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## SENATE BILL NO. 348

Offered January 9, 2008

Prefiled January 8, 2008

A *BILL to amend and reenact § 2.2-1839 of the Code of Virginia, as it is currently effective and as it may become effective, relating to the Department of the Treasury; Risk Management Division; coverage for area agencies on aging.*

Patron—Blevins

Referred to Committee on General Laws and Technology

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

**1. That § 2.2-1839 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted as follows:**

§ 2.2-1839. (Contingent expiration date July 1, 2008 - see Editor's note) 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 one or more risk management plans specifying the terms and conditions for coverage, subject to the approval of the Governor, and which plans 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; any attorney for any claim arising out of the provision of pro bono legal services for custody and visitation to an eligible indigent person under a program approved by the Supreme Court of Virginia or the Virginia State Bar; any receiver for an attorney's practice appointed under § 54.1-3900.01 or 54.1-3936; 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 local chapter or program of the Meals on Wheels Association of America or any area agency on aging, providing meal and nutritional services to persons who are elderly, homebound, or disabled, *including insurance for vehicles used to provide nutritional services by such entities*; any individual serving as a guardian or limited guardian as defined in § 37.2-1000 for any consumer of a community services board or behavioral health authority or any patient or 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, including attorneys appointed to serve as receivers under § 54.1-3900.01 or 54.1-3936, or attorneys under Virginia Supreme Court or Virginia State Bar approved programs, 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 Virginia Supreme Court shall pay the cost for coverage of eligible persons performing services in approved programs of the Virginia Supreme Court or the Virginia State Bar. 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

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59 to settle or defend claims presented under the plan. All prejudgment settlements shall be approved in  
60 advance by the Division.

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

64 The trust fund shall also provide for payment of legal defense costs, actuarial costs, administrative  
65 costs, contractual costs and all other expenses related to the administration of such plan.

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

71 F. Notwithstanding any provision to the contrary, a sheriff's department of any city or county, or a  
72 regional jail shall not be precluded from securing excess liability insurance coverage beyond the  
73 coverage provided by the Division pursuant to this section.

74 § 2.2-1839. (Contingent effective date July 1, 2008 - see Editor's note) Risk management plans  
75 administered by the Department of the Treasury's Risk Management Division for political subdivisions,  
76 constitutional officers, etc.

77 A. The Division shall establish one or more risk management plans specifying the terms and  
78 conditions for coverage, subject to the approval of the Governor, and which plans may be purchased  
79 insurance, self-insurance or a combination of self-insurance and purchased insurance to provide  
80 protection against liability imposed by law for damages and against incidental medical payments  
81 resulting from any claim made against any county, city or town; authority, board, or commission;  
82 sanitation, soil and water, planning or other district; public service corporation owned, operated or  
83 controlled by a locality or local government authority; constitutional officer; state court-appointed  
84 attorney; any attorney for any claim arising out of the provision of pro bono legal services for custody  
85 and visitation to an eligible indigent person under a program approved by the Supreme Court of Virginia  
86 or the Virginia State Bar; any receiver for an attorney's practice appointed under § 54.1-3900.01 or  
87 54.1-3936; affiliate or foundation of a state department, agency or institution; any clinic that is  
88 organized in whole or primarily for the delivery of health care services without charge; any local chapter  
89 or program of the Meals on Wheels Association of America or any area agency on aging, providing  
90 meal and nutritional services to persons who are elderly, homebound, or disabled, *including insurance*  
91 *for vehicles used to provide nutritional services by such entities*; any individual serving as a guardian or  
92 limited guardian as defined in § 37.2-1000 for any consumer of a community services board or  
93 behavioral health authority or any patient or resident of a state facility operated by the Department of  
94 Mental Health, Mental Retardation and Substance Abuse Services; any participant who satisfies the  
95 requirements of § 2.2-1839.1; or the officers, agents or employees of any of the foregoing for acts or  
96 omissions of any nature while in an authorized governmental or proprietary capacity and in the course  
97 and scope of employment or authorization.

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

101 B. Participation in the risk management plans shall be voluntary and shall be approved by both the  
102 participant's respective governing body or by the State Compensation Board in the case of constitutional  
103 officers, by the office of the Executive Secretary of the Virginia Supreme Court in the case of state  
104 court-appointed attorneys, including attorneys appointed to serve as receivers under § 54.1-3900.01 or  
105 54.1-3936, or attorneys under Virginia Supreme Court or Virginia State Bar approved programs, by the  
106 Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services  
107 for any individual serving as a guardian or limited guardian for any patient or resident of a state facility  
108 operated by such Department or by the executive director of a community services board or behavioral  
109 health authority for any individual serving as a guardian or limited guardian for a consumer of such  
110 board or authority, and by the Division. Those participants under § 2.2-1839.1 shall not be required to  
111 obtain approval from any entity other than the Division. Upon such approval, the Division shall assume  
112 sole responsibility for plan management, compliance, or removal. The Virginia Supreme Court shall pay  
113 the cost for coverage of eligible persons performing services in approved programs of the Virginia  
114 Supreme Court or the Virginia State Bar. The Department of Mental Health, Mental Retardation and  
115 Substance Abuse Services shall be responsible for paying the cost of coverage for eligible persons  
116 performing services as a guardian or limited guardian for any patient or resident of a state facility  
117 operated by the Department. The applicable community services board or behavioral health authority  
118 shall be responsible for paying the cost of coverage for eligible persons performing services as a  
119 guardian or limited guardian for consumers of such board or authority.

120 C. The Division shall provide for the legal defense of participants and shall reserve the right to settle

121 or defend claims presented under the plan. All prejudgment settlements shall be approved in advance by  
122 the Division.

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

126 Trust funds shall also provide for payment of legal defense costs, actuarial costs, administrative costs,  
127 contractual costs and all other expenses related to the administration of such plans.

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

134 F. Notwithstanding any provision to the contrary, a sheriff's department of any city or county, or a  
135 regional jail shall not be precluded from securing excess liability insurance coverage beyond the  
136 coverage provided by the Division pursuant to this section.