2009 Legislative Review

Virginia Poverty Law Center

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2009 General Assembly Consumer Legislation Summary

All bills become effective July 1, 2009 unless otherwise noted

By Jay Speer, jay@vplc.org

Debt Collection Recovery Fund—Salvatore Iaquinto (HB 2037). This bill had to do with collection of debt owed to the Commonwealth of Virginia.

We were concerned about a provision in the bill that allowed for an automatic 30% attorneys fees to be added to a debt owed the Commonwealth when it was referred for collection to the Division of Debt Collection of the Office of the Attorney General.

We were able to get the bill amended to eliminate the automatic 30 percent charge of attorneys fees and change it to reasonable attorney fees.

This bill also sought to amend § 8.01-220.2, spousal liability for medical care, to eliminate the word emergency so that it created a new spousal liability for all hospital and physician care. We were able to amend the bill so that no changes were made to section of the Code.

Consumer Protection Act: Recalled Products—Salvatore Iaquinto and Ryan McDougle (SB 954 and HB 2039). This bill from the Attorney General's Office started as an attempt to add the selling, offering for sale, or manufacturing for sale a product recalled by the U.S. Consumer Product Safety Commission as a prohibited practice under the Virginia Consumer Protection Act.

It was considerably narrowed due to various objections and the following has been added as a prohibited practice:

Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable presumption that a supplier has reason to know a children's product was recalled if notice of the recall has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's products that are used, secondhand or "seconds."

Virginia Consumer Protection Act; Foreclosure Rescues—Terry Kilgore and John Watkins (HB 2261 and SB 1169). This is another bill from the Attorney General's Office. It amends the definition of foreclosure rescue services that are prohibited under § 59.1-200.1.

It is now prohibited to offer services to avoid or prevent foreclosure if payment for those services is required before full and complete performance of the services.

Open-End Credit: Payday and Car Title Lending—Glenn Oder and Richard Saslaw (SB 1470 and HB 1709). The 2008 General Assembly made several changes to the Virginia Payday Loan Act that took effect January 1, 2009. Several payday lenders began offering lines of credit to their payday loan borrowers in order to take advantage of § 6.1-330.78 which places no restrictions on "open-end" credit (loans made with no set period to be repaid-only a minimum payment due each month). This is the same statute car title lenders have been claiming as authority to make their motor vehicle equity lines of credit.

Many legislators were upset that the payday lenders were using lines of credit to get around the

restrictions they crafted last year. These two bills were intended to stop payday lenders from making these lines of credit and skirting the changes to the Payday Loan Act. Va. Code § 6.1-330.78 has been amended:

[a licensed payday lender] and a third party shall not engage in the extension of credit under an open-end credit or similar plan described in this section at any office, suite, room, or place of business where a licensee conducts the business of making payday loans.

However there are several loopholes:

- Licensed payday lenders can do open-end lending at another location

- Payday lenders could drop their license and do open-end lending and several have done that.

- It is expressly OK for payday lenders to do open-end lending IF the loan is secured by a motor vehicle—This exception was clearly meant to satisfy the car title loan lobbyists:

    - *"No prohibition in subsection E shall apply to an extension of credit under an open-end credit or similar plan that is secured by a security interest in a motor vehicle…"*

- It only applies to new lines of credit not existing lines of credit:

    - *"nothing contained in subsection E…shall prohibit the collection of any outstanding loan or extension of credit made under § 6.1-330.78 by a licensee, …in accordance with the terms of a loan agreement made prior to the effective date of this act;…"*

Effective: Now

Car Title Lending—Mark Herring and Joseph Morrisey (SB 1490 and HB 1809). These two bills attempted to bring the open-end lending done by car title lenders and payday lenders under the 36% APR cap in the Virginia Consumer Finance Act. Both bills were defeated in the Commerce and Labor committees but a "study" of car title lending was ordered by Senator Saslaw, chair of Senate Commerce and Labor and Delegate Kilgore, chair of House Commerce and Labor. Three members of both committees will be appointed to this study.

Status: Defeated

Magistrates and Felony Arrest Warrants—Creigh Deeds (SB1426) John Cosgrove (HB 1874).

"*However, no magistrate may issue an arrest warrant for a felony offense upon the basis of a complaint by a person other than a law-enforcement officer without prior consultation by the magistrate with the attorney for the Commonwealth or, if no attorney for the Commonwealth is available, without prior consultation with a law-enforcement agency having jurisdiction over the alleged offense."*

This legislation is significant for consumer law because of the increasing threats and actual use of criminal charges to collect debts. The payday lenders routinely threaten criminal prosecution for fraud or bad checks. The car title lenders threaten arrest for concealing their collateral and in some cases have convinced magistrates to issue felony arrest warrants. Recently, some car dealers have begun threatening arrest and in some cases, having felony warrants issued, for failure of a buyer to return a car in a "yo-yo" sale.

This legislation should make it more difficult for a creditor to actually follow through with obtaining a felony arrest warrant.

Yo-yo Car Sales—John Cosgrove (HB 1687). Yo-yo car sales refers to the practice of selling a car to a buyer who makes a down payment or offers a trade-in, signs a contract obligating him to monthly payments and then drives off the lot thinking the transaction is final. After a few days or weeks, the dealer calls the customer and tells him to return the car because the dealer was not able to sell the contract to a financing company on terms the dealer would accept.

This bill started out as an attempt by the car dealers to immunize themselves from lawsuits alleging a violation of the Uniform Commercial Code when they repossess cars from buyers who refuse to return them when they are told their financing fell through.

In its final form, the legislation amends §§ 46.2-1530 and 46.2-1542 of the Code of Virginia. It purports to "spell out the rights of dealers and buyers when purchases of vehicles are conditional upon financing of the transaction by an independent source."

If a car buyer enters into a proposed retail installment contract that is conditioned upon the dealer getting approval of the financing agreement from a third party, then:

- *IF YOUR RETAIL INSTALLMENT SALES CONTRACT IS NOT APPROVED THE DEALER WILL NOTIFY YOU VERBALLY OR IN WRITING. YOU CAN THEN DECIDE TO PAY FOR THE VEHICLE IN SOME OTHER*

WAY OR YOU OR THE DEALER CAN CANCEL YOUR PURCHASE.

- *IF THE SALE IS CANCELLED, YOU NEED TO RETURN THE VEHICLE TO THE DEALER WITHIN 24 HOURS OF VERBAL OR WRITTEN NOTICE IN THE SAME CONDITION IT WAS GIVEN TO YOU, EXCEPT FOR NORMAL WEAR AND TEAR. ANY DOWN PAYMENT OR TRADE-IN YOU GAVE THE DEALER WILL BE RETURNED TO YOU. IF YOU DO NOT RETURN THE VEHICLE WITHIN 24 HOURS OF VERBAL OR WRITTEN NOTICE OF CANCELLATION, THE DEALER MAY LOCATE THE VEHICLE AND TAKE IT BACK WITHOUT FURTHER NOTICE TO YOU AS LONG AS THE DEALER FOLLOWS THE LAW AND DOES NOT CAUSE A BREACH OF THE PEACE WHEN TAKING THE VEHICLE BACK.*

- *IF THE DEALER DOES NOT RETURN YOUR DOWN PAYMENT AND ANY TRADE-IN WHEN THE DEALER GETS THE VEHICLE BACK IN THE SAME CONDITION IT WAS GIVEN TO YOU, EXCEPT FOR NORMAL WEAR AND TEAR, THE DEALER MAY BE LIABLE TO YOU UNDER THE VIRGINIA CONSUMER PROTECTION ACT."*

<u>Homestead Exemption Increases for Veterans and Persons Age 65 and Older—Joseph P. Johnson (HB 2559 and HB 2560).</u> Increases the homestead exemption from $5,000 to $10,000 for householders who are 65 years of age or older.

Increases the additional homestead exemption for veterans from $2,000 to $10,000.

<u>Wage Garnishment Exemption—Terry Kilgore (HB 1668).</u> This bill provides an additional exemption from wage garnishment for debtors with dependent minor children whose household gross income does not exceed $1750 per month. To claim the exemption, the debtor must file an affidavit and two forms of proof that he is entitled to the exemption in addition to his claim for exemption form. The additional exemption amounts are as follows:

-$34 per week for one child
-$52 per week for two children
-$66 per week for three or more children

2009 General Assembly Domestic Violence Legislation Summary

All bills become effective July 1, 2009 unless otherwise noted

By Susheela Varky, Susheela@vplc.org

Protective Order Improvement Bill—Mark D. Obenshain, John S. Edwards, Chris Peace (SB 1439). VPLC, along with a coalition of partners (including the Governor's Office, the Virginia Sexual and Domestic Violence Action Alliance, the Office of the Attorney General, the Virginia State Police, the Department of Criminal Justice Services, the Clerks' Association and the Office of the Executive Secretary of the Supreme Court of Virginia), worked to pass this "clean-up" bill that:

- puts Respondent's essential data (not just name and address, but sex, race, hair color, eye color, height, weight, DOB, SS#, i.e., the data that makes a protective order enforceable) *back* on the front page of the protective order,
- specifies the information courts are to enter and transfer to the interface that feeds VCIN (Virginia Criminal Information Network. VCIN is the database that prevents a prohibited party—such as a respondent in a protective order matter—from purchasing or transporting a gun).
- eliminates the addendum that was supposed to travel with the protective order (which was not happening on a regular basis) and
- clarifies that Emergency Protective Orders (under §16.1-253.4 for domestic violence and §19.2-152.8 for stalking) and Protective Orders (under §16.1-279.1 for domestic violence and §19.2-152.10 for stalking) end at 11:59 PM on the expiration date.

SB 1439 passed both Houses unanimously, and was signed by the Governor.

