



VIRGINIA BIRTH-RELATED  
NEUROLOGICAL INJURY  
COMPENSATION PROGRAM

*A lifetime of help*

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October, 2023

## RE: State Mandated Assessment & Participation Fees

Dear Physician:

For 2024, as in recent years, the Virginia State Corporation Commission has determined that all applicable fees and assessments will be implemented to support the Virginia Birth-Related Neurological Injury Compensation Program. All physicians licensed in Virginia, regardless of specialty, are required to respond annually either by filing an exemption, payment of the non-participating assessment or participation in the Program.

**NOTE: if you need to make a payment, you also have the option of doing so online at [www.officialpayments.com](http://www.officialpayments.com). A convenience fee will be charged by the web site provider.**

### ***FOLLOWING ARE INSTRUCTIONS FOR EACH OF THE POSSIBLE RESPONSES.***

#### **OPTION 1: CERTIFY YOU ARE EXEMPT**

**New:** You now have the option to submit an exemption completely online. Simply go to [www.vabirthinjury.com](http://www.vabirthinjury.com), click on the **Physician Exemption** tab, then complete the online form. If you prefer to file a paper form follow the directions below.

State law allows a physician to be exempt from paying the mandated assessment if one of five criteria are met — they are listed below. Remember, qualification for one or more exemptions for 2024 is based on your status as of September 30, 2023. You may claim an exemption if on this date you were:

- Employed by the Commonwealth of Virginia or the federal government and income from professional fees from a source other than the Commonwealth of Virginia or the federal government is less than 10% of your annual salary.
- Enrolled in a full-time graduate medical education program accredited by the American Council for Graduate Medical Education.
- Retired from active clinical practice.
- Engaged in active clinical practice that was limited to the provision of services, voluntarily and without compensation, to any patient of any clinic organized in whole or in part for the delivery of health care services without charge.
- Not practicing medicine in Virginia (either not currently practicing or practicing in another state).

To file an exemption, complete the **green exemption form** and return it along with the invoice in the provided return envelope. Claiming an exemption for any assessment year(s) does not affect the status of your medical license.

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If you claimed an exemption for a previous year and still qualify under an allowable circumstance, you **must** complete the enclosed green affidavit and return it along with the invoice in the provided return envelope. Please note this form **does not** have to be notarized.

If you no longer qualify for one or more of the allowable exemptions, please refer to “Option 2”.

### **OPTION 2: SUBMIT THE ANNUAL NON-PARTICIPATING ASSESSMENT OF \$300**

If you actively practice medicine in Virginia and do not qualify for an exemption or participate in the Birth Injury Program, you must submit the annual mandated assessment regardless of your specialty. Please note that paying the \$300 fee does not make you a participating provider.

To submit the mandated assessment fee, return the enclosed invoice with your check in the provided envelope.

### **OPTION 3: BECOME A PARTICIPATING PROVIDER — FOR PHYSICIANS AND MIDWIVES WHO DELIVER CHILDREN IN VIRGINIA**

Along with providing you with the Program’s coverage, state law requires private malpractice insurance carriers to issue a reduction in premium to participating providers.

To become a participating provider, please complete the **yellow form** (participating agreement) and return it along with the invoice and your check in the reply envelope.

**The 2023 participation fee is \$6,200.** Please note that full calendar year participation is only available during December of the prior year due to the required 30-day waiting period. However, a prorated fee is available for physicians and midwives participating for only a portion of the year. For details please contact Paula Ward, Provider Relations Coordinator, at **804-330-2471, ext. 3040**. Additional information on the benefits of being a participating provider is available on the included *Frequently Asked Questions* page and on our website at **[www.vabirthinjury.com](http://www.vabirthinjury.com)**.

The Birth-Injury Program was created in 1987 by the Virginia General Assembly to help relieve a crisis in malpractice coverage throughout the Commonwealth. Physicians, primarily obstetricians, were threatened with an inability to obtain malpractice coverage due to insurers leaving the state. Creation of the Program helped relieve the crisis. Utilizing a no-fault approach, children severely injured at birth and whose situation meets the legislative requirements are placed into the Program in lieu of seeking a tort remedy.

Thank you for taking the time to read and respond to this letter. Also enclosed is a page of *Frequently Asked Questions* that may be of assistance to you. If you need further information about the Virginia Birth-Related Neurological Injury Compensation Program please see our website at **[www.vabirthinjury.com](http://www.vabirthinjury.com)**. You can also call at **804-330-3021, ext. 3040**.

Thank you,

*Virginia Birth-Related Neurological Injury Compensation Program*



## **Frequently Asked Questions About The Virginia Birth-Related Neurological Injury Compensation Program**

### **I am not an obstetrician and I do not deliver babies, do I have to pay this assessment?**

The assessment applies to all Virginia licensed physicians regardless of specialty or income. However, if you meet one of the five exemption categories you may file an exemption affidavit instead of paying the assessment. If you become a participating provider and pay the \$6,200 annual fee you do not have to pay the additional assessment.

