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## HOUSE BILL NO. 2307

Offered January 8, 2003

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A BILL to amend and reenact §§ 32.1-127, 38.2-5002, 38.2-5004, 38.2-5005, 38.2-5008, 38.2-5016, and 38.2-5020 of the Code of Virginia, relating to the Birth-Related Neurological Injury Compensation Program; penalty.

Patron—Devolites

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 32.1-127, 38.2-5002, 38.2-5004, 38.2-5005, 38.2-5008, 38.2-5016, and 38.2-5020 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-127. Regulations.

A. The regulations promulgated by the Board to carry out the provisions of this article shall be in substantial conformity to the standards of health, hygiene, sanitation, construction and safety as established and recognized by medical and health care professionals and by specialists in matters of public health and safety, including health and safety standards established under provisions of Title XVIII and Title XIX of the Social Security Act, and to the provisions of Article 2 (§ 32.1-138 et seq.) of this chapter.

B. Such regulations:

1. Shall include minimum standards for (i) the construction and maintenance of hospitals, nursing homes and certified nursing facilities to assure the environmental protection and the life safety of its patients and employees and the public; (ii) the operation, staffing and equipping of hospitals, nursing homes and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes and certified nursing facilities, except those professionals licensed or certified by the Department of Health Professions; and (iv) conditions under which a hospital or nursing home may provide medical and nursing services to patients in their places of residence;

2. Shall provide that at least one physician who is licensed to practice medicine in this Commonwealth shall be on call at all times, though not necessarily physically present on the premises, at each hospital which operates or holds itself out as operating an emergency service;

3. May classify hospitals and nursing homes by type of specialty or service and may provide for licensing hospitals and nursing homes by bed capacity and by type of specialty or service;

4. Shall also require that each hospital establish a protocol for organ donation, in compliance with federal law and the regulations of the Health Care Financing Administration (HCFA), particularly 42 C.F.R. § 482.45. Each hospital shall have an agreement with an organ procurement organization designated in HCFA regulations for routine contact, whereby the provider's designated organ procurement organization certified by HCFA (i) is notified in a timely manner of all deaths or imminent deaths of patients in the hospital and (ii) is authorized to determine the suitability of the decedent or patient for organ donation and, in the absence of a similar arrangement with any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks, the suitability for tissue and eye donation. The hospital shall also have an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes to ensure that all usable tissues and eyes are obtained from potential donors and to avoid interference with organ procurement. The protocol shall ensure that the hospital collaborates with the designated organ procurement organization to inform the family of each potential donor of the option to donate organs, tissues, or eyes or to decline to donate. The individual making contact with the family shall have completed a course in the methodology for approaching potential donor families and requesting organ or tissue donation that (i) is offered or approved by the organ procurement organization and designed in conjunction with the tissue and eye bank community and (ii) encourages discretion and sensitivity according to the specific circumstances, views, and beliefs of the relevant family. In addition, the hospital shall work cooperatively with the designated organ procurement organization in educating the staff responsible for contacting the organ procurement organization's personnel on donation issues, the proper review of death records to improve identification of potential donors, and the proper procedures for maintaining potential donors while necessary testing and placement of potential donated organs, tissues, and eyes takes place. This process shall be followed, without exception, unless the family of the relevant decedent or patient has expressed opposition to organ donation, the chief administrative officer of the hospital or his designee knows of such opposition,

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59 and no donor card or other relevant document, such as an advance directive, can be found;

60 5. Shall require that each hospital that provides obstetrical services establish a protocol for admission  
61 or transfer of any pregnant woman who presents herself while in labor;

62 6. Shall also require that each licensed hospital develop and implement a protocol requiring written  
63 discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall  
64 require that the discharge plan be discussed with the patient and that appropriate referrals for the mother  
65 and the infant be made and documented. Appropriate referrals may include, but need not be limited to,  
66 treatment services, comprehensive early intervention services for infants and toddlers with disabilities  
67 and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C.  
68 § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to  
69 the extent possible, the father of the infant and any members of the patient's extended family who may  
70 participate in the follow-up care for the mother and the infant. Immediately upon identification, pursuant  
71 to § 54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify, subject to  
72 federal law restrictions, the community services board of the jurisdiction in which the woman resides to  
73 appoint a discharge plan manager. The community services board shall implement and manage the  
74 discharge plan;

