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SENATE BILL NO. 601

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on March 3, 2004)

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

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~~ *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

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60 as referenced in § 2.2-1839, if such a clinic is reasonably available, for the equivalent of one day per
61 month, (iv) participate in the Virginia Birth Related Neurological Injury Fund, if eligible, (v) have active
62 hospital privileges or participate in a quality assurance committee pursuant to § 8.01-581.17, (vi)
63 participate in and cooperate at his or her own expense with a medical risk management program as
64 defined by the Division, (vii) fulfill other criteria as established by the Division, and (viii) agree in
65 writing to the Division's authority to assess and to assign its policy, individually or collectively, to a
66 third party if the third party is comparable as defined by the Division.

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

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. The Division may terminate coverage for physicians or sole community
80 hospitals for (i) failing to pay premiums or (ii) failing to satisfy the requirements of subsections B and
81 C by providing written notice of such termination by first class mail no later than 30 days prior to
82 termination of coverage.

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

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

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

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

122 subcommittee shall be adopted if a majority of the Senate members or a majority of the House
123 members appointed to the joint subcommittee (i) vote against the recommendation and (ii) vote for
124 the recommendation to fail notwithstanding the majority vote of the joint subcommittee. The joint
125 subcommittee shall complete its meetings by November 30, 2004. The chairman shall present the
126 findings and recommendations of the joint subcommittee to the Senate Committee for Courts of
127 Justice and the House Committee for Courts of Justice no later than December 1, 2004. The
128 chairman shall submit to the Division of Legislative Automated Systems an executive summary of
129 its findings and recommendations no later than the first day of the 2005 Regular Session of the
130 General Assembly. The executive summary shall state whether the joint subcommittee intends to
131 submit to the General Assembly and the Governor a report of its findings and recommendations
132 for publication as a document. The executive summary and report shall be submitted as provided
133 in the procedures of the Division of Legislative Automated Systems for the processing of legislative
134 documents and reports and shall be posted on the General Assembly's website. Implementation of
135 this bill is subject to subsequent approval and certification by the Joint Rules Committee. The
136 Committee may approve or disapprove expenditures for this study, extend or delay the period for
137 the conduct of the study, or authorize additional meetings during the 2004 interim.
138 3. That the provisions of this act establishing the authority and requirements for the purchase of
139 general liability or medical malpractice insurance shall be effective July 1, 2006.

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