### **How is the money used?**

All fees and assessments are utilized by the Virginia Birth-Related Neurological Compensation Program to provide medically necessary care for the children in the Program. The Birth-Injury Program operates according to its authorizing statutes in the Code of Virginia-§38.2-5020 through 5021.

### **Does participation in the Program replace my malpractice insurance?**

No. Participation in the Program only entitles a qualifying birth-injured child you deliver to enter the program. The Program then pays medically necessary care for the child for life. Additionally, upon reaching the age of 18, the child receives a wage benefit.

### **If I pay the \$300 assessment, does that make me a participating physician in the Birth-Related Injury Program?**

No. To become a participating physician you must pay the participating physician fee and sign a participating provider agreement.

### **What happens if I do not respond to this assessment?**

The Program may turn over the names of all non-compliant physicians to the State Corporation Commission for enforcement.

### **What qualifies a child to enter the program?**

From §38.2-5001 of the Code of Virginia:

*“Birth-related neurological injury” means to the brain or spinal cord of an infant caused by the deprivation of oxygen or mechanic injury occurring in the course of labor, delivery or resuscitation necessitated by a deprivation of oxygen or mechanic injury that occurred in the course of labor or delivery, in a hospital which renders the infant permanently motorically disabled and (i) developmentally disabled or (ii) for infants sufficiently developed to be cognitively evaluated, cognately disabled. In order to constitute a “birth-related neurological injury” within the meaning of this chapter, such disability shall cause the infant to be permanently in need of assistance in all activities of daily living.*

Per applicable law, entry into the Program is decided solely by the Virginia Workers’ Compensation Commission.

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### **Where did the Birth-Injury Program get my address?**

Physician addresses are obtained from the Virginia Board of Medicine. Per state law, the list is based on physicians with an active license practicing in Virginia on September 30 of the year prior to the assessment year (For example, addresses downloaded on September 30, 2015 for the 2016 assessment).

### **Who regulates the Virginia Birth-Related Neurological Injury Compensation Program?**

The Program is regulated by statute in a variety of ways including:

- The Code of Virginia is very specific in how the Program is to operate. Additionally, a Plan of Operation is approved by the State Corporation Commission.
- All admissions into the Program are through the Virginia Workers' Compensation Commission. The Program itself does not admit claimants.
- The Program is required to file an annual financial report, including information regarding its reserve funds to the Governor's office, the Virginia Senate and the Virginia House of Delegates.
- The Governor appoints all governing board members for the Program.
- At least every-other year, the State Corporation Commission is required to conduct an actuarial study of the Program.

### **Are physicians the only source of income for the Birth-Injury Program?**

No. There are four Sources of income.

- Participating physician fees
- Participating hospital fees
- Non-Participating physician assessments
- Assessments of insurance companies selling liability insurance in Virginia

### **Where can I see the legislation establishing and authorizing the Birth-Injury Program?**

Code of Virginia, Chapter 50, SS 38.2-5000 through 38.2-5021

This may be viewed on-line via the Commonwealth's website at <http://legl.state.va.us/lis.htm>  
A copy also is available on the Program's website at [www.vabirthinjury.com](http://www.vabirthinjury.com)

### **I have an active medical license but do not actively practice in Virginia. Do I have to pay the assessment?**

You may meet the criteria for an exemption. Please see the exemption affidavit.

### **What are the benefits of being a participating provider?**

For those who deliver babies, becoming a participating provider has several advantages including:

- If a qualifying birth occurs, there is no malpractice court case.
- A child who qualifies will be assured of a lifetime of care including all medically necessary expenses and, beginning at age 18, compensation for lost wages.
- Participating physicians receive a "credit" on the cost of their liability insurance. This credit varies depending on the insurance carrier and may or may not totally offset the participating provider fee.

***Virginia Birth-Related Neurological Injury Compensation Program***

c/o P. O. Box 91739, Richmond, Virginia 23291-1739

804-330-2471

www.vabirthinjury.com

**2024 PHYSICIAN ASSESSMENT INVOICE**

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Please check only **one** and note new fee amounts:

