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HOUSE BILL NO. 350**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on General Laws
on February 10, 2004)

(Patron Prior to Substitute—Delegate Albo)

*A BILL to amend and reenact § 2.2-1839 of the Code of Virginia, relating to the Department of the Treasury; risk management plans; inclusion of guardians.***Be it enacted by the General Assembly of Virginia:****1. That § 2.2-1839 of the Code of Virginia is amended and reenacted as follows:**

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

A. The Division shall establish ~~aone or more~~ risk management ~~plan~~ *plans specifying the terms and conditions for coverage*, 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 individual serving as a guardian or limited guardian as defined in § 37.1-134.6 for any consumer of a community services board or behavioral health authority or any resident of a state facility operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services*; 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 shall be voluntary and shall be approved by 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, *by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services for any individual serving as a guardian or limited guardian for any patient or resident of a state facility operated by such Department or by the executive director of a community services board or behavioral health authority for any individual serving as a guardian or limited guardian for a consumer of such board or authority*, and by the Division. Upon such approval, the Division shall assume sole responsibility for plan management, compliance, or removal. *The Department of Mental Health, Mental Retardation and Substance Abuse Services shall be responsible for paying the cost of coverage for eligible persons performing services as a guardian or limited guardian for any patient or resident of a state facility operated by the Department. The applicable community services board or behavioral health authority shall be responsible for paying the cost of coverage for eligible persons performing services as a guardian or limited guardian for consumers of such board or authority.*

C. The Division shall provide for the legal defense of participating entities 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 established pursuant to this section shall provide for the establishment of a trust fund for the payment of claims covered under such plan. 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 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.

E. The Division shall, in its sole discretion, set the premium and administrative cost to be paid to it for providing a risk management plan 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 and administrative costs need not be uniform among participants, but shall be set so as to best ensure the financial stability of the plan.

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