75 7. *Shall also require that each hospital that provides obstetrical services establish a records*  
76 *retention policy to require any records relating to labor or delivery, including the fetal heart monitor*  
77 *tape, to be retained for a minimum of 10 years;*

78 8. Shall require that each nursing home and certified nursing facility fully disclose to the applicant  
79 for admission the home's or facility's admissions policies, including any preferences given;

80 89. Shall require that each licensed hospital establish a protocol relating to the rights and  
81 responsibilities of patients which shall include a process reasonably designed to inform patients of such  
82 rights and responsibilities. Such rights and responsibilities of patients, a copy of which shall be given to  
83 patients on admission, shall be based on Joint Commission on Accreditation of Healthcare Organizations'  
84 standards;

85 910. Shall establish standards and maintain a process for designation of levels or categories of care  
86 in neonatal services according to an applicable national or state-developed evaluation system. Such  
87 standards may be differentiated for various levels or categories of care and may include, but need not be  
88 limited to, requirements for staffing credentials, staff/patient ratios, equipment, and medical protocols;

89 1011. Shall require that each nursing home and certified nursing facility train all employees who are  
90 mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting  
91 procedures and the consequences for failing to make a required report; and

92 1112. Shall permit hospital personnel, as designated in medical staff bylaws, rules and regulations, or  
93 hospital policies and procedures, to accept emergency telephone and other verbal orders for medication  
94 or treatment for hospital patients from physicians, and other persons lawfully authorized by state statute  
95 to give patient orders, subject to a requirement that such verbal order be signed, within a reasonable  
96 period of time not to exceed seventy-two hours as specified in the hospital's medical staff bylaws, rules  
97 and regulations or hospital policies and procedures, by the person giving the order, or, when such person  
98 is not available within the period of time specified, co-signed by another physician or other person  
99 authorized to give the order.

100 C. Upon obtaining the appropriate license, if applicable, licensed hospitals, nursing homes, and  
101 certified nursing facilities may operate adult day care centers.

102 D. All facilities licensed by the Board pursuant to this article which provide treatment or care for  
103 hemophiliacs and, in the course of such treatment, stock clotting factors, shall maintain records of all lot  
104 numbers or other unique identifiers for such clotting factors in order that, in the event the lot is found to  
105 be contaminated with an infectious agent, those hemophiliacs who have received units of this  
106 contaminated clotting factor may be apprised of this contamination. Facilities which have identified a lot  
107 which is known to be contaminated shall notify the recipient's attending physician and request that he  
108 notify the recipient of the contamination. If the physician is unavailable, the facility shall notify by mail,  
109 return receipt requested, each recipient who received treatment from a known contaminated lot at the  
110 individual's last known address.

111 § 38.2-5002. Virginia Birth-Related Neurological Injury Compensation Program; exclusive remedy;  
112 exception.

113 A. There is hereby established the Virginia Birth-Related Neurological Injury Compensation Program.

114 B. Except as provided in subsection D, the rights and remedies herein granted to an infant on  
115 account of a birth-related neurological injury shall exclude all other rights and remedies of such infant,  
116 his personal representative, parents, dependents or next of kin, at common law or otherwise, arising out  
117 of or related to a medical malpractice claim with respect to such injury *if the participating hospital has*  
118 *obtained the prior written consent of the obstetrical patient pursuant to subsection G of § 38.2-5016. If*  
119 *the obstetrical patient did not provide such consent, the infant, his personal representative, parents,*  
120 *dependents or next of kin may elect to proceed under the Program by filing a claim for benefits under*

*this chapter, or in the alternative, to bring a civil action against a participating hospital or physician.*

C. Notwithstanding anything to the contrary in this section, a civil action shall not be foreclosed against a physician or a hospital where there is clear and convincing evidence that such physician or hospital intentionally or willfully caused or intended to cause a birth-related neurological injury, provided that such suit is filed prior to and in lieu of payment of an award under this chapter. Such suit shall be filed before the award of the Commission becomes conclusive and binding as provided for in § 38.2-5011.

