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SENATE BILL NO. 601

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Newman)

(Patrons Prior to Substitute—Senators Newman [SBs 415 and 601] and Potts [SB 216])

Senate Amendments in [] — February 16, 2004

A *BILL 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.*

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 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, and by the Division. Upon such approval, the Division shall assume sole responsibility for plan management, compliance, or removal. *Those participants under § 2.2-1839.1 shall not be required to obtain approval from any entity other than the Division.*

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 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 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 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. *Patient access to physicians and hospitals; medical malpractice liability insurance.*

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 with an aggregate three times the amount of the limitation from 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) 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, (iii) participate in the Virginia Birth

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60 *Related Neurological Injury Fund if eligible, (iv) have active hospital privileges or participate in a*
61 *quality assurance committee pursuant to § 8.01-581.17 and (v) have been (a) refused a medical*
62 *malpractice liability insurance premium quote by two or more private insurance carriers actively writing*
63 *medical malpractice liability insurance in the Commonwealth or (b) have had the medical malpractice*
64 *liability insurance carrier that last provided coverage to the physician become insolvent or to have*
65 *stopped writing medical malpractice liability insurance for physicians in the Commonwealth after*
66 *February 1, 2004, [~~and~~ or] have received medical malpractice liability insurance premium quotes*
67 *from at least two private insurance carriers that exceed 175 percent of the premium last paid by the*
68 *physician to a private insurance carrier.*

69 *C. In order to purchase medical malpractice liability insurance under this section, a sole community*
70 *hospital shall; (i) hold a valid license issued by Virginia Department of Health, (ii) participate in the*
71 *Medicaid program or support financially or in kind a patient clinic as referenced in § 2.2-1839, (iii)*
72 *participate in the Virginia Birth Related Neurological Injury Fund, (iv) have been refused a medical*
73 *malpractice liability insurance premium quote by at least two private insurance carriers actively writing*
74 *medical malpractice liability insurance for sole community hospitals in the Commonwealth .*

75 *D. Physicians or sole community hospitals that satisfy the requirements of this section and elect to*
76 *purchase medical malpractice liability insurance coverage from the Division shall pay the Division the*
77 *premium, which is to be determined in accordance with subsection E of § 2.2-1839. Physicians or sole*
78 *community hospitals shall not be charged that portion of the premium related to care provided to clinics*
79 *as referenced in § 2.2-1839.*

80 *E. A physician or sole community hospital who reports a claim that is covered by the medical*
81 *malpractice liability insurance issued pursuant to this section shall pay to the Division expenses related*
82 *to defending such claim, not to exceed \$10,000, as incurred for each claim.*

83 *F. Physicians who elect to retire, while covered by a medical malpractice liability insurance policy*
84 *provided by the Division, shall be entitled to purchase extended reporting period endorsement coverage*
85 *for a period not to exceed 10 years from the date of retirement.*

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

89 **2. That the chairman of the Senate Committee on Rules shall appoint a subcommittee of three**
90 **members of the Senate to study the availability and affordability of medical malpractice liability**
91 **insurance for physicians and hospitals in the Commonwealth, and the practices of medical**
92 **malpractice liability insurance carriers related to the establishment of premiums and the**
93 **determination of increases in such premiums and the impact that the medical malpractice liability**
94 **insurance climate is having on patient access to quality healthcare and on the ability of patients to**
95 **recover damages from the settlement or verdict of a medical malpractice action. The Division of**
96 **Legislative Services shall provide staffing and support to the subcommittee. The Bureau of**
97 **Insurance of the State Corporation Commission shall provide insurance information and assistance**
98 **to the subcommittee. The subcommittee shall receive input from the Medical Society of Virginia,**
99 **the Virginia Trial Lawyers Association, representatives of medical malpractice liability insurance**
100 **carriers, and the Virginia Hospital and Healthcare Association. The subcommittee shall report its**
101 **findings to the chairman of the Senate Committee on Courts of Justice prior to December 1, 2004.**
102 **Notwithstanding any other provision of law, members of the subcommittee shall receive only that**
103 **per diem specifically authorized for this study by the Senate Committee on Rules.**

104 **3. That medical malpractice liability insurance issued pursuant to § 2.2-1839.1 shall not be**
105 **provided after July 1, 2007.**

106 **4. That an emergency exists and this act is in force from its passage.**