

COMMONWEALTH OF VIRGINIA

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STATE CORPORATION COMMISSION BUREAU OF INSURANCE

May 10, 1988

Administrative Letter
1988 - 7

TO: All Licensed Liability Insurance Companies

FROM: Steven T. Foster
Commissioner of Insurance

RE: Virginia Birth-Related Neurological Injury Compensation Program

Chapter 50 of Title 38.2 of the Code of Virginia enacted by the 1987 General Assembly sets forth the provisions of the Virginia Birth-Related Neurological Injury Compensation Act. The Act provides that the birth-related neurological injury compensation program will be the exclusive remedy granted to an infant of a birth-related neurological injury as defined in the Act. The effect of the Act on medical professional liability premiums is to potentially reduce the losses attributable to neurologically injured infants that would normally be covered under a physician's or hospital's medical professional liability policy.

The consulting actuary for the Bureau of Insurance has issued an analysis that indicates that potential premium savings are in the 10% to 20% range for a mature claims made policy and that analogous discounts could be selected for other maturities of claims made policies. Accordingly, the Bureau of Insurance is requiring an appropriate rate credit for participating physicians and hospitals to be filed by every company that maintains a filing for medical professional liability insurance for physicians, surgeons and hospitals. Filings should be received by the Bureau of Insurance no later than July 1, 1988. The usual sixty day delayed effect applicable to medical malpractice rate filings will apply.

A company may want to amend its policy language by excluding births that are within the scope of the Act. The Bureau of Insurance will not approve such outright exclusions for use in Virginia. However, the Bureau will consider for approval policy amendments which exclude coverage, but which also permit a

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physician or hospital to buy-back coverage in the event of any invalidation of the Act. Attached is a sample endorsement that may be used for this purpose. Companies should submit proposed forms in the normal manner for review by the Bureau of Insurance.

In accordance with current guidelines, it will not be permissible for an insurer to cancel any in force policy due to the non-payment of any premium due on any other policy (currently in force or previously issued) for the same insured. Further, a return premium for a policy may not be applied to any other premium that is due from the same insured for a different policy.

STF:dw
Attachment

Virginia Birth-Related Neurological Injury Compensation Program
Provisional Premium Endorsement for Participating
Physicians and Hospitals

In consideration of the issuance of this policy, it is agreed that the premiums stated in declarations are provisional and are subject to recomputation to the extent that the exclusive remedy provisions of Virginia Code Section 38.2-5002 are declared to be invalid by a Court of competent jurisdiction.

In such an event, the premiums for this policy shall be recomputed in accordance with the rates, rating plans and rules that were in effect for the Company as of the inception date of this policy.

As a condition precedent to this policy's applicability to any claim(s) otherwise subject to the Virginia Birth-Related Neurological Injury Compensation Program, all additional premiums as a result of any recomputation provided for herein must be paid to the insurer within 90 days from the date of billing by the insurer.

Signature of Insured or
Authorized Representative

Date