Protective Order Against Incarcerated Respondent—Steve Shannon (HB1857). This bill was introduced to address a specific scenario that arose in Fairfax (that could arise anywhere). A victim requested a Preliminary Protective Order (PPO) against a defendant who was already in jail after being convicted for family abuse against her. While the Juvenile and Domestic Relations District Court judge in this situation issued the PPO, he/she wasn't sure he/she had the authority to do so if another incident of family abuse had not occurred since the act upon which the conviction was based had occurred. HB 1857 allows a court to issue a PPO upon a showing by the petitioner that "(i) the allegedly abusing person is incarcerated and is to be released from incarceration within 30 days following the petition or has been released from incarceration within 30 days prior to the petition, (ii) the crime for which the allegedly abusing person was convicted and incarcerated involved family abuse against the petitioner and (iii) the allegedly abusing person has made or attempted to make some unwanted, threatening or offensive contact with the petitioner ***while he was incarcerated, exhibiting a renewed threat to the petitioner of family abuse*** [emphasis added]." HB 1857 also allows the court to issue a full two-year protective order if it issued the PPO against the incarcerated person under the above-mentioned circumstances. The bill passed the House and then, the Senate, unanimously, after the Senate made a few amendments. The House unanimously adopted the bill with Senate amendments, and it was signed by Governor Kaine.

Establishment of SART by Holding One Meeting Annually, At Least—Robert Bell (HB 2400). This final result is a good step in the effort to require Commonwealth's Attorneys to establish Sexual Assault Response Teams (SARTs). Delegate Rob Bell introduced HB 2400 in response to the difficulty many localities have had in implementing 2008 sexual violence laws, including those related to the collection and storage of Physical Evidence Recovery Kits (PERKS). The House and Senate passed the bill unanimously, despite opposition from the Commonwealth's Attorneys Association, and it was signed by Governor Kaine (with a minor recommendation both houses accepted).

Adds "Sexual Battery" and "Aggravated Sexual Battery" as Crimes in Stalking Protective Orders—Morgan Griffith (HB 1842). Until this bill, Emergency, Preliminary or "full" Stalking/Serious Bodily Injury Protective Orders could only be issued when a warrant was issued for a criminal offense resulting in serious bodily injury or stalking. This bill expands the authority of a judge or magistrate to issue stalking/serious bodily injury protective orders when a warrant is issued for sexual battery or aggravated sexual battery. The House unanimously adopted the bill with Senate amendments, and it was signed by Governor Kaine.

Allows Sexual Assault Nurse Examiners to Administer Preventive Medications—Harry Blevins (SB 965). This bill provides that pursuant to an oral or written order or standing protocol issued by a prescriber within the course of his/her professional practice, said prescriber may authorize registered professional nurses certified as sexual assault nurse examiners (SANE) under his/her supervision and when he/she is not physically

present to possess and administer preventive medications for victims of sexual assault as recommended by the Centers for Disease Control and Prevention. This bill passed the House and Senate, and was signed by Governor Kaine.

2009 General Assembly Elder Law Legislation Summary

All bills become effective July 1, 2009 unless otherwise noted

By Kathy Pryor, Kathy@vplc.org

PASSED:

Long Term Care:

Medication Aide Training Programs in Assisted Living Facilities—Emmett Hanger (SB 1032) and John O'Bannon (HB 1986). The bill delays enforcement of the medication aide registration, under §54.1-3041, to August 1, 2009, allows medication aides to administer drugs that would normally be self-administered in assisting living facilities until that date, and temporarily amends the provision of subsection L of §54.1-3408. The new law also specifies some parameters for the education, training and competency examination which, after August 1, 2009, must be successfully completed for registration, including a 68 hour medication aide training program (including classroom instruction and clinical skills practice curriculum), format for the written examination, allowance of provisional practice for no more than 120 days after completion of the course before successfully completing the competency evaluation, and cessation of work as a medication aide after 3 failed attempts to pass the written examination. The provisions of the law are effective immediately, retroactive to December 31, 2008.

Certificate of public need; criteria for determining need and method of filing—Phillip Hamilton (HB 1598). Replaces existing criteria for determining need for the purposes of a Certificate of Public Need; establishes an expedited application and review process for certificates for projects involving a capital expenditure of $15 million or more that are not otherwise defined as reviewable in the definition of "project"; and establishes a Request for Applications procedure for psychiatric and substance abuse treatment beds and services. This bill establishes a review process in cases in which no regional health planning agency is designated. This bill also provides that in cases in which a provision of the State Medical Facilities Plan that has been previously set aside by the Commissioner and final amendments to the plan have not yet taken effect, the Commissioner's decision shall be consistent with the guiding principals set forth in the plan; establishes a process for satisfying conditions on a certificate by making direct payments to an organization authorized under a memorandum of understanding with the Department of Health to receive contributions to satisfy conditions on a certificate, or to a private nonprofit foundation authorized under a memorandum of understanding with the Department of Health that funds basic insurance coverage for indigents; requires that any medical care facility that furnishes, conducts, operates, or offers any service which requires a certificate of public need to report data on utilization of certain services; and replaces the term "gamma knife surgery" with the term stereotactic radiosurgery, and adds stereotactic radiotherapy and proton beam therapy to radiation therapy in the list of specialized services provided by medical care facilities subject to COPN. This bill incorporates HB 1981 and HB 2451.

Certificate of Public Need; Commissioner of Health to accept and approve request to amend—Harry Purkey (HB 1605). Authorizes the Commissioner of Health to accept and approve a request to amend the conditions of a certificate of need issued for an increase in beds in which nursing facility or extended care services are provided to allow such facility to continue to admit persons, other than residents of the cooperative units, to its nursing facility beds through June 30, 2012 when such facility (i) is operated by an association described in § 55-458; (ii) was created in connection with a real estate cooperative; (iii) offers its residents a level of nursing services consistent with the definition of continuing care in Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2; and (iv) was issued a certificate of need prior to October 3, 1995.

Adult Protective Services:

APS Required to Take Photographs—Clifford Athey (HB 2328). As originally introduced, HB 2328 would have required APS investigators to take photographs, video recordings or appropriate medical imaging of the alleged victim, with or without the informed consent of the victim (existing law requires informed consent and does not mandate these actions by APS). Delegate Athey agreed to restore the informed consent requirement to § 63.2-1605.E and to add language which allows an agent under an advance directive or one authorized to make treatment decisions under § 54.1-2986 to give consent where the alleged adult victim is incapable of giving informed consent. With informed consent, APS would be required to take such actions. The Senate committee added language which deems consent to have been given if no agent or authorized representative is immediately available, and that language was accepted by both houses.

Religious Treatment Exemption for Definition of Adult Neglect—Emmett Hanger (SB 1028). As passed by both houses, SB 1028 adds language to the definition of adult

neglect in § 63.2-100 to say that an adult will not be considered neglected solely because he is receiving religious nonmedical treatment or nursing care instead of medical care as long as the care is performed in good faith, is in accordance with the religious practices of the adult, and there is a written or oral expression of consent by that adult.

Emergency Services Reporting of Suspected Adult Abuse—Ryan McDougle (SB 898). This bill amends § 63.2-1606, the mandated reporting statute, to allow emergency medical services personnel, who are already mandated reporters, to report the suspected abuse, neglect or exploitation directly to the attending physician at the hospital to which they are transporting the victim who shall then make the report to APS.

Guardianship/Powers of Attorney/ Advance Medical Directives:

Revision of the Health Care Decisions Act—Mary Margaret Whipple (SB 1142 and SB 1051) and Robert Bell (HB 2396) and Phillip Hamilton (HB 2062). These bills make changes to the involuntary commitment statute, guardianship statute and major changes to the Health Care Decisions Act, primarily by incorporating mental health into the Act. They are products of the Chief Justice's Commission on Mental Health Law and have been vetted and endorsed by the VBA, VSB and various other entities. Among other things, the bills add § 37.2-805.1 to allow a guardian or a health care agent under an advance directive to admit an incapacitated person to a mental health facility for up to 10 days under certain limited circumstances; adds a provision § 54.1-2983.1 to allow an agent to approve participation by the declarant in a health care study; presumes the capacity of a person to make an informed decision unless determined incapable by two doctors or a doctor and licensed clinical psychologist, the second of which has not been currently involved in the person's treatment unless an independent physician or clinical psychologist is not reasonably available, and provides for notice to the person that a determination of incapacity has been made prior to the provision, withdrawal of treatment; makes changes in the suggested form in § 54.1-2984; adds § 54.1-2986.2 to allow health care to be provided despite the patient's protest, under certain circumstances, by an agent under an advanced directive or by one authorized under § 54.1-2986. The bills as introduced also had provisions (1) which would have added a 7th category of people who can make health care decisions for someone found to be incapable of making an informed decision where there is no advance directive by adding any adult, with some exceptions, who "has exhibited special care and concern for the patient and who is familiar with the patient's religious beliefs and basic values..." and (2) which would have allowed a doctor to provide health care, without obtaining a court order, if there was no one eligible to make health care decisions under § 54.1-2986, under certain limited circumstances, generally with the approval of the facility's ethics committee or the determination by 2 physicians not currently involved in the patient's care or in the determination of incapacity to make health care decisions that the health care was appropriate. These two provisions were deleted on the House side and were not restored by the conference committee. We are told that the committee that worked on the original bill will bring a bill next year to deal with these 'non-relative' and 'unbefriended' provisions. The amended bills passed both houses and were signed by the Governor.

Spouse Considered in Appointment of a Guardian/Conservator—Marshall (HB 1657). The bill, as originally introduced, would have required the court to consider the spouse before any other person to be appointed guardian or conservator if the court determined a guardian or conservator was necessary. As passed by both houses (and signed by the Governor), the bill amends § 37.2-1007 to say that the court shall appoint a suitable person, "who may be the spouse of the respondent" to be guardian or conservator.

