

COMMONWEALTH OF VIRGINIA

**PUBLIC LIABILITY RISK
MANAGEMENT PLAN**

Administered by

Virginia Department of the Treasury
Division of Risk Management

Commonwealth of Virginia

Public Liability Risk Management Plan

The Governor of the Commonwealth of Virginia, in accordance with §§ 2.2-1834, 2.2-1837 and 2.2-1838 of the *Code of Virginia*, as amended ("*Code*"), hereby approves and directs the implementation of this Public Liability Risk Management Plan (hereafter referred to as the "Plan") established and submitted by the Division of Risk Management.

The Division of Risk Management (DRM) is not an insurance company and this Plan is not insurance, as those terms are defined in the *Code*. DRM is, instead, a division of a state agency, the Virginia Department of the Treasury, which finds its authority to act from the statutory provisions of the *Code*. DRM shall have final responsibility for interpretation and determination of the protection available under the Plan.

Unless otherwise specified herein, all terms, phrases and definitions used in the Plan shall be those used in the *Code*.

I. PROTECTION PROVIDED BY THIS PLAN

- A. Except as herein limited, or as limited by the *Code*, this Plan will pay certain sums that those entitled to its protection shall be obligated to pay by reason of liability imposed by law for damages resulting from any claim arising out of acts or omissions that occur while operating in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.
- B. This protection extends to incidental medical payments incurred by and arising from the official activities of any authorized volunteer in an amount not to exceed ten thousand dollars (\$10,000) per incident. This does not increase the limits described in Section II, Monetary Limits.

II. MONETARY LIMITS

- A. Subject to all applicable defenses, the amount recoverable by any claimant against the Commonwealth of Virginia, its agencies and affiliate organizations as listed in § 2.2-1837 of the *Code* shall not exceed seventy-five thousand dollars (\$75,000) per claim for causes of action established by Virginia law and which occurred prior to July 1, 1993. For events occurring on or after July 1, 1993, the limit is one hundred thousand dollars (\$100,000) per claim. For causes of action other than those established by Virginia law, the amount recoverable shall not exceed two million dollars (\$2,000,000) per claim.
- B. Subject to all applicable defenses, the amount recoverable by any claimant against officers, employees and agents of the Commonwealth of Virginia, including students while participating within the authorized scope of a clinical, internship, externship, or other educational program in order to

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meet pedagogical requirements, shall not exceed two million dollars (\$2,000,000) per claim.

- C. Recovery for claims based on acts of medical malpractice against a health care provider as defined in § 8.01-581.1 of the *Code*, shall be limited as provided in § 8.01-581.15 of the *Code*.
- D. For claims arising from the use of licensed vehicles owned or leased by the Commonwealth or used as authorized in the course of employment:
 - 1. Recovery for any uninsured motorist claim shall be limited to amounts stated in § 46.2-472 of the *Code*.
 - 2. Recovery for incidental medical payments shall be limited to a maximum of five thousand dollars (\$5,000) per person.
 - 3. Recovery of damages for loss of use of a motor vehicle shall be limited as provided in § 8.01-66 of the *Code*.
- E. In the event that any fund established for the payment of claims considered under this Plan, including but not limited to the State Insurance Reserve Trust Fund, becomes insolvent, neither the Commonwealth of Virginia, the General Assembly of Virginia, nor any entity or individual entitled to the Plan's protection shall be liable for any claim that would have been covered under this Plan but for such insolvency. The establishment of this Plan does not and shall not be deemed or construed to pledge or obligate the full faith and credit of the Commonwealth of Virginia.

III. RESTRICTIONS

This Plan's protection does not apply to:

- A. Claims arising from acts or omissions of persons providing services eligible for charge through MCV Physicians, the Virginia Commonwealth University Health Systems Authority, the University of Virginia Health Services Foundation, their successors, or any similar organizations.
- B. Estates, heirs, legal representatives, committees, guardians or assigns of deceased or incapacitated persons, unless (1) the claim was first made and DRM notified before the death or incapacitation and/or (2) the estates, heirs, legal representatives, committees, guardians or assigns of the deceased or incapacitated can demonstrate to DRM's satisfaction the ability to cooperate with, to actively participate in, and to actively assist with defense of claims asserted against the deceased or incapacitated persons.
- C. Obligations resulting from fidelity or dishonesty bonds or similar plans of protection, and obligations resulting from rules or regulation related to

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workers' compensation, unemployment compensation, and similar administrative hearings, procedures, or regulations.