D. Notwithstanding anything to the contrary in this section, a civil action arising out of or related to a birth-related neurological injury under this chapter, brought by an infant, his personal representative, parents, dependents, or next of kin, shall not be foreclosed against a nonparticipating physician or hospital, provided that (i) no participating physician or hospital shall be made a party to any such action or related action *if the infant, his personal representative, parents, dependents, or next of kin has elected to participate in the Program*, and (ii) the commencement of any such action, regardless of its outcome, shall constitute an election of remedies, to the exclusion of any claim under this chapter; provided that if claim is made, accepted and benefits are provided by the Fund established under this Virginia Birth-Related Neurological Injury Compensation Program, the Fund shall have the right, and be subrogated, to all of the common law rights, based on negligence or malpractice, which the said infant, his personal representative, parents, dependents or next of kin may have or may have had against the non-participating physician or hospital, as the case may be.

§ 38.2-5004. Filing of claims; review by Board of Medicine; review by Department of Health; filing of responses.

A. 1. In all claims filed under this chapter, the claimant shall file with the Commission a petition, setting forth the following information:

a. The name and address of the legal representative and the basis for his representation of the injured infant;

b. The name and address of the injured infant;

c. The name and address of any physician providing obstetrical services who was present at the birth and the name and address of the hospital at which the birth occurred;

d. A description of the disability for which claim is made;

e. The time and place where the birth-related neurological injury occurred;

f. A brief statement of the facts and circumstances surrounding the birth-related neurological injury and giving rise to the claim;

g. All available relevant medical records relating to the person who allegedly suffered a birth-related neurological injury, *including the fetal heart monitor tape*, and an identification of any unavailable records known to the claimant and the reasons for their unavailability;

h. Appropriate assessments, evaluations, and prognoses and such other records and documents as are reasonably necessary for the determination of the amount of compensation to be paid to, or on behalf of, the injured infant on account of a birth-related neurological injury;

i. Documentation of expenses and services incurred to date, which indicates whether such expenses and services have been paid for, and if so, by whom; and

j. Documentation of any applicable private or governmental source of services or reimbursement relative to the alleged impairments.

2. The claimant shall furnish the Commission with as many copies of the petition as required for service upon the Program, any physician and hospital named in the petition, the Board of Medicine and the Department of Health, along with a fifteen dollar filing fee. Upon receipt of the petition the Commission shall immediately serve the Program by service upon the agent designated to accept service on behalf of the Program in the plan of operation by registered or certified mail, and shall mail copies of the petition to any physician and hospital named in the petition, the Board of Medicine and the Department of Health.

B. Upon receipt of the petition, the Board of Medicine shall evaluate the claim, and if it determines that there is reason to believe that the alleged injury resulted from, or was aggravated by, substandard care on the part of the physician, it shall take any appropriate action consistent with the authority granted to the Board in §§ 54.1-2911 through 54.1-2928.

C. Upon receipt of the petition, the Department of Health shall evaluate the claim, and if it determines that there is reason to believe that the alleged injury resulted from, or was aggravated by, substandard care on the part of the hospital at which the birth occurred, it shall take any appropriate action consistent with the authority granted to the Department of Health in Title 32.1.

D. The Program shall have thirty days from the date of service in which to file a response to the petition, and to submit relevant written information relating to the issue of whether the injury alleged is a birth-related neurological injury, within the meaning of this chapter.

E. Any hospital that receives written notice of an infant's legal representative's intent to file a claim

under this chapter, whether or not the claim is filed, shall provide such person with all medical records related to birth, including the fetal heart monitoring tape. A hospital that fails to comply with the requirements of this subsection shall be subject to a civil penalty of not more than \$5,000, imposed at the discretion of the Commission. Such civil penalty shall be credited to the Birth Related Neurological Injury Compensation Fund.

§ 38.2-5005. Tolling of statute of limitations.

The statute of limitations with respect to any civil action that may be brought by or on behalf of an injured infant allegedly arising out of or related to a birth-related neurological injury shall be tolled by the filing of a claim in accordance with this section chapter, and the time such claim is pending shall not be computed as part of the period within which such civil action may be brought.

§ 38.2-5008. Determination of claims; presumption; finding of Virginia Workers' Compensation Commission binding on participants; medical advisory panel.

