

# VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

## CHAPTER 822

*An Act to amend and reenact § 2.2-1839 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 2.2-1839.1, relating to risk management plans; physicians and community hospitals.*

[S 601]

Approved April 14, 2004

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

**1. That § 2.2-1839 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 2.2-1839.1 as follows:**

§ 2.2-1839. Risk management plans administered by the Department of the Treasury's Risk Management Division for political subdivisions, constitutional officers, etc.

A. The Division shall establish a risk management ~~plan~~ *plans* subject to the approval of the Governor, which may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide protection against liability imposed by law for damages and against incidental medical payments resulting from any claim made against any county, city or town; authority, board, or commission; sanitation, soil and water, planning or other district; public service corporation owned, operated or controlled by a locality or local government authority; constitutional officer; state court-appointed attorney; affiliate or foundation of a state department, agency or institution; any clinic that is organized in whole or primarily for the delivery of health care services without charge; *any participant who satisfies the requirements of § 2.2-1839.1*; or the officers, agents or employees of any of the foregoing for acts or omissions of any nature while in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

For the purposes of this section, "delivery of health care services without charge" shall be deemed to include the delivery of dental, medical or other health services when a reasonable minimum fee is charged to cover administrative costs.

B. Participation in the risk management ~~plan~~ *plans* shall be voluntary and shall be approved by *both* the participant's respective governing body or by the State Compensation Board in the case of constitutional officers, by the office of the Executive Secretary of the Virginia Supreme Court in the case of state court-appointed attorneys, and by the Division. *Those participants under § 2.2-1839.1 shall not be required to obtain approval from any entity other than the Division.* Upon such approval, the Division shall assume sole responsibility for plan management, compliance, or removal.

C. The Division shall provide for the legal defense of ~~participating entities~~ *participants* and shall reserve the right to settle or defend claims presented under the plan. All prejudgment settlements shall be approved in advance by the Division.

D. The risk management ~~plan~~ *plans* established pursuant to this section shall provide for the establishment of a trust ~~fund~~ *funds* for the payment of claims covered under such ~~plan~~ *plans*. The funds shall be invested in the manner provided in § 2.2-1806 and interest shall be added to the fund as earned.

~~The trust fund~~ *Trust funds* shall also provide for payment of legal defense costs, actuarial costs, administrative costs, contractual costs and all other expenses related to the administration of such ~~plan~~ *plans*.

E. The Division shall, in its sole discretion, set the premium, *deductible*, and administrative cost to be paid to it for providing a risk management ~~plan~~ *plans* established pursuant to this section. The premiums and administrative costs set by the Division shall be payable in the amounts at the time and in the manner that the Division in its sole discretion shall require. The premiums, *deductibles*, and administrative costs need not be uniform among participants, but shall be set so as to best ensure the financial stability of the ~~plan~~ *plans*.

§ 2.2-1839.1. *Medical malpractice liability insurance for physicians and sole community hospitals.*

A. *Any physician licensed by the Virginia Board of Medicine, together with his employees and professional medical business entity, or any sole community hospital as defined by § 1886 (d) 5 (D) (iii) of the Social Security Act, together with its employees, shall be entitled to purchase medical malpractice liability insurance in an amount equal to the limitation on recovery set forth in § 8.01-581.15 under a program administered by the Department of the Treasury's Risk Management Division, pursuant to § 2.2-1839, covering all liability imposed by law for damages arising from the provision of health care to all patients, subject to the requirements of this section.*

B. *In order to purchase medical malpractice liability insurance under this section, a physician shall: (i) hold a valid license issued by the Virginia Board of Medicine, (ii) have the majority of his medical practice in Virginia, (iii) participate in the Medicaid program or provide health care to patient clinics as referenced in § 2.2-1839, if such a clinic is reasonably available, for the equivalent of one day per*

month, (iv) participate in the Virginia Birth Related Neurological Injury Fund, if eligible, (v) have active hospital privileges or participate in a quality assurance committee pursuant to § 8.01-581.17, (vi) participate in and cooperate at his or her own expense with a medical risk management program as defined by the Division, (vii) fulfill other criteria as established by the Division, and (viii) agree in writing to the Division's authority to assess and to assign its policy, individually or collectively, to a third party if the third party is comparable as defined by the Division.

