

VIRGINIA ACTS OF ASSEMBLY -- 2002 RECONVENED SESSION

CHAPTER 857

An Act to amend and reenact § 38.2-5016 of the Code of Virginia, relating to the Birth-Related Neurological Injury Compensation Program; reports by board of directors regarding investment of assets.

[S 689]

Approved April 17, 2002

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-5016 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-5016. Board of directors; appointment; vacancies; term.

A. The Birth-Related Neurological Injury Compensation Program shall be governed by a board of seven directors.

B. Except as provided in subsection C, directors shall be appointed for a term of three years or until their successors are appointed and have qualified.

C. 1. The directors shall be appointed by the Governor as follows:

a. Three citizen representatives. The term of the member appointed in 1999 shall commence when appointed and shall end on July 1, 2002. When the terms of the other two representatives expire, one shall be appointed for a term of two years ending July 1, 2003, and one shall be appointed for a term of three years ending July 1, 2004. In selecting citizen representatives, consideration shall be given to (i) persons who have experience in finance and investment; (ii) parents; and (iii) persons who have worked closely with persons who might qualify as claimants. Citizen representatives shall not have children or relatives who are claimants or who have been awarded benefits under the Act;

b. One representative of participating physicians. The initial term of the member appointed in 1999 shall commence when appointed and shall be for one year;

c. One representative of participating hospitals. The initial term of the member appointed in 1999 shall commence when appointed and shall be for two years;

d. One representative of liability insurers. The initial term of the member appointed in 1999 shall commence when appointed and shall be for three years; and

e. One representative of physicians other than participating physicians. The initial term of the member appointed in 1999 shall commence when appointed and shall be for three years.

2. The Governor may select the representative of the participating physicians from a list of at least three names to be recommended by the Virginia Society of Obstetrics and Gynecology; the representative of participating hospitals from a list of at least three names to be recommended by the Virginia Hospital Association; the representative of liability insurers from a list of at least three names, one of which is recommended by the American Insurance Association, one by the Alliance of American Insurers, and one by the National Association of Independent Insurers; and the representative of physicians other than participating physicians from a list of at least three names to be recommended by the Medical Society of Virginia. In no case shall the Governor be bound to make any appointment from among the nominees of the respective associations.

D. The Governor shall promptly notify the appropriate association, which may make nominations, of any vacancy other than by expiration among the members of the board representing a particular interest and like nominations may be made for the filling of the vacancy.

E. The directors shall act by majority vote with four directors constituting a quorum for the transaction of any business or the exercise of any power of the Program. The directors shall serve without salary, but each director shall be reimbursed for actual and necessary expenses incurred in the performance of his official duties as a director of the Program. The directors shall not be subject to any personal liability with respect to the administration of the Program or the payment of any award.

F. The board shall have the power to (i) administer the Program, (ii) administer the Birth-Related Neurological Injury Compensation Fund, which shall include the authority to purchase, hold, sell or transfer real or personal property and the authority to place any such property in trust for the benefit of claimants who have received awards pursuant to § 38.2-5009, (iii) appoint a service company or companies to administer the payment of claims on behalf of the Program, (iv) direct the investment and reinvestment of any surplus in the Fund over losses and expenses, provided any investment income generated thereby remains in the Fund, and (v) reinsure the risks of the Fund in whole or in part. The board shall discharge its duties with respect to the Fund solely in the interest of the recipients of awards pursuant to § 38.2-5009 and shall invest the assets of the Fund with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Any decisions regarding the investment of the assets of the Fund shall be based on the advice of

one or more investment advisors retained by the board from a list provided by the chief investment officer of the Virginia Retirement System. The board shall report annually to *the Governor and to the Speaker of the House of Delegates and the Clerk of the House of Delegates* and to the Chairman of the Senate Rules Committee *and the Clerk of the Senate* regarding the investment of the Fund's assets. No later than October 1, 1994, the board shall establish a procedure in the plan of operation for notice to be given to obstetrical patients concerning the no-fault alternative for birth-related neurological injuries provided in this chapter, such notice to include a clear and concise explanation of a patient's rights and limitations under the program. The board shall also have the power to reduce for a stated period of time the annual participating physician assessment described in subsection A of § 38.2-5020 and the annual participating hospital assessment described in subsection C of § 38.2-5020 after the State Corporation Commission determines the Fund is actuarially sound in conjunction with actuarial investigations conducted pursuant to § 38.2-5021.