A. The Commission shall determine, on the basis of the evidence presented to it, the following issues:

1. Whether the injury claimed is a birth-related neurological injury as defined in § 38.2-5001.

a. A rebuttable presumption shall arise that the injury alleged is a birth-related neurological injury where it has been demonstrated, to the satisfaction of the Virginia Workers' Compensation Commission, that the infant has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury, and that the infant was thereby rendered permanently motorically disabled and (i) developmentally disabled or (ii) for infants sufficiently developed to be cognitively evaluated, cognitively disabled.

If either party disagrees with such presumption, that party shall have the burden of proving that the injuries alleged are not birth-related neurological injuries within the meaning of the chapter.

b. A rebuttable presumption of fetal distress shall arise if the hospital fails to provide the fetal heart monitor tape to the claimant, as required by subsection E of § 38.2-5004.

2. Whether obstetrical services were delivered by a participating physician at the birth.

3. Whether the birth occurred in a participating hospital.

4. How much compensation, if any, is awardable pursuant to § 38.2-5009.

5. If the Commission determines (i) that the injury alleged is not a birth-related neurological injury as defined in § 38.2-5001, or (ii) that obstetrical services were not delivered by a participating physician at the birth and that the birth did not occur in a participating hospital, it shall dismiss the petition and cause a copy of its order of dismissal to be sent immediately to the parties by registered or certified mail.

6. All parties are bound for all purposes including any suit at law against a participating physician or participating hospital, by the finding of the Virginia Workers' Compensation Commission (or any appeal therefrom) with respect to whether such injury is a birth-related neurological injury.

B. The deans of the medical schools of the Commonwealth shall develop a plan whereby each claim filed with the Commission is reviewed by a panel of three qualified and impartial physicians. This panel shall file its report and recommendations as to whether the injury alleged is a birth-related neurological injury as defined in § 38.2-5001 with the Commission at least ten days prior to the date set for hearing pursuant to § 38.2-5006. At the request of the Commission, at least one member of the panel shall be available to testify at the hearing. The Commission must consider, but shall not be bound by, the recommendation of the panel.

§ 38.2-5016. Board of directors; appointment; vacancies; term; plan of operation; notice to obstetrical patients.

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~~ At least one citizen representative shall not have children a child or relatives a relative 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.

*G. The board shall establish a procedure in the plan of operation that requires a participating physician or participating hospital, or both, as may be applicable, to give written notice to obstetrical patients concerning the no-fault alternative for birth-related neurological injuries provided under the Program. Such notice shall include a clear and concise explanation of the rights and limitations provided by the Program, and shall provide for signature indicating informed written consent by any patient who agrees that any claim with respect to a birth-related neurological injury sustained by the infant shall be pursued under the Program, to the exclusion all other rights and remedies of such infant, his personal representative, parents, dependents or next of kin, at common law or otherwise, arising out of or related to a medical malpractice claim with respect to such injury.*

*H. The board shall establish a procedure in the plan of operation for maintaining a list of Program claimants. Each claimant may consent to have his name, address, phone number, and other personal information included on such list, for distribution to other Program claimants. The Board shall distribute the list to Program claimants who have given consent to be included on such list, and to no other person.*

§ 38.2-5020. Assessments.

A. A physician who otherwise qualifies as a participating physician pursuant to this chapter may

305 become a participating physician in the Program for a particular calendar year by paying an annual  
306 participating physician assessment to the Program in the amount of \$5,000 on or before December 1 of  
307 the previous year, in the manner required by the plan of operation. The board may authorize a prorated  
308 participating physician or participating hospital assessment for a particular year in its plan of operation,  
309 but such prorated assessment shall not become effective until the physician or hospital has given at least  
310 thirty days' notice to the Program of the request for a prorated assessment.

311 B. Notwithstanding the provisions of subsection A of this section, a participating hospital with a  
312 residency training program accredited to the American Council for Graduate Medical Education may pay  
313 an annual participating physician assessment to the Program for residency positions in the hospital's  
314 residency training program, in the manner provided by the plan of operation. However, any resident in a  
315 duly accredited family practice or obstetrics residency training program at a participating hospital shall  
316 be considered a participating physician in the Program and neither the resident nor the hospital shall be  
317 required to pay any assessment for such participation. No resident shall become a participating physician  
318 in the Program, however, until thirty days following notification by the hospital to the Program of the  
319 name of the resident or residents filling the particular position for which the annual participating  
320 physician assessment payment, if required, has been made.