Revocation of Durable Do Not Resuscitate Orders—Edward Houck (SB 1085). The bill amends § 54.1-2987.1 to provide that if a patient is able to and does express to a health care provider the desire to be resuscitated in the event of cardiac or respiratory arrest, that expression revokes the provider's authority to follow a durable DNR order. The bill also provides that no one other than the patient has the authority to revoke a durable DNR order which was executed at the patient's request and with his consent, but that if the DNR order was issued upon the request of and with the consent of someone authorized to consent on the patient's behalf, then that authorized person can revoke the DNR by expressing the desire of the patient to be resuscitated. The bill also clarifies that the DNR order remains valid and in effect until revoked as set out above, or rescinded, in accordance with accepted medical practice by the provider who issued the Durable DNR order.

Health:

Posting of Charity Care Policies—John O'Bannon (HB 2458). The bill adds § 32.1-137.01 to require hospitals to provide written information about the hospital's charity

care policies, including free and discounted care, by posting the information conspicuously in public areas of the hospital, and to provide information about specific eligibility criteria and procedures for applying at the time of admission or discharge, with any billing statements sent to uninsured patients, and on the website maintained by the hospital.

Elimination of the Mental Retardation Medicaid Waiver Waiting Lists—George Barker (SB 1501). The bill expresses the intent of the GA to eliminate the waiting lists for the MR waiver and the Individual and Family Developmental Disabilities and Support waiver under Medicaid. Beginning July 1, 2010 and each year thereafter, DMAS shall add at least 400 funded slots for MR waivers and at least 67 funded slots for IFDDS waivers until the waiting lists have been eliminated. It also requires the Governor to develop a plan to eliminate the waiting lists by the 2018-20 biennium including provisions to reduce the number of individuals on the waiting list for the MR waiver by 10% in the 2008-10 biennium.

Outpatient Treatment; Voluntary Admission—David Albo (HB 2257). The bill amends § 37.2-814.B. to require a judge or special justice to consider evidence regarding the person's past compliance or noncompliance with treatment in determining whether the person is capable of consenting to voluntary admission.

Consumers; Right to Notify—John O'Bannon (HB 2459) and Janet Howell (SB 1076). The bill amends § 37.2-400 to allow a consumer in a mental health facility to have an individual of his choosing notified of his general condition, location, and transfer to another facility.

Transportation of Person Under Emergency Custody Order Allowed to be Transported by Family Member—John O'Bannon (HB 2460) and Ken Cuccinelli (SB 823). The bills amend § 16.1-345 and §§ 37.2-808, 37.2-317.2 and 37.2-829 to provide that a family member or friend, representative of a community services board or other alternative transportation provider with trained staff may transport a person who is the subject of an emergency custody order as a result of his inability to protect himself from harm, a temporary detention order, or an involuntary commitment order.

Crisis Intervention Team Programs for Persons with Mental Illness—John Edwards (SB 1294). Adds § 9.1-187 through 9.1-190 to establish crisis intervention team programs throughout the state with the support of the Departments of Criminal Justice and DMHMRSAS using "such federal or state funding as may be available for this purpose." The teams shall assist law enforcement officers in responding to crisis situations involving persons with mental illness, substance abuse problems or both. The bill sets out goals for the crisis intervention team programs, provides for the Department of Criminal Justice with DMHMRSAS to develop a training program, provides for each crisis intervention team to develop a protocol, and provides for assessment and reporting on the impact and effectiveness of the programs.

Expansion of Authority of Persons Allowed to Administer Prescription Drugs—Phillip Hamilton (HB 1601). Amends § 54.1-3408 to expand the authority of persons who have completed a training course approved by the Board of Nursing to allow administration of prescription drugs, in compliance with the prescriber's instructions and in accordance with Board of Pharmacy regulations, where the drugs would normally be self-administered by an individual receiving services in a program licensed by DMHMRSAS (currently this authority is limited to administration of drugs normally self-administered by a resident of a facility licensed or certified by DMHMRSAS).

Donation of Prescription Medication; Clarifies Liability of Pharmaceutical Manufacturers—Steven Landes (HB 2352). Amends § 54.1-3411.1 to clarify the liability of pharmaceutical manufacturers relating to storage, donation, acceptance or dispensing of any drug in accordance with the Prescription Drug Donation Program. It also provides that unused prescription drugs dispensed for use by persons covered by Medicaid may be donated unless donation is prohibited.

Allows Drugs in Multi-Dose Packaging to be Placed in Automated Drug Dispensing Systems—Chris Jones (HB 2212). Amends § 54.1-3434.02 to allow drugs in multi-dose packaging, other than those administered orally, to be placed in an automated drug dispensing system if approved by the pharmacist-in-charge in consultation with a standing hospital committee comprised of pharmacy, medical and nursing staff.

Department of Health Professions; Confidentiality of Investigations—Joseph Morrissey (HB 1852). Amends § 54.1-2400.2 to provide that prior to interviewing a licensee who is the subject of a complaint or report, or when the licensee is first notified in writing of the complaint or report, whichever occurs first, the licensee shall be provided with a copy of the complaint or report or supporting documentation unless the provision would materially obstruct a criminal or regulatory investigation. The bill also clarifies that the confidentiality concerns during an investigation or discipli-

nary proceeding do not prohibit investigative staff from interviewing fact witnesses, disclosing to fact witnesses the identity of the subject of the complaint or report, or reviewing with witnesses a copy of records or other supporting documentation as necessary to refresh the fact witness's recollection.

Consumer:

Increases Homestead Exemption for Householders 65 and Older—Joseph Johnson (HB 2559). The bill amends §§ 8.01-512.4 and 34-4 to increase the homestead exemption from $5,000 to $10,000 for those householders 65 years of age or older.

Increases Homestead Exemption for Veterans—Joseph Johnson (HB 2560). The bill amends §§ 8.01-512.4 and 34-4.1 to increase the additional homestead exemption for veterans from $2,000 to $10,000.

Establishment of the Debt Collection Recovery Fund—Salvatore Iaquinto (HB 2037). The bill establishes the Debt Collection Recovery Fund. It provides that final orders of a final agency case decision may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such order by the agency head or his designee. Each state agency and institution may charge reasonable attorney's fees and collection fees on all past due accounts receivable (the original bill allowed 25% attorney or collection fees). Interest accrues from the 60th day after the initial written demand and is imposed at the judgment rate as provided in 6.1-330.54 unless a higher rate is authorized by contract of by statute. Returned checks or dishonored credit card or debit card payments shall incur a handling fee of $50. The original language would have deleted the word "emergency" from § 8.01-220.2 "spousal liability for medical care" but that was restored in the final version. The Governor recommended—and the GA concurred—that the provisions would not affect collection of state taxes owed.

Taxes:

Increase in Livable Home Tax Credit for State Income Taxes—Christopher Peace (HB 1938). Amends § 58.1-339.7 to increase the livable home tax credit from $500 to $2,000 for a new residence and to increase the 25% amount for retrofitting of an existing residence to 50% for taxable years beginning on or after January 1, 2010.

Constitutional Amendment; Real Property Tax Relief for Person 65 Years Old (first reference)—Mark Cole (HJ 688). Would amend Section 6 of Article X of the Constitution of Virginia to allow the General Assembly to authorize localities to either waive or establish their own income or financial worth limitations for purposes of granting real property tax relief for persons not less than 65 years of age or persons permanently and totally disabled.

Estates:

Succession; Determination of Parent-Child Relationship in Determining Rights to Property—Christopher Peace (HB 1944). Bill amends § 64.1-5.1 to provide that the determination of a parent-child relationship for succession purposes for a child born out of wedlock applies to intestate succession of real property and not just personal property. The bill is in response to the 2008 Virginia Supreme Court case of Jenkins v. Johnson, 276 Va. 30, 641 S.E.2d 484 (2008).

Nonresident Decedents' Personal Property in Virginia—Patricia Ticer (SB 806). The bill amends § 64.1-130 to clarify that a transferor of a nonresident decedent's stocks, bonds, securities, money or tangible personal property held in Virginia may comply either with Virginia law or with the comparable law of the state in which the nonresident decedent was domiciled.

Fiduciaries Distributing Intangible Personal Property to File Informative Tax Returns—Steven Landes (HB 2348). The bill repeals § 58.1-20 which had required the filing of informative tax returns by fiduciaries paying or distributing intangible personal property to beneficiaries.

Miscellaneous:

Department for the Aging; Designate AAA's as Lead Agencies for No Wrong Door System—Chap Petersen (SB 1454). The bill amends § 2.2-703 to require the Department for the Aging to designate the local area agency on aging as the lead agency in each respective area for the No Wrong Door system of aging and disability resource centers.

Alzheimer's Disease and Related Disorders Commission; Extends Sunset—Donald Merricks (HB 1617). Extends the sunset on the Alzheimer's Disease and Related Disorders Commission until July 1, 2014 and adds a requirement that the Commission develop and promote strategies to encourage brain health and reduce cognitive decline.

Life Insurance Funding Preneed Funeral Contracts—Harvey Morgan (HB 2467). Adds § 38.2-3100.3 to require that life insurance policies, annuity contracts, and certificates issued in connection with group life insurance policies or group annuity contracts specify the means by which face amount adjustments will be made, and benefits payable upon death will be adjusted, when they will be used to fund preneed funeral contracts. The bill also

requires insurers proposing to issue life insurance policies or annuity contracts for purposes of funding preneed funeral contracts to disclose clearly their intended purpose and market when the forms are submitted for SCC approval.

Approval of Compromises on Behalf of Persons Under a Disability—John Edwards (SB 1293). Amends § 8.01-424 to provide that the court shall approve the settlement of a compromise on behalf of a person under a disability in a suit or action in which he is a party if the court finds that all payments that are due to be made are to be irrevocably guaranteed by an insurance company or companies authorized to do business in the Commonwealth and rated A plus (A+) or better by Best's Insurance Reports.

Crash Prevention Courses to be Delivered via Internet or other Electronic Means—John Edwards (SB 1013) and Onzlee Ware (HB 1974). Amends § 38.2-2217 to authorize the Department of Motor Vehicles to approve a crash prevention course for drivers 55 or older that is delivered through a computer-based medium, if the course sponsor has been approved to provide the course in a classroom setting. Insurers may allow a premium reduction for those who complete the course provided via the internet or other electronic means.

