

GUIDELINES

For The

VIRGINIA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION PROGRAM

IMPORTANT NOTE: THE FOLLOWING GUIDELINES ARE ONLY A SUMMATION OF THE OVERALL PROGRAM AND NOT A GUARANTEE OF BENEFITS. FOR THOSE IN THE PROGRAM, PURCHASES AND EXPENDITURES MUST BE PRE-APPROVED BY THE PROGRAM. GUIDELINES ARE SUBJECT TO CHANGE BY THE BOARD OF DIRECTORS OF THE VIRGINIA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION PROGRAM.

ADOPTED APRIL 15, 1997

REVISED SEPTEMBER 2000

POSTED JULY 2002

TABLE OF CONTENTS

| | | |
|------|-----------------------------|----|
| I. | Introduction..... | 3 |
| II. | Benefits: | |
| | Nursing Care..... | 6 |
| | Dental Care..... | 9 |
| | Therapy..... | 10 |
| | Equipment..... | 11 |
| | Housing..... | 14 |
| | Funeral Expenses..... | 15 |
| | Miscellaneous Expenses..... | 16 |
| | Attorneys' Fees..... | 20 |
| III. | Procedures..... | 21 |

**VIRGINIA BIRTH-RELATED NEUROLOGICAL
INJURY COMPENSATION FUND POLICY**

APRIL 15, 1997

The Virginia Birth-Related Neurological Injury Compensation Fund is an example of a private-public partnership endeavor that is working. Known as the Birth Injury Fund, the Program provides a wide range of benefits to a child who is in need of permanent assistance in all activities of daily living, and who has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury during labor, delivery, or in the immediate post-delivery period in a hospital which renders the child permanently (1) motorically disabled, and (2) developmentally disabled or cognitively disabled.

The Birth Injury Fund was initiated for two principal reasons: (1) to provide benefits to eligible children over their lifetime without having to resort to the tort law system for recovery and (2) to insure that the medical community would be

able to continue to provide obstetric services within the Commonwealth.

The benefits of the Birth Injury Fund are limited to "medically necessary and reasonable expenses" of medical and hospital, rehabilitative, residential and custodial care and service, special equipment and facilities. The Birth Injury Fund is a payer of last resort; that is, the Fund pays after available insurance or governmental programs have paid. A unique feature of the Program provides for payments as "loss of earnings" to the child when he or she reaches the age of eighteen years based upon a formula set by law.

The Birth Injury Fund is financed by assessments, in varying amounts, upon hospitals that have obstetric units, licensed physicians who practice obstetrics or perform services, including licensed nurse-midwives, all other licensed physicians, and the insurance industry within the Commonwealth.

A seven member Board of Directors manages the Fund and they employ an Executive Director. They are assisted by a number of professionals to provide eligible children with medically necessary services. The Board meets regularly, and all meetings are open to the public.

Claims for compensation under the Fund are made to and awarded by the Virginia Workers' Compensation Commission. Once a claim has been awarded, the Program will communicate with the parents or caregivers of the child. A home visit will be made to determine the needs of the child and the family.

Counseling can be provided, initially and ongoing, and the Board strongly urges members of the family to avail themselves of this benefit. If the situation warrants, individual counseling will be considered.

What follows is a listing of benefits and the procedures that the Board of Directors has set up to carry out the statutory mandate under which it operates, chapter 50 of Title 38.2 of the Code of Virginia (see Attachment A).

Benefits:

Nursing Care:

- A. The Program will provide appropriate medically necessary and reasonable nursing care as recommended in writing by the child's identified primary care physician.
- B. The Program will review periodically with medical professionals the continued appropriateness of the nursing hours.
- C. The Program utilizes nursing agencies when available. If an agency is unable to provide care, the Executive Director is authorized to make other arrangements.
- D. Where a nursing agency is not available, the Program may reimburse the child's family or guardian for care providers who are employed by the child's family as independent contractors. The Program will reimburse claimant families for employment-related taxes such as FICA or unemployment tax upon receipt of proper

documentation of payment of these taxes. (Note: The Program, however, discourages employment of personnel not associated with a nursing agency because of cost and quality of care control that experience has demonstrated can occur.)

- E. The Program will not reimburse a care provider for more than a 12-hour shift within a 24-hour period unless there is an emergency and no other care provider is available to care for the child.

- F. The Program will not provide a private duty nurse while a child is hospitalized unless the attending physician deems it medically necessary and a written order for private duty nursing is provided to the Program. The Program will provide a sitter, who is not a family member and may not have medical experience, while the child is hospitalized, if requested.

- G. The Program will provide nurses for children who are in school, provided such care is deemed medically necessary, and is not otherwise available.

H. The Program will reimburse medically necessary care provider expenses if they have not been previously filed with the tax authorities as deductions/credits. If they have been filed with the tax authorities as deductions/credits, then an amended tax report must be filed with the tax authorities and a copy of the amended tax report provided to the Program before the family will be reimbursed for these expenses.

