

## State Corporation Commission 2010 Fiscal Impact Statement

**1. Bill Number:** HB87

House of Origin      X      Introduced                  Substitute                  Engrossed

Second House                  In Committee              Substitute                  Enrolled

**2. Patron:**        Marshall, R.G.

**3. Committee:** Courts of Justice

**4. Title:**        **Medical incident compensation; penalties.**

**5. Summary:** Establishes a medical compensation system for individuals who have sustained a medical injury caused by the unintended or unexpected adverse consequence or unanticipated outcome of health care rendered to the patient or the failure of the health care provider to render or provide health care to the patient. The compensation system will be the exclusive remedy for medical malpractice except where there is clear and convincing evidence that the health care provider intentionally or willfully caused or intended to cause a medical injury. The bill provides that the State Corporation Commission shall approve the policy forms used by medical incident insurers and set minimum standards of service for such insurers (voluntary and involuntary market). Rates, except for assigned risk policies, remain file and use. Where a medical provider cannot obtain medical incident insurance on its own, the provider may apply to the Commission to be assigned to a medical incident insurer for the coverage required by § 38.2-6439 of the Code of Virginia. With respect to assigned risk policies, the Commission shall establish rules and regulations, and rates and schedule rates. With respect to assigned risk policies, the Commission may refuse to assign an application, approve the rejection of an application by an insurance carrier, approve the cancellation of a medical incident insurance policy, and refuse to approve the renewal or reassignment of an expiring policy. The Commission shall not be required to disclose its reasons for taking any of these actions. Creates the Medical Injury Compensation Board composed of three members with qualifications prescribed for judges of courts of record. The Board will be funded by a tax levied on all liability insurers engaged in writing liability insurance in Virginia of 2.5 percent of net direct premiums for the year ending December 31. The bill also establishes an Uninsured Provider Fund to be maintained and administered by the Board. To provide funds for the Fund, the bill provides an assessment of a tax of not more than one-fourth of one percent of the liability premiums as determined in the same manner as the tax to fund the Board. This bill provides that the liability companies assessed for these taxes shall not be taxed on their liability premiums under any other law in the Commonwealth except for those taxes set forth in §§ 65.2-1101 and 65.2-1201 and Chapter 4 of Title 38.2.

**6.** Fiscal Impact estimates are tentative; see Item 8.

**7. Budget amendment necessary:** Not sure; Medical Injury Compensation Board is created

**8. Fiscal implications:** If liability insurers paid the tax levied by House Bill 87 and paid that tax in lieu of insurance premium license tax, there would be a significant fiscal impact.

According to the 2008 Virginia Premium Profile for Property and Casualty Insurers, insurers writing liability lines of insurance paid \$88,590,591 in insurance premium license tax in Calendar Year 2008, the last year for which figures are available.

The Bureau of Insurance cannot estimate the cost for establishing the Medical Injury Compensation Board (Board members, staff, office, equipment, supplies, salary, travel expenses, etc.). Under the bill, the Bureau of Insurance will have costs associated with administering assigned risk policies for this new line of insurance, including additional staffing and additional actuarial and economic consultants' costs which are estimated at \$250,000 per year.

**9. Specific agency or political subdivisions affected:** State Corporation Commission; Department of Health Professions; Department of Health, Workers' Compensation Commission; and Office of the Attorney General

**10. Technical amendment necessary:** The Bureau of Insurance offered the following technical comments to the patron on House Bill 87:

- A change to the definition of personal injury liability insurance under § 38.2-117 is not needed since a new line of medical incident insurance is being added under § 38.2-118.1. Additionally, on line 1046, reference to § 38.2-118.1 should be added to make it clear that the definition of personal injury liability insurance does not include medical incident insurance.
- On lines 1844-1848, the bill sets forth notice requirements for the termination of medical incident policies that are considerably shorter than the current notice requirements set forth in § 38.2-231 for the termination of medical malpractice insurance policies. In addition, § 38.2-231 was not amended to change "medical malpractice" insurance to "medical incident" insurance.
- On lines 1902-1904, no time frame has been set forth regarding the approval of forms nor is there any reference to § 38.2-317.

**11. Other comments:** The Bureau of Insurance offered the patron some substantive comments on HB 87:

- On Line 2532, the bill repeals the requirement that medical malpractice insurers provide a credit to physicians and hospitals who participate in the Virginia Birth-Related Neurological Injury Compensation Program. These credits run as much as 20% of the provider's annual medical

malpractice insurance premium. Without this requirement, it is uncertain whether insurers would continue to provide the credit.

- On Lines 2050-2052, the bill appears to conflict with § 38.2-5020 in that it does away with the annual assessment paid by liability insurers into the Virginia Birth-Related Neurological Injury Compensation Program. Based on past assessments, this would represent a loss of approximately \$13 million per year. In addition, no assessment to the Virginia Birth-Related Neurological Injury Compensation Program would come from medical incident insurers as defined in § 38.2-118.1 since this new section has not been added to subsection E of § 38.2-5020. Bureau of Insurance analysis indicates that this could result in a loss to the Virginia Birth-Related Neurological Injury Compensation Program of as much as \$500,000 per year (based on one quarter of one percent of the medical malpractice written premiums reported by licensed insurers on their 2008 annual statements.)
- It appears that liability insurers would be exempt from the premium license tax as set forth in § 58.1-2501 because of the language on Lines 2050-2052. This tax provision would divert approximately \$100 million from the General Fund to the Medical Injury Compensation Board since it appears that liability insurers would pay a tax for the administration of the Medical Injury Compensation Board in lieu of a premium license tax (see Line 8). In addition, it appears that liability insurers would be exempt from the tax set forth in § 65.2-1000 for the administration of the Workers' Compensation Commission because of the language on Lines 2050-2052.
- Health care providers may have to consider purchasing coverage for an extended reporting period (often called tail coverage) under their existing claims-made policies when they converted their coverage to the new medical incident insurance policy. For example, depending on the specialty, a physician could pay anywhere from \$30,600 to \$228,500 for the extended reporting period coverage. This would be in addition to the cost of the new medical incident insurance policy, the premium for which is unknown at this time.

**Date:** 01/24/10/V. Tompkins

cc: Secretary of Commerce and Trade  
Secretary of Health and Human Resources