FAILED/TABLED/STRUCK:

Long-Term Care:

Use of Civil Monetary Penalty Monies to Build a Green House Facility in Planning District 8—Jill Vogel (SB 1263). SB 1263 would have devoted up to $2 million in civil monetary penalty funds to build a Green House facility for 100 residents in Planning District 8. We opposed this bill, though we support the Green House concept, because it would have diverted monies from the Quality Improvement Program pilot project that many of us have been working on. The QIP pilot project would impact facilities and residents statewide through the pilots themselves and through training, materials and best practices for all facilities, around ways to develop more supportive workplaces and enhanced retention of direct care workers. This bill was passed by indefinitely in Education and Health and is dead.

Assisted Living Facility Administrators and Medication Aide—Donald McEachin (SB 1543). The bill would have allowed assisted living administrators with 5 years experience as an ALF administrator to satisfy the education and training requirements for initial licensure and would have allowed medication aides with 5 years experience to bypass education and training requirements. We and others opposed this bill and Senator McEachin allowed the bill to be left in committee, thereby killing it.

Reporting of Pressure Sores by Nursing Homes and Assisted Living Facilities—Robert Bell (HB 2395). This bill would have required nursing homes and ALFs to report information on the occurrence of pressure sores among residents. Claire Curry proposed some alternative language which would have required the reporting of new pressure sores which developed during the nursing home stay and would have required the Health Department to disclose facility-specific data to the public at least quarterly. An agreement was reached on the ALF side. However, although no agreement had been reached on the nursing home aspect of the bill, Delegate Bell tabled his bill in subcommittee, without giving an opportunity for public comment, so the bill died. The ALF agreement will go forward, however, and Virginia DSS has already issued a technical assistance document for assisted living facilities regarding the reporting of pressure ulcers. This document clarifies that a pressure ulcer at stage 2, 3 or 4 would be considered "a major incident that has negatively affected or that threatens the life, safety or welfare of a resident" such that it must be reported as an incident. 22 VAC 40-72-100 A. The technical assistance document is fairly detailed in providing guidelines on how to identify a stage 2, 3 or 4 pressure ulcer and what should be done when one is identified.

Reporting of Direct Care Service Hours—Vivian Watts (HB 2193). This bill would have required the Health Department to promulgate regulations to require nursing homes to report quarterly the average number of direct care service hours provided to each resident based on payroll information reported to the IRS. The bill was defeated in Health, Welfare and Institutions.

Use of Estate Tax Federal Credit for Funding of Nursing Home Staffing Levels—Vivian Watts (HB 1895). HB 1895 would have reinstated some federal credit amount for estate taxes and would have allocated the revenues from the estate taxes to fund certain staffing standards in nursing homes. The bill was referred to Finance where it was passed by indefinitely and is dead.

Prohibition of Employers Questioning Employees about Criminal Convictions—Joseph Morrissey (HB 1812—state agency employers and HB 1815—other employers). These bills would have prohibited employers from asking an existing or prospective employee about the individual's record of arrests or convictions except for arrests or convictions within the preceding 8 years or for a violent felony. These would have been problematic for the

nursing home and assisted living criminal background check requirement for prospective employees. Both bills were passed by indefinitely in subcommittee—i.e., they died in subcommittee.

Alcoholic Beverage License for Long Term Care Facilities—Robert Mathieson (HB 1956). This bill would have allowed a nursing home or assisted living facility to get a special license to permit consumption of alcoholic beverages on premises in limited areas. They can already do this with a restaurant license. There was a provision that the beverages could not be sold or charged for. The bill was killed in subcommittee.

In-Home Health Care Tax Credit—Vivian Watts (HB 2195). This bill would provide an income tax credit of up to $1000 for every individual taxpayer who pays medical and in-home care expenses for mentally or physically impaired relatives living with the taxpayer and who claims the relative as a dependent on his income tax return. The bill was left in Finance where it died.

Income Tax Deduction for CNAs and Home Health Aides—Vivian Watts (HB 2196). The bill would give an income tax deduction of up to $10,000 for certified nursing assistants and home health aides who provide Medicare-authorized home health or long term care services to individuals in their homes. The bill was left in Finance and is now dead.

Locality Can Require Installation of Carbon Monoxide Detectors in Certain Buildings—John Edwards (SB 853). As introduced, the bill would have allowed localities to pass an ordinance requiring carbon monoxide alarms to be installed in certain buildings. The substitute bill instructs the Board of Housing and Community Development to promulgate regulations to establish standards and requirements for carbon monoxide detectors in residential occupancies and dwelling units serviced by fuel-fired appliances. This passed the Senate, but on the House side, the bill was left in Appropriations (died).

Increases Maximum Amount of Fees for Application for Certificate of Public Need—Phillip Puckett (SB 1334). The bill would have increased the maximum amount of fees required for an application for a certificate of public need from $20,000 to $50,000 and would have divided the fees equally between the Department of Health and the regional planning agencies. The bill passed the Senate but was left in House Appropriations.

Guardianship/ Advance Medical Directives/ Powers of Attorney:

Uniform Power of Attorney Act Created—John Edwards (SB 855). This bill would establish in Virginia law the Uniform Power of Attorney Act, which was adopted by the National Conference of Commissioners on Uniform State Laws in 2006. Among other things, the Act, at § 26-71.01 et seq, would have created various default rules which could be modified if the principal so desires, specified clear definitions of duties, clarified the fiduciary duty of an agent, established liability for refusal to accept an acknowledged power of attorney under certain circumstances, and created a new statutory power of attorney form with various options for the principal to select. The bill passed the Senate without opposition; however, on the House floor a reenactment clause was added: that the provisions of the Act do not become effective unless reenacted by the 2010 session of the General Assembly. Despite opposition, the reenactment clause was recommended by the conference committee and was approved by both houses, so the bill must pass again in 2010 to become law. The Governor recommended language to clarify that §§ 11-9.1 through 11-9.7 and 37.2-1018 are repealed by passage of the act and that change was approved by the General Assembly. Apparently, the language of the bill will be added to the Code so that it can be reviewed by attorneys before the 2010 session when the bill will again be introduced and must pass in order to become law.

Designation of Persons Authorized to Make Funeral and Burial Decisions—Ward Armstrong (HB 1909). The bill would designate persons, in order of priority similar to that established by the Health Care Decisions Act, who are authorized to make necessary arrangements for a decedent's funeral and disposition of the remains. The bill was in response to recent Virginia cases concerning who has the authority to make such decisions. The original bill left out various provisions regarding the public guardianship program, including civil immunity as long as the guardian acted in good faith, and we asked Delegate Armstrong to restore the civil immunity provision for the public guardianship program. Delegate Armstrong agreed to the requested changes and offered a substitute incorporating these changes. However, the funeral and cemetery industry strongly opposed the bill and the bill was tabled in subcommittee on the House side.

Adult Protective Services:

Financial Institutions as Mandated Reporters of Suspected Financial Exploitation—John Edwards (SB 1413) and Robert Tata (HB 2514). As introduced, both bills (with different language) would have mandated reporting to APS by employees of financial institutions when they suspect financial exploitation is occurring. Currently, financial

institution staff may report suspicions of financial exploitation but are not required to do so. The bank and insurance lobbyists are very opposed to any mandates, citing liability concerns even though the law already has immunity for those who report in good faith and the penalties for failure to report are rarely imposed. Delegate Tata's bill died in subcommittee despite support by AARP, the Alzheimer's Association, Virginia Association of Area Agencies on Aging and VPLC. In an effort to get something passed, Senator Edwards offered a substitute for SB 1413 to delete the mandatory reporting requirement but mandate training of financial institution frontline staff in the detection and proper handling of suspected financial exploitation. Even without the mandatory reporting provision, the financial institutions opposed the bill and SB 1413 died in the Senate Commerce and Labor committee. There is likely to be a workgroup working on this issue after the GA session.

Crime of Financial Exploitation of Incapacitated Adults—Mark Herring (SB 1099). This bill would create a crime of financial exploitation of an incapacitated adult. The bill was left in Senate Courts.

2009 General Assembly Family Law Legislation Summary

All bills become effective July 1, 2009 unless otherwise noted

By Christie Marra, Christie@vplc.org

Procedure:

Authentication of School Records—David Bulova (HB 2046). This bill amended section 8.01-390.1, which governs authentication of school records offered into evidence. Under current law, records relating to attendance, transcripts or grades are admissible into evidenced as long as they are authenticated by an affidavit singed by the custodian of the records. The amended law will allow all school records to be authenticated in this fashion. The new law will also require that the party seeking to introduce school records authenticated through an affidavit deliver notice and a copy of the records to be introduced to the other parties so that they are received no less than seven days before trial.

Appeals from Juvenile Court—John Edwards (SB 1290). This bill is declarative of existing law. It simply clarified that appeals from juvenile to circuit court must be heard *de novo*.

Physician/Patient Privilege—Mark Obenshain (SB 1275). This bill amends the law relating to physician/patient communication. Current law prohibits a court from compelling a "duly licensed practitioner of the healing arts" to testify unless the patient consents. As of July 1st, the law will prohibit a court from permitting such a practitioner from testifying without the consent of the patient. In practice under current law, a client's doctor or therapist could testify voluntarily without the client's consent. This law will prohibit that unless the testimony is material to the issues in the case.

Child Support:

DSS-Sponsored Private Health Insurance—George Barker (SB 1237). This bill authorizes the Department of Social Services to provide private health insurance to children in cases where DCSE provides services and health insurance is not available at a reasonable cost. Here are the key definitions and details:

- *"Reasonable Cost"* means available, in an amount not to exceed five per cent of the parents' combined gross income, and accessible through employers, unions or other groups, or Department-sponsored health care coverage, without regard to service delivery mechanism unless the court deems otherwise in the best interest of the children or by agreement of the parties.

- *"Department-sponsored health care coverage"* means any health care coverage that the Department may make available through a private contractor for children receiving child support services from the Department.