Dental Care:

The Program will pay for the child's dental care costs if they are not covered by other sources.

Therapy:

- A. The Program will provide therapy, which is determined to be medically necessary and reasonable, and for which there is a certificate of medical necessity.

- B. The Program may consult periodically with appropriate medical professionals regarding the necessity for continuing various therapies, such as, but not limited to occupational, physical, horseback and speech therapy.

- C. The Program will reimburse documented parking fees and mileage. If the transportation used is a van provided by the Program, then reimbursement will be fifty (50%) per cent of the Commonwealth of Virginia's mileage allowance; otherwise mileage will be reimbursed at the prevailing Commonwealth of Virginia rate.

Equipment

- A. Equipment documented as a medical necessity by the child's physician will be provided by the Program. Because there is a gamut of equipment that might be provided, no attempt is made to categorize such. Equipment provided to date, however, does include oxygen concentrators, bipap machines, feeding pumps, gait trainers, wheelchairs, Wizard strollers, suction machines, apnea monitors, IV poles, pulse oximeters, therapy balls, therapy mats, Gorilla car seats, wheelchair lifts, and wheelchair tie-downs.
- B. The Program will fund the purchase of a van when it becomes medically necessary for wheelchair transportation. The Birth Injury Fund will be listed as lien holder on the van's title, although the van itself will be titled in the name of the parents or guardians.
- Effective June 22, 1998**, the Program will pay the personal property taxes on the medically necessary van and will also pay an

amount equal to the Uninsured Motorist Fee, or the insurance premium for the van, whichever is the lesser of the two. Operating costs such as city/county decals and tags, maintenance, and tires will be the responsibility of the parents or guardians. Mileage and other transportation costs will be reimbursed as set out elsewhere in this policy (see miscellaneous costs). The Program will reimburse the child's family for the cost of insuring the lift and tie downs if an additional cost is incurred for this and a receipt is provided.

- C. Van Replacement: Vans will be replaced at approximately 100,000 miles. Documentation of the vehicle's service history will be considered in determining the timing of van replacement.
- D. Removal of Lien from Van: In the event a child dies and the Program has provided the family with a medically necessary van, the lien held by the Program will be removed and the van will remain the property of the family. Prior to transfer of the van to the

family, all special equipment provided for the child will be removed from the van and returned to the Program.

- E. All medical equipment purchased entirely by the Program remains the property of the Program. It is expected, depending upon the type of equipment and its condition that it be returned to the Program when no longer required by the child. If the parents or caregivers wish to retain the equipment, and it still has some useful life, then the Director will endeavor to reach an agreement as to its value in lieu of its return.

Housing:

The Board's statutory authority is to make awards solely for the medical needs of the child and the added costs attributable to those needs. If the child has medically necessary housing needs that can be addressed in the home currently occupied, the Board is willing to provide one-time funds for medically necessary modifications or construction of an accessible bedroom and bathroom if such modifications are feasible and reasonable.

Before funding for an accessible bedroom and bathroom will be authorized, the Program's construction manager or similar professional will determine the feasibility of such renovations or construction and whether the child's needs will be met in the contemplated project.

Funeral Expenses:

The Program will pay up to \$5,000 for the funeral expenses of a child who has been accepted into the Program.

Miscellaneous Expenses:

A. **Transportation:** Upon submission of receipts, the Program will reimburse parking fees associated with medically necessary travel.

The Program will reimburse documented mileage for medically necessary travel at the following rates:

1. Mileage will be reimbursed at fifty (50%) per cent of the Commonwealth of Virginia's mileage rate for vans provided by the Program. Mileage reimbursement typically covers gasoline and other costs of operation. Since the Program provides the van, the Program's mileage reimbursement is intended only to cover the cost of gasoline associated with medically necessary transportation.
2. For use of other personal vehicles reimbursement will be at the prevailing rate according to the Commonwealth of Virginia. In the event a van provided by the Program is

unavailable, the mileage reimbursement allowance provided would be that allowed for vans purchased by the Program.

Upon submission of receipts, the Program will reimburse other medically necessary transportation expenses, not otherwise reimbursed.

B. Postage: The Program will pay postage for reimbursement requests submitted to the Program and for information requested by the Program.

C. Telephone: If the Program receives a prescription from the child's physician that a cellular telephone is medically necessary, the Program will investigate carriers available in the area where the claimant lives to determine whether basic emergency service is available. If basic emergency service is available in the claimant's residence area, then that is the monthly service, which will be paid by the Program. If basic *emergency service* is unavailable, the Program will pay for basic monthly service only. A plan with free

call service will not be provided. If installation of the cellular telephone is required, the phone must be installed in the vehicle in which the claimant is transported.

D. Diapers: Beginning at age three, the Program will provide diapers for the child. The Program has contracted with a diaper service, which is to be used unless medical reasons preclude their use.

