042740524

HOUSE BILL NO. 1407

Offered January 23, 2004

A BILL to amend and reenact §§ 38.2-5001, 38.2-5020 and 38.2-5021 of the Code of Virginia, relating to the Virginia Birth-Related Neurological Injury Compensation Act; assessment of particpating hospitals and participating physicians.

Patron—Tata

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-5001, 38.2-5020 and 38.2-5021 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-5001. Definitions.

As used in this chapter:

"Birth-related neurological injury" means injury to the brain or spinal cord of an infant caused by the deprivation of oxygen or mechanical injury occurring in the course of labor, delivery or resuscitation necessitated by a deprivation of oxygen or mechanical injury that occurred in the course of labor or delivery, in a hospital which renders the infant permanently motorically disabled and (i) developmentally disabled or (ii) for infants sufficiently developed to be cognitively evaluated, cognitively disabled. In order to constitute a "birth-related neurological injury" within the meaning of this chapter, such disability shall cause the infant to be permanently in need of assistance in all activities of daily living. This definition shall apply to live births only and shall not include disability or death caused by genetic or congenital abnormality, degenerative neurological disease, or maternal substance abuse. The definition provided here shall apply retroactively to any child born on and after January 1, 1988, who suffers from an injury to the brain or spinal cord caused by the deprivation of oxygen or mechanical injury occurring in the course of labor, delivery or resuscitation in the immediate postdelivery period in a hospital.

"Claimant" means any person who files a claim pursuant to § 38.2-5004 for compensation for a birth-related neurological injury to an infant. Such claims may be filed by any legal representative on behalf of an injured infant; and, in the case of a deceased infant, the claim may be filed by an administrator, executor, or other legal representative.

"Commission" means the Virginia Workers' Compensation Commission.

"Participating hospital" ~~means a~~*includes every* hospital licensed in Virginia ~~which at the time of the injury (i) had in force an agreement with the Commissioner of Health or his designee, in a form prescribed by the Commissioner, whereby the hospital agreed to participate in the development of a program to provide obstetrical care to patients eligible for Medical Assistance Services and to patients who are indigent, and upon approval of such program by the Commissioner of Health, to participate in its implementation, (ii) had in force an agreement with the State Department of Health whereby the hospital agreed to submit to review of its obstetrical service, as required by subsection C of § 38.2-5004, and (iii) had paid the participating hospital assessment pursuant to § 38.2-5020 for the period of time in which the birth-related neurological injury occurred~~. The term also includes employees of such hospitals, excluding *participating* physicians or nurse-midwives ~~who are eligible to qualify as participating physicians~~, acting in the course of and in the scope of their employment.

"Participating physician" means a physician licensed in Virginia to practice medicine, who practices obstetrics or performs obstetrical services either full or part time or, as authorized in the plan of operation, a licensed nurse-midwife who performs obstetrical services, either full or part time, within the scope of such licensure ~~and who at the time of the injury (i) had in force an agreement with the Commissioner of Health or his designee, in a form prescribed by the Commissioner, whereby the physician agreed to participate in the development of a program to provide obstetrical care to patients eligible for Medical Assistance Services and to patients who are indigent, and upon approval of such program by the Commissioner of Health, to participate in its implementation, (ii) had in force an agreement with the Board of Medicine whereby the physician agreed to submit to review by the Board of Medicine as required by subsection B of § 38.2-5004, and (iii) had paid the participating physician assessment pursuant to § 38.2-5020 for the period of time in which the birth-related neurological injury occurred~~. The term "participating physician" includes a partnership, corporation, professional corporation, professional limited liability company or other entity through which the participating physician practices.

"Program" means the Virginia Birth-Related Neurological Injury Compensation Program established by this chapter.

§ 38.2-5020. Assessments.

A. ~~A physician who otherwise qualifies as a~~ *Every* participating physician ~~pursuant to this chapter may become a participating physician in the Program for a particular calendar year by paying~~ *shall pay* an annual participating physician assessment to the Program in the amount of $5,000 on or before December 1 of the previous year, in the manner required by the plan of operation. The board may authorize a prorated participating physician or participating hospital assessment for a particular year in its plan of operation, but such prorated assessment shall not become effective until the physician or hospital has given at least ~~thirty~~*30* days' notice to the Program of the request for a prorated assessment.

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

C. ~~A hospital that otherwise qualifies as a participating hospital pursuant to this chapter may become a~~ *Every* participating hospital in the Program ~~for a particular year by paying~~ *shall pay* an annual participating hospital assessment to the Program, on or before December 1 of the previous year, amounting to ~~fifty dollars~~*$50* per live birth for the prior year, as reported to the Department of Health in the Annual Survey of Hospitals. The participating hospital assessment shall not exceed $150,000 for any participating hospital in any ~~twelve~~*12*-month period.

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

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

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

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

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

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

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

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

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

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

~~F.~~ *E.* On and after January 1, 1989, a participating physician covered under the provisions of this section who has paid an annual assessment for a particular calendar year to the Program and who retires

from the practice of medicine during that particular calendar year shall be entitled to a refund of one-half of his or her annual assessment for the calendar year if he or she retires on or before July 1 of that year.

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

G. All participating hospitals shall pay the participating hospital assessment pursuant to this section. All participating physicians shall pay the participating physician assessment pursuant to this section. Failure by a participating hospital or participating physician to pay the mandatory annual assessment shall constitute a specific waiver of protection of the limitation on recovery in certain medical malpractice actions as set forth in § 8.01-581.15.

§ 38.2-5021. Actuarial investigation, valuations, gain/loss analysis; notice if assessments prove insufficient.

A. The Bureau of Insurance of the State Corporation Commission shall undertake an actuarial investigation of the requirements of the Fund based on the Fund's experience in the first year of operation, including without limitation the assets and liabilities of the Fund. Pursuant to such investigation, the State Corporation Commission shall establish the rate of contribution of the entities listed in subsection ~~E~~ *D* of § 38.2-5020 for the tax year beginning January 1, 1989.

Following the initial valuation, the State Corporation Commission shall cause an actuarial valuation to be made of the assets and liabilities of the Fund no less frequently than biennially. Pursuant to the results of such valuations, the State Corporation Commission shall prepare a statement as to the contribution rate applicable to contributors listed in subsection ~~E~~ *D* of § 38.2-5020. However, at no time shall the rate be greater than one quarter of one percent of net direct premiums written.

B. In the event that the State Corporation Commission finds that the Fund cannot be maintained on an actuarially sound basis subject to the maximum assessments listed in § 38.2-5020, the Commission shall promptly notify the Speaker of the House of Delegates, the President of the Senate, the board of directors of the Program, and the Virginia Workers' Compensation Commission.