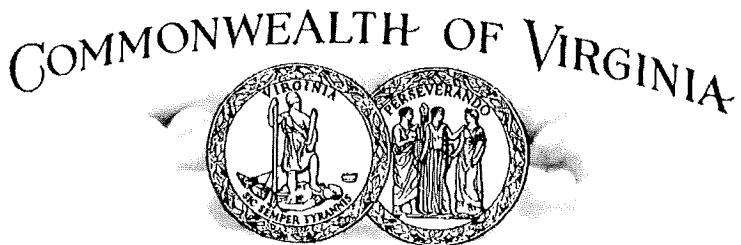


JACQUELINE K. CUNNINGHAM
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March 8, 2013

Gary M. Cohen
Deputy Administrator and Director
Center for Consumer Information and Insurance Oversight
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: Response to your Letter Dated February 15, 2013 and conditions for performance of plan management

Dear Mr. Cohen:

This letter responds to your letter dated February 15, 2013, in which you inquired about Virginia's authority to enforce the 2014 insurance requirements addressed in the Affordable Care Act (ACA). Herein, I also highlight several conditions required by Virginia legislation relative to performance of plan management by the Virginia State Corporation Commission (SCC) through its Bureau of Insurance.

2014 Insurance Requirements

During its recent legislative session, the Virginia General Assembly passed legislation conforming Virginia law to the 2014 requirements addressed in the ACA. As of the date of this letter, House Bill 1900 and Senate Bill 921 are pending for Governor Robert McDonnell's signature. The bills, which are identical, add, amend and reenact a number of statutes within the Insurance Title so as to conform relevant insurance laws to the 2014 requirements addressed in the ACA and preserve other state insurance laws addressing earlier provisions of the ACA.

Provided the Virginia legislation is signed by the Governor, the SCC will administer such laws beginning January 1, 2014, as stipulated in the bills' enactment clauses. Specifically, the SCC will review for approval all health insurance products and monitor insurers' conduct of business in the marketplace to ensure compliance with the ACA-related provisions set forth in Virginia law.

The links below will direct you to the bills and a historical overview of their statuses during the 2013 session of the Virginia General Assembly:

House Bill 1900:
<http://lis.virginia.gov/cgi-bin/legp604.exe?ses=131&typ=bil&val=HB1900>

Senate Bill 921:
<http://lis.virginia.gov/cgi-bin/legp604.exe?ses=131&typ=bil&val=SB921>

Plan Management

In addition, the Virginia General Assembly passed legislation authorizing the SCC, with the assistance of the Virginia Department of Health, to perform plan management functions. Those bills, House Bill 1769 and Senate Bill 922, are also pending for the Governor's signature, and contain specific conditions including:

- The SCC is prohibited from using any Virginia special funds dedicated to other functions and duties of the SCC to fund the plan management functions.
- Full funding must be available and the SCC must receive federal funding sufficient to pay the operating expenses necessary to carry out the plan management functions. The SCC, therefore, must receive federal grant money to fund start-up costs, and a regular source of federal funding to support ongoing functions. The SCC intends to apply for one or more Establishment Grants for start-up costs, and seeks assistance to identify the source of, and process to secure, continued federal funding for ongoing functions.
- The technology infrastructure, including integration with federal, state, and other necessary entities, is made available to the SCC by or through the U.S. Department of Health and Human Services (HHS) or the Virginia Secretary of Health and Human Resources in order for it to carry out the plan management functions described in the Virginia legislation. In that regard, the SCC expects that communication with CCIIO/HHS will be conducted through the System for Electronic Rate and Form Filings (SERFF), and that such functionality will be in place in a timely manner so that the SCC may recommend plans for certification on the exchange by July 31, 2013.
- Technology resources provided by the SCC in carrying out the plan management functions are limited to existing SCC technology support functions such as desktop support, network administration support, web services support, or other similar functions.
- There are no other impediments that effectively prevent the SCC from performing any required plan management functions. For example, to the extent that other process activities related to plan management are still being developed and coordinated, the SCC reserves the right to ensure that all such processes are acceptable and workable for SCC staff.
- The performance of plan management functions is not deemed to establish a health benefit exchange pursuant to §1311 of the ACA.

Moreover, while SCC currently assists consumers and other interested parties in resolving consumer complaints relating to company/agent conduct pertaining to fully insured coverage issued or issued for delivery in Virginia, and will continue to do so, the Virginia legislation discussed herein does not authorize the SCC to assist individuals or other interested parties in the resolution of consumer complaints or appeals specifically related to the activities of or decisions made by the federal exchange. We will refer such matters to the federal exchange.

The links below will direct you to the bills related to plan management and a historical overview of their statuses during the 2013 session of the Virginia General Assembly:

House Bill 1769:

<http://lis.virginia.gov/cgi-bin/legp604.exe?ses=131&typ=bil&val=HB1769>

Senate Bill 922:

<http://lis.virginia.gov/cgi-bin/legp604.exe?ses=131&typ=bil&val=SB922>

The SCC requests confirmation of CCIIO/HHS's understanding and agreement with the above conditions under which the SCC is authorized to perform plan management functions before recommendations for certification of Qualified Health Plans can be completed. Please do so by April 5, 2013. If you fail to respond by that date, we will assume you understand and agree with the conditions under which the SCC is authorized to conduct plan management functions. Please do not hesitate to contact us if you have any questions.

Sincerely,

Jacqueline K. Cunningham
Commissioner of Insurance