The cost of the Department-sponsored health care coverage is included in the child support calculation just as the cost of health care coverage provided by a parent or through a parent's employer is. My understanding is that the cost must be less than five per cent of the parents' combined gross income.

Where the child receives Medicaid or FAMIS, the court or the Department must order the noncustodial parent to pay to the Department 2.5% of his gross income, prorated. This is referred to as "cash medical support". The bill also refers to payments for unreimbursed medical or dental expenses as "cash medical support".

When the Department receives child support payments pursuant to an order that includes Department-sponsored health care coverage, the Department will deduct the cost of the health care coverage before distributing the balance of the payments to the custodial parent. This is analogous to the payment made by the parent in cases where he or she purchases health insurance through the employer. (i.e. The Department gets a credit for the cost of the coverage they provide just as the parent would.)

If a child support payment received by the Department isn't enough to cover both the monthly child support amount and either the monthly cost of Department-sponsored health care coverage or cash medical support paid by the noncustodial parent when the child receives Medicaid or FAMIS, the Department must pay the child support first.

In addition to establishing the basic parameters for a Department-sponsored health insurance program, the bill also authorizes a court and the Department to order both parents to provide health care coverage for the children and directs that the costs of health insurance for the child provided by a parent's spouse be included in the child support calculation.

Notice Provisions in Support Orders—Frederick Quayle (SB 1059). This bill adds certain information to that which is already required to be stated in the notice portion of child support court and administrative orders, including the last four digits of the social security number of each parent. The other additional information includes notices re-

garding when support continues for a child over the age of 18, information about health care coverage for the child, and notices regarding the collection actions the Department can take.

Administrative Support Orders—John Edwards (SB 1015). Under current law, an obligor and obligee must have maintained a matrimonial domicile in Virginia in order for the Department to establish an administrative support order between them. This bill eliminates that requirement and makes the requirements for ASOs the same as those for court orders.

Foster Care:

Foster Care—Mamye BaCote (HB 1914). This bill removes references to "continued foster care" from the Code, clarifying that this is not an acceptable goal for a child.

Foster Care; Placement of a Child Pursuant to an Agreement—John Edwards (SB 1012). This bill makes changes to section 63.2 necessary to conform it to certain changes made to 16.1 last year. The impact of these changes is to eliminate the previous requirement that parents who enter into agreements through local CPMTs to obtain behavioral health services for their children be subjected to foster care plans.

Cooperative Adoption—David Toscano (HB 2160) and John Miller (SB 1011). These identical bills create a limited form of cooperative adoption for youth adopted out of foster care.

Beginning July 1, 2009, prospective adoptive parents adopting a youth who is in foster care may enter into an agreement with one or both birth parents that provides the birth parent or parents rights to contact and communication with and/or obtain information about the child. The agreement is incorporated into the final order of adoption provided that: the circuit court finds it to be in the child's best interests; the adoptive parent/parents and birth parent/parents have consented to it; the agency sponsoring the adoption and the child's guardian *ad litem* approved the agreement as being in the child's best interests; and the child, if he is 14 or older, has consented to the agreement.

The post-adoption communication and contact agreement, once incorporated into the final order of adoption, is enforceable through contempt proceedings. However, the adoption remains irrevocable even if the agreement is breached, and the birth parent(s) must acknowledge that in the agreement. Similarly, the adoptive parent(s) must acknowledge that the agreement grants the birth parent(s) enforcement rights.

The bill expressly prohibits requiring a birth parent or a pre-adoptive parent to enter into a post-adoption contact and communication agreement.

The parties must go to the circuit court to enforce or modify the post-adoption communication and contact agreement, unless the final order of adoption transfers jurisdiction over these matter to another court (presumably JDR). Modification is based upon a material change of circumstances and the best interests of the child. The court may not award monetary damages as a result of the filing of a petition for modification or enforcement.

Adoption:

Adoption of a Child—David Toscano (HB 2159). This bill makes additional changes to the adoption laws including:

Allowing a court to grant a petition for adoption without the valid consent of a birth parent if it finds that the consent is withheld contrary to the best interests of the child *fifteen* days after personal service on the parent (reduced from twenty-one days);

Clarifying that payment of child support, in the absence of other contact with the child, is not contact for the purposes of establishing that a parent's consent is not required. Under present law, a parent's consent to adoption is not required if that parent has not contacted the child for six months prior to the filing of the petition for adoption.

Allowing the juvenile and domestic relations court to grant a petition for adoption and transfer custody when the birth parent(s) have failed to appear at the hearing without good cause, if the child has been under the physical care and custody of the prospective adoptive parents. Current law allows this only if the child was placed with the prospective adoptive parents by the birth parent(s).

Miscellaneous:

Garnishment Exemption—Terry Kilgore (HB 1668). This bill provides an additional exemption from wage garnishment for debtors with dependent minor children whose household gross income does not exceed $1750 per month. To claim the exemption, the debtor must file an affidavit and two forms of proof that he is entitled to the exemption in addition to his claim for exemption form. The additional exemption amounts are as follows:

$34 per week for one child
$52 per week for two children
$66 per week for three or more children

Virginia Child Protection Accountability System—Ward Armstrong (HB 1904). This bill creates the Virginia Child Protection Accountability System. It directs DSS to maintain a website accessible to the public that provides statistical information about complaints and cases of child abuse and neglect. No individual identifying information can be included.

2009 General Assembly Health Law Legislation Summary

All bills become effective July 1, 2009 unless otherwise noted

By Jill Hanken, jill@vplc.org

Child Health:

Improvements in Comprehensive Services Act–Emmitt Hanger (SB 1180, SB 1181). Revises duties and powers of the State Executive Council and the Office of Comprehensive Services for At-Risk Youth and Families.

Medical Support Orders–George Barker (SB 1237). Amends child support guidelines and provisions related to the provision of medical support. The bill broadens the definitions of "health care coverage" to include both insurance plans and "cash medical support." The support formula is changed to specifically considering health care costs actually paid by a parent. The "reasonable cost" of health care coverage is defined as 5% of the parents' combined gross income. An alternative "Department Sponsored Health Coverage" is established for parents who do not have access to reasonably priced private insurance when the child does not qualify for public health insurance. For children enrolled in FAMIS / Medicaid, the non-custodial parent will pay 2.5% of gross income as cash medical support, but only if current child support is paid first.

Dental:

Hygienists Scope of Practice – Clarence Phillips (HB 2180) Phillip Puckett (SB 1202). Licensed dental hygienists employed by the Virginia Department of Health may provide educational and preventative dental care in the Cumberland Plateau, Southside, and Lenowisco Health Districts (areas designated as Dental Health Professional Shortage Areas). Specific protocols for this practice must be developed and followed.

Disability Rights:

Virginia Community Integration Advisory Commission–Toddy Puller (SB 1062). Extends the sunset for the Virginia Community Integration Advisory Commission to July 1, 2010.

Department of Veterans Services; Processing of Disability Claims–Kirkland Cox (HB 1732). Subject to the availability of sufficient non-general fund revenues, the Department of Veterans' Services shall work with state and federal agencies to develop and deploy an automated system for the electronic preparation of veterans' disability claims.

Health Information and Technology:

Health Information Technology–Samuel Nixon (HB 2044). Allows the Information Technology Investment Board to establish an advisory committee to assist in the adoption of national health information technology technical and data standards.

Electronic Prescribing–Mark Sickles (HB 2453). Directs the Secretary of HHR and DMAS to promote electronic prescribing through training, a website, and Medicaid incentives / requirements.

Disclosure of Medical Information –Janet Howell (SB 1077). Describes when protected medical information can be disclosed to family members or personal representatives of an individual who is the subject of a commitment proceeding. The information must be directly relevant to such person's involvement with the individual's health care, and it may include the individual's location and general condition. The requirements vary, depending on the individual's capacity and whether an emergency exists.

Obtaining Information on Medical Accounts and Billing–Ryan McDougal (SB 1154). Amends §8.01-413 to provide that, upon request, a patient's account balance or itemized listing of charges maintained by a health care provider shall be supplied at no cost up to three times every twelve months to either the patient or the patient's attorney.

Health Insurance:

Mandated Coverage of Prosthetic Services–Patricia Ticer (SB 1116). Requires health insurers to offer and make available coverage for medically necessary prosthetic devices, their repair, fitting, replacement, and components, to replace a limb. Co-insurance may not exceed 30% of the allowable charge.

No Mandates for Small Business Group Coverage–Daniel Marshall (HB 2024) John Watkins (SB 1411). Allows insurance companies to offer "mandate-lite" health insurance policies to small businesses with 2 to 50 employees. The only services that must be provided are certain cancer screenings. An enactment clause requires annual reports to the Bureau of Insurance to monitor the impact and costs of such policies. The legislation also includes a "mini-COBRA" provision that will allow certain individuals who lose their jobs at small businesses (with fewer than 20 employees) to receive the same 65% federal COBRA subsidy to retain group health insurance that is now available to workers laid off from larger businesses. The subsidy is authorized by federal law (ARRA) for up to 9 months of coverage.

Insurance Mandates for State Employees–Samuel Nixon (HB 2557) Frank Wagner (SB 1351). Any law effective on or after July 1, 2009, that provides for an insurance mandate for policies of accident and health insurance shall also apply to health insurance plans for state employees. The measure also requires the Department of Human Resource Management to report to the Special Advisory Commission on Mandated Health Insurance Benefits on cost and utilization information for each of the mandated benefits.

Indigent Care:

Publication of Hospital Charity Care Policies—John O'Bannon (HB 2458). Requires all hospitals to provide written information about their charity care policies (free and discounted care). Such information must be posted in specified public areas of the hospital. The eligibility criteria and application procedures must be on the hospital's website, provided directly to patients, and included in bills sent to uninsured patients.

Donated Medication—Albert Eisenberg (HB 2482). Clarifies that hospitals, as well as health clinics, may re-dispense donated medications when providing indigent care.

