

# VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

## CHAPTER 35

*An Act to amend and reenact § 2.2-1839 of the Code of Virginia, relating to coverage for pro bono attorneys under risk management plan.*

[H 712]

Approved February 27, 2014

**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, 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; *any attorney authorized by the Virginia State Bar for any claim arising out of the provision of pro bono legal services in a Virginia State Bar approved program*; 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; volunteer drivers for any nonprofit organization providing transportation for persons who are elderly, disabled, or indigent to medical treatment and services, provided the volunteer driver has successfully completed training approved by the Division; 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, and volunteer drivers for such entities who have successfully completed training approved by the Division; any individual serving as a guardian or limited guardian as defined in § 64.2-2000 for any individual receiving services from a community services board or behavioral health authority or from a state facility operated by the Department of Behavioral Health and Developmental Services; for nontransportation-related state construction contracts less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317; 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.

For purposes of this section, a sheriff or deputy sheriff shall be considered to be acting in the scope of employment or authorization when performing any law-enforcement-related services authorized by the sheriff, and coverage for such service by the Division shall not be subject to any prior notification to or authorization by the Division.

B. In any case in which the coverage provided by one or more risk management plans established pursuant to this section applies, no sheriff or deputy shall be liable for any verdict or civil judgment in his individual capacity in excess of the approved maximum coverage amount as established by the Division and set forth in the respective coverage plans, which shall be at least \$1.5 million for sheriffs and deputies. If a jury returns an award in excess of \$1.5 million, the judge shall reduce the award and enter judgment against the sheriff or deputy for such damages in the amount of \$1.5 million, provided that this shall not affect the ability of a court to order a remittitur. Nothing in this subsection shall be construed to limit the ability of a plaintiff to pursue the full amount of any judgment against a sheriff or deputy from any available insurance coverage. To the extent that any such award exceeds the coverage available under such risk management plans, the sheriff and any deputy shall be considered immune defendants under subsection F of § 38.2-2206. Automobile insurance carried by a sheriff or deputy in his personal capacity shall not be available to satisfy any verdict or civil judgment under the circumstances in which coverage is provided by one or more risk management plans.

C. 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~~ *approved programs; by the Virginia State Bar in the case of attorneys providing pro bono services under Virginia State Bar approved programs;* by the Commissioner of the Department of Behavioral Health and Developmental Services for any individual serving as a guardian or limited guardian for any individual receiving services from a state facility operated by the 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 any individual receiving services from the 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~~. *The Virginia State Bar shall pay the cost for coverage of eligible attorneys providing pro bono services in Virginia State Bar approved programs.* The Department of Behavioral Health and Developmental Services shall be responsible for paying the cost of coverage for eligible persons performing services as a guardian or limited guardian for any individual receiving services from 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 individuals receiving services from the board or authority.

D. 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.

E. 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.

F. 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.

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