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HOUSE BILL NO. 931

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 38.2-5004 and 38.2-5009.1 of the Code of Virginia, relating to Virginia Birth-Related Neurological Injury Compensation Act; publication of disciplinary actions; award eligibility.

Patron—Robinson

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-5004 and 38.2-5009.1 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-5004. Filing of claims; review by Board of Medicine; review by Department of Health; filing of responses; medical records.

A. 1. In all claims filed under this chapter, the claimant shall file with the Commission a petition, setting forth the following information:

a. The name and address of the legal representative and the basis for his representation of the injured infant;

b. The name and address of the injured infant;

c. The name and address of any physician providing obstetrical services who was present at the birth and the name and address of the hospital at which the birth occurred;

d. A description of the disability for which claim is made;

e. The time and place where the birth-related neurological injury occurred;

f. A brief statement of the facts and circumstances surrounding the birth-related neurological injury and giving rise to the claim;

g. All available relevant medical records relating to the person who allegedly suffered a birth-related neurological injury and an identification of any unavailable records known to the claimant and the reasons for their unavailability;

h. Appropriate assessments, evaluations, and prognoses and such other records and documents as are reasonably necessary for the determination of the amount of compensation to be paid to, or on behalf of, the injured infant on account of a birth-related neurological injury;

i. Documentation of expenses and services incurred to date, which indicates whether such expenses and services have been paid for, and if so, by whom; and

j. Documentation of any applicable private or governmental source of services or reimbursement relative to the alleged impairments.

2. The claimant shall furnish the Commission with as many copies of the petition as required for service upon the Program, any physician and hospital named in the petition, the Board of Medicine and the Department of Health, along with a \$15 filing fee. Upon receipt of the petition the Commission shall immediately serve the Program by service upon the agent designated to accept service on behalf of the Program in the plan of operation by registered or certified mail, and shall mail copies of the petition to any physician and hospital named in the petition, the Board of Medicine and the Department of Health.

B. Upon receipt of the petition or the filing of a claim relating to the conduct of a participating physician, the Department of Health Professions shall investigate the petition or claim, utilizing the same process as it does in investigating complaints filed under any provision contained in Title 54.1. Conduct of health care providers giving rise to disciplinary action shall be referred to the Board of Medicine for action consistent with the authority granted to the Board in Article 2 (§ 54.1-2911 et seq.) of Chapter 29 of Title 54.1. If a notice or order is issued by the Board of Medicine, a copy shall be mailed to the petitioner or claimant *and, to the extent permissible by federal and state law, published on the website of the Board of Medicine.*

C. Upon receipt of the petition or the filing of a claim relating to the conduct of a participating hospital, the Department of Health shall investigate the petition or claim, utilizing the same process as it does in investigating complaints filed under any provision of Title 32.1. If it determines that there is reason to believe that the alleged injury resulted from, or was aggravated by, substandard care on the part of the hospital at which the birth occurred, it shall take any appropriate action consistent with the authority granted to the Department of Health in Title 32.1.

D. The Program shall file a response to the petition and submit relevant written information relating to the issue of whether the injury alleged is a birth-related neurological injury within the meaning of this

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chapter within 10 days after the date the panel report prepared pursuant to subsection C of § 38.2-5008 is filed with the Commission.

E. Any hospital at which a birth occurred, upon receipt of written notice from the legal representative of an injured infant that he intends to file a petition under this chapter, shall promptly deliver to such person all available medical records relating to the infant who allegedly suffered a birth-related neurological injury.

F. As used in this chapter, fetal monitoring strips, whether printed or in electronic format, shall be deemed to constitute part of the medical records relating to an infant who allegedly suffered a birth-related neurological injury.

§ 38.2-5009.1. Minors dying after birth.

A. For births occurring on or after July 1, 2003, if the Commission determines that ~~an infant~~ *a minor* has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at the birth or that the birth occurred in a participating hospital, and the ~~infant~~ *minor* dies ~~within 180 days of birth~~ *prior to the minor's eighteenth birthday*, the Commission, in its discretion, may make an award in an amount not exceeding \$100,000 to the ~~infant's~~ *minor's* family, which award shall be in addition to and not in lieu of any other award providing compensation as provided in § 38.2-5009.

B. Prior to making an award pursuant to this section, the Commission shall conduct a hearing for the purpose of determining whether such award is appropriate and, if so, the proper amount of such an award and how it should be paid, after receiving evidence pertaining to sorrow, mental anguish, solace, grief associated with the death of the infant, and all other material factors that are relevant.

C. The hearing referred to in subsection B may be conducted as part of a hearing conducted pursuant to § 38.2-5009. The same procedural requirements applicable to a hearing conducted pursuant to § 38.2-5009 shall apply to a hearing conducted hereunder.

D. As used in this section, an infant's family means the infant's father, mother, or both, or if neither is a party to the proceeding, the infant's legal guardian.