Indigent Care Trust Fund—John Watkins (SB 1448). The bill repeals the Indigent Care Trust Fund, which had collected and allocated hospital contributions for indigent care.

Standards for Issuance of Certificate of Public Need (COPN)—Phillip Hamilton (HB 1598). Revises and streamlines standards for issuance of certificates. Includes provisions for certain new medical technology and psychiatric and substance abuse beds; an expedited review process; and alternate means to satisfy indigent care conditions.

COPN Plans of Correction—John Watkins (SB 1162). Provides the same new standards as in HB 1598 for a plan of correction to meet COPN indigent care conditions, including direct payments to organizations providing health services and foundations providing basic insurance coverage to indigents or other initiatives to provide primary or specialized care to underserved populations.

Medicaid:

Elimination of waiting lists in MR and DD Waivers—George Barker (SB 1501) Kirkland Cox (HB 2674). States the intent of the legislature to eliminate waiting lists in these Medicaid waivers. Starting July 2010, adds at least 400 more MR slots and 67 DD slots per year and requires a plan to eliminate waiting list by the 2018-2020 Biennium.

Study on Virginia's Receipt of Federal Grants—Creigh Deeds (SJR 337). Requests the Department of Planning and Budget and the Virginia Liaison Office to work with state agencies to increase Virginia's receipt of federal grants (which include Medicaid).

Medical Directives:

Health Care Decisionmaking, Medicaid Directives, Informed Consent, Mental Capacity– Robert Bell (HB 2396) Mary Margaret Whipple (SB 1142). Revises the Health Care Decisions Act to (i) allow a person to make a written advance directive regarding specific health care services to appoint an agent to make health care decisions and specify anatomical gifts; (ii) clarify the procedures regarding capacity; (iii) require certain professional opinions regarding capacity; (iv) allow one physician to restore capacity (v) clarify the authority of an agent to make medical decisions for an incompetent patient, including admission to a mental health facility for up to 10 days and participation in an approved health care study; and (vi) determine when a physician may treat a patient over his protests. This bill also provides penalties for certain criminal acts related to an advance directive or revocation of an advance directive.

Mental Health:

Alzheimer's Disease and Related Disorders Commission—Donald Merricks (HB 1617) Ralph Northam (SB 1109). Extends the sunset on the ADRD Commission until July 1, 2014, and adds a requirement that the Commission develop and promote strategies to encourage brain health and reduce cognitive decline.

Mental Health Treatment for Minors—Phillip Hamilton (HB 2061) Louise Lucas (SB 1122). A person who meets the criteria for involuntary commitment under the Psychiatric Inpatient Treatment of Minors Act may be ordered to mandatory outpatient treatment if that less restrictive alternative is appropriate and available. The bill also describes how such treatment will be monitored and how a minor's noncompliance will be addressed. The bill also clarifies that the commitment criteria for minors apply when emergency admission of a minor is sought under § 37.2-808 *et seq*. The bill also allows a minor detained by a J & DR court to petition for voluntary admission and treatment of mental illness. Other provisions relate to disclosure of medical information and the role of the qualified evaluator who examines the minor.

Department Name Change—Charles Caputo (HB 2300) Patricia Ticer (SB 1117). Changes the name of the Department of Mental Health, Mental Retardation and Substance Abuse Services

(DMHMRSAS) to the Department of Behavioral Health and Developmental Services (DBHDS).

Transfers out of Jurisdiction—Jeion Ward (HB 2486) Janet Howell (SB 1079). Describes the authority of law-enforcement officers transporting individuals to facilities for mental health assessments in voluntarily and involuntary situations. This bill also clarifies that a law-enforcement officer who takes a person into emergency custody based upon his own observations or reliable reports of others may transport such person beyond the territorial boundaries of the jurisdiction in which he serves in order to obtain the required assessment.

Midwifery:

Regulation of the practice of midwifery—Matthew Lohr (HB 2163). Regulations shall require midwives and certified nurse midwives to disclose to their patients information on health risks associated with home deliveries including but not limited to special risks associated with vaginal birth after a prior C-section, breech births, births by women experiencing high-risk pregnancies, and births of twins or multiples.

Prescription drugs:

Administration of prescription drugs—Phillip Hamilton (HB 1601). Expands authority of persons who have completed a required training course to administer prescription drugs to individuals receiving services in a program licensed by DMHMRSAS.

Medication aide training programs; required registration delayed—John O'Bannon (HB 1986) Emmitt Hanger (SB 1032). Establishes educational requirements for Medication Aides and effective dates for compliance.

Donation of prescription medication; liability of pharmaceutical manufacturers—Steven Landes (HB 2352). Clarifies the liability of pharmaceutical manufacturers relating to storage, donation, acceptance, or dispensing of any drug in accordance with the Prescription Drug Donation Program. This bill also provides that unused prescription drugs dispensed for use by persons covered under the Medicaid program may be donated unless otherwise prohibited.

Women's Health:

Breast and Cervical Cancer Prevention and Treatment Fund—Margaret Vanderhye (HB 2200) Senator Mary Margaret Whipple (SB 1144). Establishes the Breast and Cervical Cancer Prevention and Treatment Fund to expand services for underserved and uninsured women in Virginia. Contributions to the fund can be made through Virginia tax returns. The Fund shall not be used until the General Assembly authorizes the Department of Health and DMAS to increase access to services provided under the National Breast and Cervical Cancer Early Detection Program.

2009 General Assembly Housing Law Legislation Summary

All bills become effective July 1, 2009 unless otherwise noted

By Jim Naggles, jim@vplc.org

PASSED:

Mortgage Lender and Broker Act; broker duties and liability—Jennifer McClellan (HB1776). This bill prohibits a mortgage broker from failing to use reasonable skill, care, and diligence in exercising the broker's duty to make reasonable efforts to secure a mortgage loan that is in the best interests of the applicant, considering the applicant's circumstances and loan characteristics. It allows a borrower who suffers a loss as a result of a breach of such duty may bring an action to recover actual damages. SB 1020 is identical.

Cancellation of property insurance policy upon foreclosure—Sam Nixon (HB1887). The bill authorizes the cancellation of a policy insuring an owner-occupied dwelling on grounds that the property secured by the policy has been sold pursuant to foreclosure of a deed of trust encumbering the property.

Housing authorities; referendum—Bob Brink (HB1890). This bill increases the number of qualified voters in a locality needed to have a referendum creating a housing authority from at least 100 voters to at least two percent of the qualified voters. The bill also provides that once a referendum has been held, no other referendum on the same question shall be held in the county, city, or town within five years of the date of the prior referendum. The bill was aimed at resolving the problems that might arise in locations like Fairfax County when as few as 100 voters are able to force a referendum that affects a population of several million.

Income tax; livable home tax credit—Chris Peace (HB1938). Increases the individual tax credit limit from $500 to $2,000 and the 25 percent amount for retrofitting to 50 percent for taxable years beginning on or after January 1, 2010 for any taxpayer who purchases a new residence or retrofits or hires someone to retrofit an existing residence, as long as a new residence or the retrofitting of an existing residence is designed to improve accessibility, provide universal visitability, and meets the eligibility requirements established by guidelines developed by the Department of Housing and Community Development.

Mortgage Lender and Broker Act; employee background checks and training—Danny Marshall (HB2030). This repeals provisions enacted in 2008 that require licensed mortgage lenders and brokers (i) to conduct background checks on employees who may have access to or process personal identifying or financial information from a member of the public and (ii) to ensure that their employees are properly trained in applicable state and federal mortgage lending laws and regulations.

Mortgage loan originators—Danny Marshall (HB2031). This replaces the law repealed by HB2030 with a comprehensive law that prohibits an individual from acting as, or holding himself out to the public as being, a mortgage loan originator on or after July 1, 2010, unless he has obtained a license from the State Corporation Commission (SCC). The measure implements requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, which allows states to retain regulatory authority over mortgage loan originators if they enact legislation that provides for the licensing and registration of such persons through the Nationwide Mortgage Licensing System and Registry. The measure establishes licensing procedures and criteria, including requirements for bonding, background checks, education, testing, continuing education, investigations; examinations, reporting, payment of annual fees, license suspension and revocation, and fines. The measure also provides for the SCC, to the extent practicable, to include in any written memorandum of understanding or other written agreement with the Registry provisions that address information security, disclosure of pending or incompletely adjudicated regulatory matters, licensing tests limited to specific products and services, reports on examination results, privilege or confidentiality of information, and review of the Registry's proposed budget, fees, and audited financial statements. SB1171 from Sen. John Watkins is identical.

Landlord and tenant laws; rights and obligations of tenants—Glen Oder (HB2080). This measure requires a landlord to give the same notice to the tenant for the application of insecticides as is required for pesticide applications, and requires the tenant to prepare the dwelling unit for the application of insecticides or pesticides in accordance with any written instructions of the landlord, and if insects or pests are found to be present, to follow any written instructions of the landlord to eliminate the insects or pests following the application of insecticides or pesticides. The bill also:

(i) eliminates the landlord's obligation to pay all costs for mold remediation where the mold is a result of the tenant's failure to maintain the dwelling unit;

ii) in an emergency, allows a landlord to repair, replace, or clean a damaged item in the

dwelling unit and charge all costs to the tenant, when the problem is caused by the tenant

iii) changes the cap on liquidated damages penalties included in a rental agreement to 150 % of the per diem of the monthly rent,

iv) amends the schedule of interest rates on security deposits between January 1, 2009 and December 31, 2009, and

v) requires the landlord to provide notice to the tenant in the event of foreclosure under certain circumstances. The bill also contains technical amendments.