- ☐ I am exempt from the \$300 statutory assessment.
- Any physician claiming one or more of the exemptions in Va. Code § 38.2-5020 should complete the Exemption Form Affidavit and return it to the Fund at the address below.
  - **Qualification for one or more exemptions for 2024 is based on your status as of September 30, 2023**
- ☐ The \$300 assessment required by Virginia law for nonparticipating physicians is enclosed.
- Payable by check to "Birth-Related Injury Fund" **OR**
  - Payable online at [www.officialpayments.com](http://www.officialpayments.com) (a convenience fee will be charged by the website provider).
- ☐ I wish to be a Participating Physician
- Enclose a \$6200 check payable to "Birth-Related Injury Fund" **OR**
  - Payable online at [www.officialpayments.com](http://www.officialpayments.com) (a convenience fee will be charged by the website provider).
  - Enclose the signed and dated Participating Physician Agreement
  - **To become a participating provider effective January 1, 2024, your participating physician payment must be received by December 1, 2023.**

**PLEASE NOTE: THE PROGRAM CANNOT ACCEPT CASH**

Please enclose this invoice with all correspondence and payment to:

BIRTH-RELATED INJURY FUND

c/o Truist Bank

P. O. Box 91739

Richmond, VA 23291-1739

For address corrections, please fax requests to the Virginia Board of Medicine at (804)527-4426 including name and license number, e-mail [medbd@dhp.virginia.gov](mailto:medbd@dhp.virginia.gov) or call (804)367-4600.



## Virginia Birth-Related Neurological Injury Compensation Program 2024 Participating Physician Agreement

In consideration of the rights and benefits received from my participation in the Virginia Birth-Related Neurological Injury Compensation Program, and as required by §38.2-5001 of the *Code of Virginia* for my qualification as a "participating physician" in the Program, I hereby agree:

(1) To participate with the Commissioner of Health, or his designee, in the development of a program to provide obstetrical care, including prenatal care, labor and delivery services and postpartum care, to patients eligible for Medical Assistance Services ("Medicaid") and to patients who are indigent and, upon approval of this program by the Commissioner of Health, to participate in its implementation (this agreement does not require participation in the Medicaid program); and

(2) To submit to review by the Board of Medicine in its evaluation of claims submitted pursuant to §38.2-5004.

As to paragraph 1 above, the Commissioner of Health agrees to review the program described and, upon approval, provide for its implementation.

**If payment is received by December 1, 2023 this agreement shall be effective from January 1, 2024 through December 31, 2024.** For payments received after December 1, 2023, this agreement shall become effective 30 days after the Virginia Birth-Related Neurological Injury Compensation Program receives written notification from the physician.

\_\_\_\_\_  
Physician/Midwife Signature

\_\_\_\_\_  
Executed on (Date-Required)

\_\_\_\_\_  
Physician/Midwife Printed Name

\_\_\_\_\_  
VA Medical License Number (10 Digits)

\_\_\_\_\_  
Current Address

\_\_\_\_\_  
Telephone Number (with area code)

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
E-mail (Optional)

\_\_\_\_\_  
Commissioner of Health

\_\_\_\_\_  
Executed on (Date)

\_\_\_\_\_  
Executive Director, State Board of Medicine

\_\_\_\_\_  
Executed on (Date)

### FOR PARTICIPATING RESIDENTS

\_\_\_\_\_  
Name of Medical School or Residency Facility

Program is:

☐ OB

☐ Family Practice

☐ Other





**Virginia Birth-Related Neurological Injury Compensation Program  
2024 Exemption Form Affidavit**

*This Affidavit should be completed only by physicians who claim an exemption from the assessment in Va. Code § 38.2-5020.*

State of residence \_\_\_\_\_ City/County of residence \_\_\_\_\_

I, \_\_\_\_\_, certify that on September 30, 2023, I was the holder of a valid medical license issued by the Commonwealth of Virginia and, under oath, do hereby swear and affirm that I am a physician:

(Check only the boxes that apply)

1. ☐ who is employed by the Commonwealth of Virginia or the federal government and whose income from professional fees is less than 10% of my annual salary (you must be directly employed by the state or federal government).
2. ☐ who is enrolled in a full-time graduate medical education program accredited by the American Council for Graduate Medical Education.  
Place of Medical Residency \_\_\_\_\_.
3. ☐ who has retired from active clinical practice
4. ☐ whose active clinical practice is limited to the provision of services, voluntarily and without compensation, to any patient of any clinic organized in whole or in part for the delivery of health care services without charge.
5. ☐ who does not practice medicine in Virginia.

I understand that this statement is given under oath for the purpose of obtaining an exemption from the payment to the Birth-Related Injury Fund of a \$300 assessment required by Va. Code § 38.2-5020 to be paid by all licensed physicians in Virginia who are not Participating Physicians. This Affidavit will be filed with the Virginia Birth-Related Injury Program to obtain the claimed exemption.

\_\_\_\_\_  
Physician Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Physician Printed Name

\_\_\_\_\_  
VA Medical License Number (10 digits)

\_\_\_\_\_  
Current Address

\_\_\_\_\_  
Telephone Number (with area code)

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
E-Mail (Optional)