirginiaShare Health Insurance Program.**

The Honorable Marilyn B. Tavenner, Secretary of Health and Human Resources, presented an overview of the VirginiaShare Health Insurance Program. Secretary Tavenner explained that VirginiaShare was intended to address Virginia's uninsured population, noting that nearly 70 percent of the uninsured live in households with at least one full-time worker, and that workers employed by small businesses (a business with fewer than 100 employees) account for the majority of the uninsured. VirginiaShare was designed to provide affordable health insurance to over 6,000 small businesses and 15,000 low-income, uninsured employees in Virginia. Secretary Tavenner noted that the program was developed with input from insurance companies to determine the target population. Small businesses that employ between two and 50 employees and employees of these businesses who were working at least 30 hours per work, have not had health insurance during the past six months, and who earned less than 200 percent of the federal poverty level would have been eligible to participate in VirginiaShare.

Secretary Tavenner then described the mechanics of VirginiaShare. The program would subsidize the purchase of health insurance for the target population under a three-share financing approach in which the employer, the employee, and the Commonwealth would pay one-third of the monthly insurance premium. The Commonwealth's share would be capped at a certain dollar amount and it was expected that each party's share would be approximately \$60 per month.

VirginiaShare was proposed by the Governor as a pilot program in which state funds would be used in conjunction with funds provided by the Riverside Foundation to pay for the subsidy. Secretary Tavenner noted that although the VirginiaShare program was ultimately not enacted, the Riverside Foundation has continued with a version the program, committing \$1,000,000 over two years. The Riverside Foundation is providing a monthly subsidy of \$100 to employees and their spouses. The Riverside program started in September of 2008 and Secretary Tavenner noted that first employer has signed up for the program. Secretary Tavenner also noted that other foundations have expressed an interest in funding similar programs in other areas.

**II. Limited Benefit Insurance Policies.**

Delegate Daniel W. Marshall, III, spoke to the Commission about "mandate-lite" health insurance policies. "Mandate-lite" policies are insurance policies that are not required to provide coverage for some or all of the mandated health insurance benefits contained in the Virginia Code. Delegate Marshall noted that Virginia has the third highest number of mandated benefits in the nation.

In 2004, Delegate Marshall introduced House Bill 935 which would have allowed for the sale of "mandate-lite" policies. The bill passed the House but did not make it out of the Senate. In 2007, Delegate Marshall introduced another "mandate-lite" bill, House Bill 3160, which did not make it out of the House. House Bill 3160 provided for the sale of "mandate-lite" policies, but placed certain restrictions on them. The "mandate-lite" plans available under the bill would only be available to small businesses who employ between two and 50 employees. Delegate Marshall also noted that in order to prevent employers who currently offer more comprehensive health insurance from replacing those plans with a "mandate-lite" policy, only employers who had not offered health insurance during the preceding six months would be eligible to purchase such policies. Delegate Marshall explained that his bill would allow the insurance companies to determine what mandated benefits should or should not be included in the "mandate-lite" policies.

In response to Delegate Oder's question regarding who would be opposed to offering "mandate-lite" plans, Mr. Mark Pratt of Anthem Blue Cross and Blue Shield stated that the interest groups who supported each individual mandated benefit as well as the providers who administer those benefits would be the likely opposition. Ms. Julia Ciarlo Hammond, State Director, National Federation of Independent Business, noted that her organization favors such plans. Senator Barker expressed concern that businesses that offered "mandate-lite" policies would have no incentive to move up to more comprehensive coverage.

Delegate Oder moved that the Commission endorse Delegate Marshall's bill in concept, but delay a final vote until those opposed to the bill could be given a chance to speak at the next meeting. Several Commission members noted that the public had been given notice of the current meeting and Delegate Janis offered a substitute motion that the Commission vote to endorse the bill in concept. The vote on the substitute motion was eight yeas and three nays.

Doug Gray, Executive Director of the Virginia Association of Health Plans also spoke to the Commission about "mandate-lite" policies. He explained that over time, people expect coverage for the mandated benefits, so it is unlikely that an insurance company can sell a policy that eliminates all mandates. He also noted that other states allow the sale of such policies and have met with varying degrees of success. Mr. Gray stated that while some states have found a market for these policies, others have not. He cited Louisiana as a state where such policies may be sold, but none have been. Moreover, Mr. Gray explained that Virginia already allows for the sale of a limited benefit plan. The Anthem Limited 30/30 plan includes the mandated benefits, but caps

annual benefits at \$40,000. While this plan is available, Mr. Gray noted that it was rarely used. Finally, Mr. Gray stressed that the effect of "mandate-lite" policies on premiums and the potential marketplace for such plans were unknown. He stated that there are concerns that the cost to administer such plans may exceed the potential size of the marketplace.

### **III. Less Costly Health Insurance Through Section 125 Plans.**

Stephen W. Bowman, Senior Staff Attorney for the Joint Commission on Health Care made a presentation on Section 125 plans. Mr. Bowman explained that Section 125 of the Internal Revenue Code enables employees to purchase health insurance policies with pre-tax dollars. Such plans may allow for employee savings between 25 and 40 percent per dollar contributed toward health insurance. Such plans may also result in a decreased tax liability for employers through lower payroll taxes as employees' use of pre-tax dollars serves to reduce the employer's taxable payroll.

Mr. Bowman noted that there are some limitations on Section 125 plans. These plans make health insurance more affordable, but will not help employees who do not make enough to afford insurance. Additionally, employers who pay 100 percent of the insurance premiums for their employees cannot benefit from these plans.

Mr. Bowman stated that in Virginia, 58 percent of employers with less than 50 employees do not offer Section 125 plans while only eight percent of employers with more than 100 employees do not. Further, based on the number of employers that offer health insurance but do not offer Section 125 plans, 291,000 employees of employers with less than 50 employees and 139,000 employees of employers with more than 50 employees would potentially benefit from such plans.

Mr. Bowman then addressed why more businesses have not adopted Section 125 plans, citing a lack of knowledge of their existence, a misperception of the cost, time and administrative burden in establishing such plans, and the possibility of tax consequences if the plan is not correctly set up. However, Mr. Bowman explained that Section 125 plans can be set up for as little as \$100 and may serve to reduce costs for both the employer and employees.

Mr. Bowman then presented several policy options for dealing with Section 125 plans. These options ranged from doing nothing to mandating that every employer adopt a plan to sending a letter to the Department of Human Resources Management to create detailed documents highlighting these plans and making these documents available to the business community. Mr. Bowman noted that the Joint Commission on Health Care is also considering this range of policy options and will make recommendations at its next meeting held on November 24, 2008. The Commission agreed to consider the recommendations made by the Joint Commission on Health Care and directed staff to work with Mr. Bowman in preparing a letter to the Department of Human Resources Management that will be considered at the Commission's next meeting. Lynda Sharp Anderson, the Director of the Virginia Department of Business Assistance, stated her

Department's willingness to cooperate with posting information relating to Section 125 plans on Virginia's business portal website.

**Member Discussion and Work Plan.**

In addition to its directions concerning "mandate-lite" insurance plans and Section 125 plans, the Commission considered a motion that it resolve that no additional insurance mandates should be enacted during the 2009 Session of the General Assembly. This motion was adopted by a vote of eight yeas, three nays, and one abstention.

**Future Meetings.**

The Commission plans to hold one more meeting prior to the start of the 2009 Session of the General Assembly.