Virginia Consumer Protection Act; foreclosure rescues—Terry Kilgore (HB2261). The bill provides that the prohibition on fraudulent acts or practices committed by a supplier in a consumer transaction involving residential real property owned and occupied as the primary dwelling unit of the owner applies when the supplier of service to avoid or prevent foreclosure charges or receives a fee (i) prior to the full and complete performance of the services it has agreed to perform, if the transaction does not involve the sale or transfer of residential real property, or (ii) prior to the settlement on the sale or transfer of residential real property, if the transaction involves the sale or transfer of the property. Currently, any practice where a supplier of a foreclosure avoidance or prevention service is to be paid a fee prior to the settlement on a sale of residential real property is prohibited, regardless of whether the fee is charged or collected as part of the transaction involving a sale of the property. The measure also clarifies that the existing prohibition on mandatory arbitration in an agreement with a property owner applies only to transactions involving foreclosure rescue services. This bill incorporates HB 1688. This bill is identical to SB 1169 patroned by Sen. John Watkins.

Mortgage Lender and Broker Act—Terry Kilgore (HB2262). Provides that no person in the business of originating residential mortgage loans shall use any deception, fraud, false pretense, false promise, or misrepresentation in connection with a mortgage loan transaction and authorizes the Attorney General to investigate any such violations. The Attorney General may bring an action in circuit court to enjoin any such violations. If a person is found to have committed a willful violation, the Attorney General may recover a civil penalty of not more than $2,500 per violation. The Attorney General may also recover damages, restitution on behalf of borrowers, other costs and expenses, and attorney fees. The bill does not create a private right of action in favor of any person aggrieved by a violation. This bill is identical to SB 1170 patroned by Sen. John Watkins.

Virginia Residential Landlord and Tenant Act; rent escrow pending appeal- Del. Morgan Griffith (HB2306). Provides that no rent required to be escrowed in an unlawful detainer action can be disbursed within 10 days of the date of the judgment unless otherwise agreed to by the parties. If an appeal is taken by the plaintiff (landlord), the rent held in escrow has to be transmitted to the clerk of the circuit court.

Certain corporations; pro se representation—Bill Janis (HB2434). Allows a corporation, the stock of which is held by no more than five persons and is not publicly offered or planned to be publicly offered, to be represented by an officer pro se before the general district courts if (i) the amount in controversy is $2,500 or less, and (ii) the officer has the unanimous consent of all the shareholders to do so. There was some concern by the staff of VPLC that this allows the unauthorized practice of law, but the Virginia Bar Association didn't seem concerned about it. Accordingly, we let the matter rest.

Livable Home Tax Credit; increase limit—Toddy Puller (SB845). Increases the Livable Home Tax Credit limit from $500 to $2,000 for new residences, and from 25 percent to 50 percent of the amount spent retrofitting an existing residence, for taxable years beginning on or after January 1, 2010. The goal of the law in its original form was to encourage measures designed to improve accessibility and provide universal visitability in new residences or in the retrofitting of existing residences. This bill increases the amount of the tax credit.

Release of deed of trust; assignment of penalty—Ryan McDougle (SB888). In short, if the holder of the lien fails to issue a deed of satisfaction when the debt is paid and the court awards the $500 penalty to the debtor, the settlement agent or real estate attorney can't assign their client's money to a third party, just as they aren't currently able to take the money themselves.

CRESPA; settlement agent registration—John Watkins (SB938). This shifts the duty to register settlement agents from the Virginia State Bar to the appropriate licensing authorities that are responsible for regulating their particular settlement agents. The measure also allows the appropriate licensing authority to administratively terminate the registration of a settlement agent who fails to maintain a license, fails to renew his registration, or fails to comply with certain financial responsibility requirements.

Proposed sale in execution of

deeds of trust—Ken Stolle (SB1546). Provides that when written notice of proposed sale in execution of a deed of trust is given as provided by general law, there shall be a rebuttable presumption that the lienholder has complied with any requirement to provide notice of default contained in a deed of trust.
Failed:

Fair housing protections—David Englin (HB1625). Allows localities to expand beyond classes currently protected by state law (race, color, religion, national origin, sex, elderliness, familial status, or handicap).

Form of deeds and deeds of trust—Bob Marshall (HB1640). Provides that when a corporation, partnership, limited partnership, business trust, or limited liability company is the grantee of a deed or the grantor of a deed of trust, the deed or deed of trust shall contain the names of the registered agents and the directors, officers, partners, etc., of these various business entities.

Mortgage foreclosures; notices and reinstatement right—Robert Tata (HB1688). This would have significant addition to Virginia law. It would have required certain institutional lenders that are the beneficiary of a first priority deed of trust securing a loan on residential real property that is the primary residence of the borrower, within two days after characterizing the loan as being in default, accelerating the balance due on the loan, or otherwise instituting collection proceedings on the loan as a result of the borrower's failure to make any payment due on the loan.

The measure would also have required the lender to send written notice to the borrower that the beneficiary has taken such action with respect to the loan, and informing the borrower of any programs or options that the beneficiary provides, conducts, or has knowledge of, that may permit the borrower to avoid foreclosure of the deed of trust, and a telephone number or Internet address through which the borrower may find contact information for counseling agencies approved by the U.S. Department of Housing and Urban Development.

The measure prohibits the beneficiary of a loan that is in default status from unreasonably refusing to provide information regarding the status of the loan or to reply to inquiries from the borrower regarding the status of the loan or programs or options that may permit the borrower to avoid foreclosure. The measure also gives the borrower a new right, exercisable at any time, up to the date of the sale of the property, to cure the default, de-accelerate, and reinstate the loan by paying all sums that would have been due in the absence of default and performing any other obligation that the borrower would have been bound to perform in the absence of the default or acceleration. The borrower could have exercised the right to cure a default as to a particular loan and reinstate that mortgage once every 18 months. The measure would have expired January 1, 2012.

Income tax; homebuyer tax credit—Christopher Peace (HB1721). Provided an income tax credit equal to $1,250 for single taxpayers and $2,500 for married taxpayers filing jointly for taxable years beginning January 1, 2009, and ending January 1, 2010, who purchase a home for the first time during that period for use as their principal residence. The taxpayer would have to repay the credit over a 10-year period which would have begun the first year when no credit remained to be taken.

Mortgage Lender and Broker Act—Bob Hull (HB1787). Required a homeownership education program be given whenever certain nontraditional (e.g., subprime, ARM, etc.) mortgages are sold to borrowers.

Property; early termination of rental agreement by military personnel—Manoli Loupassi (HB1798). Would have required that a written notice of termination from a tenant who is in the military would have to include a copy of the official notification of the orders or a signed letter confirming the orders from the tenant's commanding officer. Currently, the tenant is only required to submit such copy or letter prior to the termination date.

Income tax, state; homebuyer tax credit—Christopher Peace (HB1808). Provided an income tax credit equal to $2,500 for single taxpayers and $5,000 for married taxpayers filing jointly for taxable years beginning on or after January 1, 2009, but before January 1, 2011, who purchase a principal residence during that period. Any tax credit claimed would be recaptured if the taxpayer disposed of the principal residence within two years after purchase.

Jury costs—Bill Janis (HB1867). Provides that, except in cases where Virginia law mandates a trial by jury, a party who requests a jury trial in a civil case shall be assessed any jury costs if he does not substantially prevail on the merits of his case.

Notice to tenant in event of foreclosure—Paul Nichols (HB2129). A landlord would have been required to give written notice to a tenant of a mortgage default, notice of mortgage acceleration or a notice of foreclosure sale relative to the loan on the dwelling unit within five business days after written notice from the lender is received by the

landlord.

The provisions of this section would not have applied (i) to any managing agent who did not receive a copy of such written notice from the lender or (ii) if the tenant provided a copy of the written notice from the lender to the landlord or the managing agent. This last provision addresses the situation that occurs in many tenancies in single-family dwellings, where the notice is put on the door of the dwelling and the tenant is aware of it before the landlord is.

Department of Housing and Community Development; rental assistance pilot project— David Englin (HB2501). Required the Department of Housing and Community Development to establish a three-year rental assistance pilot project and to report its findings and recommendations to the Governor and the Housing Commission.

Income tax; homebuyer tax credit—Walter Stosch (SB906). Provided an income tax credit equal to $2,500 for single taxpayers and $5,000 for married taxpayers filing jointly for taxable years beginning on or after January 1, 2009, but before January 1, 2011, who purchase a principal residence during that period. Any tax credit claimed would be recaptured if the taxpayer disposes of the principal residence within two years after purchase. The bill was contingent on supplemental appropriations that may be used for such a credit being included in a federal stimulus package adopted by March 27, 2009.

Fees in Civil Cases—Richard Stuart (SB916). Increases the fee for filing any civil action in general district court to $100 (currently $27); and increases the fees for filing a civil action in circuit court to a sliding scale (currently, between $60 and $160): in cases seeking recovery up to $50,000 - fee is $150; up to $100,000 - $200; up to $250,000 - $300; up to $500,000 - $400; up to $1,000,000 - $500; and above $1,000,000 - $750.

Mortgage lending practices; penalty—Creigh Deeds (SB991). The bill would have made it unlawful for a mortgage broker knowingly (i) to make or cause to be made any deliberate and material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process; (ii) to use or facilitate the use of any deliberate and material misstatement, misrepresentation, or omission, knowing the same to contain a material misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process; or (iii) to conspire to do either of such things. Violations would have been punishable as a Class 1 misdemeanor. Violators would also have been required to pay restitution. The measure prohibited mortgage brokers from providing or arranging for: (a) a subprime loan containing a provision requiring or permitting the imposition of a prepayment penalty; (b) a residential mortgage loan, other than a reverse mortgage, if the borrower's compliance with any repayment option would result in negative amortization during any six-month period; and (c) a mortgage loan that would pay off a special mortgage unless the borrower had obtained a written certification from an authorized independent loan counselor on the advisability of the loan transaction. A special mortgage would have been defined as a residential mortgage loan originated, subsidized, or guaranteed by or through an agency of the Commonwealth, a locality, or a nonprofit organization that had one or more nonstandard payment terms that substantially benefit the borrower (for example, a forgivable loan). The measure expressly gave borrowers a private right of action for violations of certain prohibited practices under the Mortgage Lender and Broker Act, in which action the borrower may seek recovery of actual damages, statutory damages equal to the amount of all lender fees included in the amount of the principal of the mortgage loan, punitive damages, costs, and reasonable attorney fees.