- D. Obligations arising from or assumed by contract, except as related to authorized indemnification agreements to the extent allowed by § 2.2-1837 (A) (1) (c) of the *Code*.
- E. Claims arising from fraudulent, dishonest, malicious, willful or wanton misconduct, criminal acts, intentional torts, as well as any other act committed outside the course and scope of employment or authorization. A defense to these allegations may be provided under a reservation of rights.
- F. Costs due or alleged to be due, including interest for (1) the value of goods or services contracted for or allegedly contracted for, (2) the return of any remuneration, (3) travel expenses, staff salaries, wages or employment benefits owed, operational and related office expenses of any protected party or (4) any combination of (1), (2), or (3).
- G. Non-monetary relief, including expenses associated with complying with any injunction (subject to the provisions of § 2.2-1837 (A) (4) and 2.2-1837 (D) of the *Code*), however, Virginia State Bar, Virginia Department of Professional and Occupational Regulation, and Virginia Department of Health Professions disciplinary actions brought against licensed professionals working for or representing the Commonwealth, its departments, agencies, institutions, boards, or commissions from acts or omissions in their official capacity as representatives of the Commonwealth are not excluded from coverage.
- H. Payment of damages, including punitive damages, that an independent fact-finder determines to be the result of (1) acts of fraud or dishonesty, (2) acts of intentional, malicious, willful or wanton misconduct, (3) criminal acts, (4) acts allowing recovery of profit or advantage to which one would not otherwise be entitled, (5) intentional torts, or (6) any other act committed outside the course and scope of employment or authorization; however, the Plan will pay such damages as directed by the Governor if, after consultation with the Attorney General, the Governor determines that payment would be in the public interest.
- I. Indemnification on behalf of any judge that the Supreme Court of Virginia determines should be censured or removed from office pursuant to Section 10 of Article VI of the Constitution of Virginia or statutes enacted pursuant thereto.
- J. Criminal proceedings of any nature.

IV. OTHER PROTECTION

If a protected party has any other protection, coverage, insurance or self-insurance available that applies to or covers, or that could have applied to or covered, a loss otherwise qualified under this Plan's terms, then this Plan shall not be liable for any amount collectable under such other coverage or self-insurance, but shall act as a source of coverage of last resort for any loss and shall pay a claim only when there are no other sources of coverage or all other sources of coverage have been exhausted. Other protection, coverage, insurance or self-insurance includes, but is not limited to, bonds of any description, policies of insurance or programs of self-insurance purchased or established by or on behalf of one otherwise entitled to this Plan's protection to guard against liability arising from the activities of such persons, regardless of whether or not the policy or program provides primary, excess, excess over excess, umbrella or contingent coverage, and regardless of the deductible of any other insurance or self-insured retention plan.

V. RESPONSIBILITIES OF PROTECTED PARTIES

Each protected party:

- A. Shall notify DRM immediately of any event that may result in a claim, suit, action or other proceeding that will be submitted for protection under this plan. Immediately means no later than close of business the next workday following the event.
- B. Shall ensure that the Notice referenced above includes all reasonably obtainable information about the time, place and circumstances of the occurrence as well as all pertinent information about individuals involved.
- C. Shall immediately, upon commencement of a claim, suit, action or other proceeding, forward every demand, notice, summons or other process to DRM or to any contractor currently designated and authorized by DRM to receive such documents. Immediately means no later than close of business the next workday.
- D. Shall fully cooperate with DRM and with any persons assigned by DRM to provide assistance and defense services during the course of the claim, suit, action or other proceeding.
- E. Shall fully cooperate with DRM and with any persons assigned by DRM to pursue responsible parties for recovery.
- F. Shall not voluntarily make any payments, assume any obligation or incur any expense, except at that party's non-reimbursable cost.

Failure to fulfill these responsibilities may, at DRM's option, result in termination of this Plan's protection.

VI. DEFENSE AND SETTLEMENT

- A. Legal defense to claims qualified for the protection of this Plan shall be provided as set forth in §§ 2.2-507 and 2.2-510 of the *Code*.
- B. Settlement of any claim, suit, action or other proceeding involving the interests of the Commonwealth shall be subject to § 2.2-514 of the *Code*.

VII. RIGHT TO APPEAL

In the event an organization or individual elects not to appeal a judgment, DRM may elect to make such appeal at its own cost.

VIII. RECOVERIES

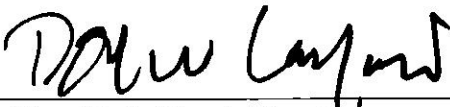
The Plan has the right to exercise all of an agency's or qualified individual's rights of recovery against any person or organization.

IX. EXIT FROM PLAN


Should a Plan member statutorily authorized to leave the program decide to leave, that Plan member is subject to an exit policy implemented by DRM as approved by the Secretary of Finance.

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IN WITNESS WHEREOF this Plan has been executed, approved and takes effect immediately upon the signature of the Governor or his designee.

BY: 
Don W. LeMond, Director
Division of Risk Management


APPROVED

BY: 
Manju S. Ganeriwala
Treasurer of Virginia

APPROVED

BY: 
Richard D. Brown
Secretary of Finance

APPROVED BY THE GOVERNOR


Terence R. McAuliffe
Governor of Virginia

DATE: 1/13/17