C. In order to purchase medical malpractice liability insurance under this section, a sole community hospital shall: (i) hold a valid license issued by Virginia Department of Health, (ii) participate in the Medicaid program or support financially or in kind a patient clinic as referenced in § 2.2-1839, (iii) participate in the Virginia Birth Related Neurological Injury Fund, if eligible, (iv) participate in and cooperate at its own expense with a medical risk management program as defined by the Division, (v) fulfill other criteria established by the Division, and (vi) agree in writing to the Division's authority to assess, and to assign its policy, individually or collectively, to a third party if the third party is comparable as defined by the Division.

D. Physicians or sole community hospitals that satisfy the requirements of this section and elect to purchase medical malpractice liability insurance coverage from the Division shall pay the Division the premium, which is to be determined in accordance with subsection E of § 2.2-1839. Physicians or sole community hospitals shall not be charged that portion of the premium related to care provided to clinics as referenced in § 2.2-1839. The Division may terminate coverage for physicians or sole community hospitals for (i) failing to pay premiums or (ii) failing to satisfy the requirements of subsections B and C by providing written notice of such termination by first class mail no later than 30 days prior to termination of coverage.

E. Physicians who cease to practice in Virginia because of retirement, disability or death, or who fail to maintain a majority of medical practice in Virginia while covered by a medical malpractice liability insurance policy provided by the Division, shall be entitled to purchase extended reporting period endorsement coverage for a period not to exceed 10 years from the date of the event.

F. Physicians or sole community hospitals may renew coverage and purchase medical malpractice liability insurance pursuant to this section provided that requirements in subsection B or C are met at the time of renewal.

G. The Division may offer coverage for general liability to sole community hospitals that satisfy the requirements of subsection C.

**2. That the joint subcommittee studying certain matters pertaining to risk management plans is established. The joint subcommittee shall consist of seven legislative members to be appointed as follows: three members of the Senate to be appointed by the Senate Committee on Rules and four members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates. The joint subcommittee shall elect a chairman and vice chairman from among its membership, who shall be members of the General Assembly. In conducting its study, the joint subcommittee shall determine (i) the availability and affordability of medical malpractice liability insurance for physicians and hospitals in the Commonwealth; (ii) the practices of medical malpractice liability insurance carriers related to the establishment of premiums and the determination of increases in such premiums and the impact that the medical malpractice liability insurance climate is having on patient access to quality healthcare and on the ability of patients to recover damages from the settlement or verdict of a medical malpractice action; (iii) the impact of the new risk management program on the private sector; and (iv) the insurance-related programs established in other states to ensure the availability and affordability of medical malpractice liability insurance for physicians and hospitals within their jurisdictions and the feasibility and practicability of establishing such programs within the Commonwealth. The joint subcommittee shall provide opportunities for the participation of the Medical Society of Virginia, the Virginia Trial Lawyers Association, representatives of medical malpractice liability insurance carriers, the Virginia Hospital and Healthcare Association, and other interested parties or entities affected by the study. Administrative staff support shall be provided by the Office of the Clerk of the Senate. Legal, research, policy analysis, and other services as requested by the joint subcommittee shall be provided by the Division of Legislative Services. Technical assistance shall be provided by the State Corporation Commission's Bureau of Insurance. All agencies of the Commonwealth shall provide assistance to the joint subcommittee for this study, upon request. The joint subcommittee shall be limited to four meetings for the 2004 interim, and the direct costs of this study shall not exceed \$7,000 without approval as set out in this bill. Approval for unbudgeted nonmember-related expenses shall require the written authorization of the chairman of the joint subcommittee and the respective Clerk. If a companion joint bill of the other chamber is agreed to, written authorization of both Clerks shall be required. No recommendation of the joint subcommittee shall be adopted if a majority of the Senate members or a majority of the House members appointed to the joint subcommittee (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the joint subcommittee. The joint**

subcommittee shall complete its meetings by November 30, 2004. The chairman shall present the findings and recommendations of the joint subcommittee to the Senate Committee for Courts of Justice and the House Committee for Courts of Justice no later than December 1, 2004. The chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2005 Regular Session of the General Assembly. The executive summary shall state whether the joint subcommittee intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website. Implementation of this bill is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may approve or disapprove expenditures for this study, extend or delay the period for the conduct of the study, or authorize additional meetings during the 2004 interim.

3. That the provisions of this act establishing the authority and requirements for the purchase of general liability or medical malpractice insurance shall be effective July 1, 2006.