E. Therapeutic Toys: The Program will provide up to three therapeutic toys per year with documentation of the therapeutic benefit of the toy(s). These toys are not to exceed \$300 in a twelve-month period. Once the child has no need for these toys and if they are in good condition, the Program would be happy to accept their return to be used to stock a lending program. The toys will be sanitized prior to use by other families. (Revised 1/2001)

F. Other: The Program may pay other medically necessary expenses of the child as determined by the Board of Directors. Requests for medically necessary services, etc., which are not

addressed in the Guidelines, should be sent to the Executive
Director who will refer these requests to the Board of Directors for
discussion.

Attorneys' Fees:

The statute authorizes payment of reasonable attorneys' fees incurred in the filing of a claim subject to the approval and award of the Commission.

Reasonable fees incurred in a dispute that arises over the benefits available under the Program are payable as well, subject to the approval of and award by the Commission.

Procedures:

- A. Insurance:** The Program is the payer of last resort. As such, the Program must be provided with a copy of the health insurance policy, if there is one, before benefits can be paid from the Program. It is the responsibility of the parents or guardians to seek benefits for which they are eligible. In addition, the parents or guardians of the child determined eligible to participate in the Program must identify one primary care physician.
- B. Reimbursement:** Although a child has been determined eligible for benefits from the Program, parents or caregivers must contact the Program before committing to the purchase of equipment or incurring other expenses for which they might seek reimbursement. Failure to do so may jeopardize reimbursement from the Program.
- C. Claims for Reimbursement:** Requests for reimbursement of expenses from medical providers, pharmacies and equipment

providers will be honored if submitted within one year from the date incurred when accompanied by documentation of medical necessity and receipts from providers. This time limit is not applicable to expenses incurred prior to acceptance into the Program.

Reimbursement will be paid in a timely fashion.

D. Requests for Authorization to Obtain Services Outside your

Insurance Plan's Covered Area: In the event it is medically necessary to take a child outside the insurance plan's covered service area for evaluation, surgery, etc., it must be ascertained if the plan will pay for benefits and if so, what percentage they will pay. After this has been determined, the Program must be contacted for authorization prior to seeking services or the Program may determine not to pay any balance remaining on the bill for these services.

E. Medically Necessary Travel Outside the Commonwealth of

Virginia: In the event that it is medically necessary for a family to

travel outside the Commonwealth of Virginia to have their child evaluated for medical services, parents must first receive the Board's approval if they wish to be reimbursed for reasonable expenses of travel. If the Board approves the travel, the Program will reimburse travel expenses for two people (the child and one person to accompany the child). Reimbursement of expenses will not exceed the rates established by the Comptroller of Virginia and paid to personnel traveling for the Commonwealth of Virginia. No reimbursement of expenses will be made without itemized receipts, which includes meals, hotel accommodations, transportation (such as air fare, taxis, etc.).

F. Requests for Benefits not specifically addressed in Guidelines:

The Guidelines authorize the Executive Director to provide the benefits described without referral to the Board except in exceptional circumstances at the Executive Director's discretion.

The Board, however, realizes that there may be programs,

equipment, or other items, which may be of value to the child that the Guidelines do not address. If the parents or guardians feel a benefit not described in the Guidelines would be of advantage to the child (the Executive Director is not authorized to provide those benefits without Board approval), the parents or guardians should write the Board via the Executive Director who is charged with bringing these requests to the Board at their next meeting.

Experimental Programs: When a request is made to fund participation in an Experimental Program, the Board will evaluate the request based on the following criteria:

1. Overall cost associated with the Program. Cost for one person to accompany the child (if necessary); duration of the Program; expected benefits to the child; and availability of the Program in Virginia) if located outside of the area of residency.
2. Report from the child's primary care physician of the medical necessity for the Experimental Program.

3. Proof of results that the Experimental Program has benefited other patients as well as proof of results that the claimant has benefited.
4. What is the expected frequency and duration of the Experimental Program requested?
5. Continuation of the program will be permitted if periodic evaluation by a physician shows the program to be of benefit to the claimant.

The Board does not intend to be limited to these criteria if evaluation indicates other criteria should be considered.

G. Disagreements: Disagreements may arise. If the Director cannot resolve a disagreement, then the Director has been charged by the Board to advise it of such disputes at its regular meetings. The parents or guardians are welcome to submit a written explanation of the dispute and request resolution by the Board and/or attend a meeting. If a dispute cannot be resolved at the level of the Board of Directors, then a petition may be filed with the Clerk of the Virginia Workers' Compensation Commission, 1000 DMV Drive,

Richmond, Virginia 23220, appealing the Board of Directors'

opinion. Either a hearing will be scheduled or the Commission will

handle the dispute on the record.

Attachment:

- A. Chapter 50 Code of Virginia §38.2-5000, The Virginia Birth-Related Neurological Injury Compensation Act.

Guide.doc