Mortgage Lender and Broker Act; employee background checks and training—John Watkins (SB1172). This measure would have repealed provisions enacted in 2008 that require licensed mortgage lenders and brokers (i) to conduct background checks on employees who may have access to or process personal identifying or financial information from a member of the public and (ii) to ensure that their employees are properly trained in applicable state and federal mortgage lending laws and regulations.

2009 General Assembly Public Benefits Law Legislation Summary

All bills become effective July 1, 2009 unless otherwise noted

By Ty Jones, ty@vplc.org

TANF Bills:

Temporary Assistance for Needy Families (TANF); diversionary cash assistance—Yvonne Miller and Roslyn Tyler (SB1045, HB 1714). These bills revised the limitation on receipt of one-time diversionary TANF cash assistance from one payment per 60-month period to one payment per 12-month period. The Department of Social Services shall report to the chairmen of the Senate Finance and House Appropriations Committees by October 1, 2012, on the savings achieved through the use of the diversionary assistance. These bills passed because it would bring about a cost savings to the Commonwealth since the one time diversionary payment helps to keep people off and TANF and away from more prolonged periods of time receiving cash assistance.

Eligibility for TANF; drug-related felonies—Patricia Ticer (SB 872). This bill would have taken away the current lifetime ban on receiving TANF benefits, which is placed on individuals who have felony drug convictions. The bill mirrored the authorized federal exemption already granted for food stamp applicants, but since TANF payment are not completely federally funded this similar exemption has been hard to receive for TANF recipients. This bill has been brought up for the last couple of legislative session and each year it meets its demise in either the Senate Finance committee or the House Appropriations committee because of the very small fiscal impact.

Substance abuse screening& assessment for VIEW; person ineligible to receive TANF if using drugs—Richard Stuart (SB 914). This bill would have required local departments of social services to screen each VIEW program participant to determine whether probable cause exists to believe the participant is engaged in the use of illegal drugs. The bill provided that, where a screening indicates reasonable cause to believe a participant is using illegal drugs, the department shall require a formal substance abuse assessment of the participant, which may include drug testing. Any person who fails or refuses to participate in a screening or assessment without good cause or who tests positive for the use of illegal drugs shall be ineligible to receive TANF payments and payments shall be made as protective or vendor payments to a third party payee for the benefit of the members of the participant's household. Persons deemed ineligible for TANF assistance due to failure or refusal to participate in a screening or assessment or for testing positive for the use of illegal drugs may reapply for TANF assistance once 12 months have elapsed from the date of initial ineligibility. Luckily this bill was never brought up in committee and therefore it died in committee. This bill was brought up during the last General Assembly session and will likely rear its ugly head again during the 2010 General Assembly session.

Unemployment Compensation:

Unemployment compensation; voluntarily leaving employment to accompany military spouse—Mamie Locke (SB 1495). This bill provides that good cause for leaving employment exists if an employee voluntarily leaves a job to accompany the employee's spouse, who is on active duty in the military or naval services of the United States, to a new military-related assignment established pursuant to a permanent change of duty order from which the employee's place of employment is not reasonably accessible. This bill became the vehicle to which Governor Kaine used to seek coverage for part-time workers and individuals in training to bring about an addition $125 million in stimulus money. That amendment was rejected by the House and now it has become one of the Democratic party's main talking points for upcoming elections. Unfortunately a provision was placed on the original bill that said that the UI benefits would only be paid if the federal government would pay for it and since that will never happen the bill is basically useless as is.

Unemployment benefits; eligibility of seasonal or temporary workers—Joseph Morrissey (HB 1816). This bill wanted to disqualify an unemployed individual for unemployment compensation benefits if he was provided with written notice, and signed an acknowledgment of receipt of such notice, by his employer stating that his employment is temporary or seasonal and will terminate by a date certain or upon the completion of seasonal work specified in the written notice. This bill was brought about because a tax preparer service in Virginia was upset that some of their employees filed for unemployment benefits when they knew when they were hired that they job would end on a particular date. Fortunately this bill was left in the Commerce and Labor committee because this bill would have allowed a lot of employers to just put in writing when a person's job would end and then they would not be liable for Unemployment benefits.

Unemployment compensation; employees at seasonal establishment shall not be paid benefits—Thomas

Gear (HB 2046). This bill sought to authorize the Virginia Employment Commission to designate, upon an employer's application, that an employer's establishment is a seasonal establishment that customarily operates only during a regularly occurring period of between 13 and 40 weeks in any 12-month period. Employees at a seasonal establishment shall not be paid unemployment benefits with respect to employment that was performed at a seasonal establishment during the establishment's operating season, if (i) his employment terminated when the establishment's stated operating season expired, (ii) the employer notified the employee prior to commencing employment that he will be performing service in a seasonal establishment, and (iii) the employer posted notices that employees are performing service in a seasonal establishment. Any benefit charges assessable with respect to the employee that are due to other employment will not be the responsibility of the seasonal employer. Fortunately this bill also met its demise in the House Commerce and Labor committee. This bill sought to classify employment anywhere from 13-40 weeks a year could be considered seasonal. This was completely unreasonable given the fact that there are only 52 weeks in a year, so technically most jobs could be considered seasonal.

Unemployment compensation; wage offset for concurrent job—Wm. Roscoe Reynolds (SB 917). This bill provided that the weekly unemployment benefit to which an eligible individual is otherwise entitled as a result of his separation from a position of employment shall not be reduced by wages payable to the individual from another position that the individual has held continuously at least since the week preceding the job separation. Currently, such an individual's weekly benefit amount is reduced on a dollar-for-dollar basis by any wages that he earns in that week in excess of $50. This bill died in the Senator Commerce and Labor committee.

Unemployment benefits; minimum earnings requirement, extended benefits—Samuel Nixon (HB1889). This bill postponed the scheduled increase, from $2,700 to $3,000, in the minimum amount of wages an employee must have earned in the two highest earnings quarters of his base period in order to be eligible for unemployment benefits. The increase will apply to claims filed on or after July 4, 2010; it is currently scheduled to apply to claims filed on or after July 5, 2009. Governor Kaine added an amendment that would also extend the amount of time that an individual could received UI benefits as a result of the ARRA. Since this mandate was fully funded by stimulus money the House did not oppose this amendment.

Unemployment compensation; eliminates requirement that applicants wait one week for benefits—Frank Ruff (SB 1376). This bill sought to eliminate the requirement that applicants for unemployment benefits wait one week prior to receiving benefits. The measure becomes effective on July 5, 2009. This bill was stricken from the docket at the request of the patron.

2009 Budget Amendments

Health Law Highlights

Overview:

Despite a projected shortfall of $3.7 billion in the biennial budget, thanks primarily to the American Recovery and Reinvestment Act of 2009 (ARRA), most cuts to Virginia's Medicaid and other health programs were avoided. Several planned and new expansions will be implemented.

References below are either to the Budget Conference Report (where item number ends in "c") - http://leg2.state.va.us/WebData/09amend.nsf/Conf+List/?OpenForm – and/or the Final Budget – Health and Human Resources Section - http://leg1.state.va.us/091/bud/TOC2105.HTM

Positive Actions:

1. The planned expansion of FAMIS Moms eligibility to 200% FPL will still be implemented on July 1, 2009. Item 305.D

2. "Maintenance of Effort" requirements in the federal stimulus legislation forced the reversal of a proposed cut in Elderly & Disabled Waiver slots and a proposed change to the cost-effectiveness test used in all waivers which would have been disastrous for individuals who needed the highest amounts of community based care. In addition, DMAS had to reverse the 2008 change in policy that required counting life estates as available resources for the aged and disabled. Life Estates are once again exempt resources for Virginia Medicaid eligibility for the aged and disabled. Item 306 #7c, #14c, #23c; Item 306 NN.

3. The proposed closure of the Southeastern Virginia Training Center (SEVTC) for people with mental retardation was rejected. Funding was restored with directions to plan for a new 75-bed facility and several smaller ICF-MRs. Item 306 #15c, Item 315 #2c, Item 327 #1c, Item 327.05 #1c

4. The proposed closure of two acute care psychiatric facilities for children was rejected. The Commonwealth Center for Children and Adolescents (CCCA) in Staunton and the adolescent unit at Southwestern Virginia Mental Health Institute (SWVMHI) in Marion will remain open. A committee will plan for future changes to offer more community based care while maintaining sufficient access to acute care beds. Item 315 #3c, Item 320 #1c, Item 322 #1c, Item 322.05 #1c, #2c

5. MR Waiver - Funding was maintained for 200 new slots planned for July 2009, and an additional 200 slots will be in place on January 2010. Item 306 #21c, Item 316 #1c

6. Hospital and Nursing Home Reimbursement – Proposed cuts were restored, although Inflationary increases remain frozen. Item 306 #19c, #20c, #22c

7. Reimbursement rates were increased for both agency and consumer-directed personal care services. Item 306 #27c, Item 306.ccc

8. Funding for Part C intervention services for children with developmental delays, including children with autism or autism spectrum disorder was increased. Item 316 #2c

9. The Medicaid State Fiscal Relief provisions in ARRA will initially increase Virginia's Federal Medical Assistance Percentage (FMAP) from 50% to 56%. Additional increases, based on Virginia's unemployment rate, are also expected. This enhanced federal funding will support anticipated increases in Medicaid enrollment resulting from the economic downturn. Item 306 #5c, #6c

10. Safety Net programs - A total of $1 million additional funding is provided to support Community Health Centers and Free Clinics Item 297 #3c, #4c

Negative Actions:

1. Assistive Technology services and Environmental Modification services were eliminated from the AIDS and EDCD Waivers, unless the enrollee is in the Money Follows the Person program. Item 306

2. The State Local Hospitalization (SLH) program was suspended, shifting state and local dollars for other purposes. Item 309