321 C. A hospital that otherwise qualifies as a participating hospital pursuant to this chapter may become  
322 a participating hospital in the Program for a particular year by paying an annual participating hospital  
323 assessment to the Program, on or before December 1 of the previous year, amounting to fifty dollars per  
324 live birth for the prior year, as reported to the Department of Health in the Annual Survey of Hospitals.  
325 The participating hospital assessment shall not exceed \$150,000 for any participating hospital in any  
326 twelve-month period.

327 D. All licensed physicians practicing in the Commonwealth on September 30 of a particular year,  
328 other than participating physicians, shall pay to the Program an annual assessment of \$250 for the  
329 following year, in the manner required by the plan of operation.

330 Upon proper certification to the Program, the following physicians shall be exempt from the payment  
331 of the annual \$250 assessment:

332 1. A physician who is employed by the Commonwealth or federal government and whose income  
333 from professional fees is less than an amount equal to ten percent of the annual salary of the physician.

334 2. A physician who is enrolled in a full-time graduate medical education program accredited by the  
335 American Council for Graduate Medical Education.

336 3. A physician who has retired from active clinical practice.

337 4. A physician whose active clinical practice is limited to the provision of services, voluntarily and  
338 without compensation, to any patient of any clinic which is organized in whole or in part for the  
339 delivery of health care services without charge as provided in § 54.1-106.

340 E. Taking into account the assessments collected pursuant to subsections A through D of this section,  
341 if required to maintain the Fund on an actuarially sound basis, all insurance carriers licensed to write  
342 and engaged in writing liability insurance in the Commonwealth of a particular year, shall pay into the  
343 Fund an assessment for the following year, in an amount determined by the State Corporation  
344 Commission pursuant to subsection A of § 38.2-5021, in the manner required by the plan of operation.  
345 Liability insurance for the purposes of this provision shall include the classes of insurance defined in  
346 §§ 38.2-117 through 38.2-119 and the liability portions of the insurance defined in §§ 38.2-124, 38.2-125  
347 and 38.2-130 through 38.2-132.

348 1. All annual assessments against liability insurance carriers shall be made on the basis of net direct  
349 premiums written for the business activity which forms the basis for each such entity's inclusion as a  
350 funding source for the Program in the Commonwealth during the prior year ending December 31, as  
351 reported to the State Corporation Commission, and shall be in the proportion that the net direct  
352 premiums written by each on account of the business activity forming the basis for their inclusion in the  
353 Program bears to the aggregate net direct premiums for all such business activity written in this  
354 Commonwealth by all such entities. For purposes of this chapter "net direct premiums written" means  
355 gross direct premiums written in this Commonwealth on all policies of liability insurance less (i) all  
356 return premiums on the policy, (ii) dividends paid or credited to policyholders, and (iii) the unused or  
357 unabsorbed portions of premium deposits on liability insurance.

358 2. The entities listed in this subsection shall not be individually liable for an annual assessment in  
359 excess of one quarter of one percent of that entity's net direct premiums written.

360 3. Liability insurance carriers shall be entitled to recover their initial and annual assessments through  
361 (i) a surcharge on future policies, (ii) a rate increase applicable prospectively, or (iii) a combination of  
362 the two, at the discretion of the State Corporation Commission.

363 F. On and after January 1, 1989, a participating physician covered under the provisions of this  
364 section who has paid an annual assessment for a particular calendar year to the Program and who retires  
365 from the practice of medicine during that particular calendar year shall be entitled to a refund of  
366 one-half of his or her annual assessment for the calendar year if he or she retires on or before July 1 of

367 that year.

368 G. Whenever the State Corporation Commission determines the Fund is actuarially sound in  
369 conjunction with actuarial investigations conducted pursuant to ~~§ 38.2-5021~~, it shall enter an order  
370 suspending the assessment required under subsection D. An annual assessment up to \$250 shall be  
371 reinstated whenever the State Corporation Commission determines that such assessment is required to  
372 maintain the Fund's actuarial soundness.

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