WV Code §29-12D

§29-12D-1. Creation of the Patient Injury Compensation Fund; purpose; initial funding of Patient Injury Compensation Fund.

(a) There is created the West Virginia Patient Injury Compensation Fund, for the purpose of providing fair and reasonable compensation to claimants in medical malpractice actions for any portion of economic damages awarded that is uncollectible as a result of limitations on economic damage awards for trauma care, or as a result of the operation of the joint and several liability principles and standards, set forth in article seven-b, chapter fifty-five of this code. The fund shall consist of all contributions, revenues and moneys which may be paid into the fund, from time to time, by the State of West Virginia or from any other source whatsoever, together with any and all interest, earnings, dividends, distributions, moneys or revenues of any nature whatsoever accruing to the fund.

(b) Initial funding for the fund shall be provided as follows: during fiscal year 2005, $2,200,000 of the revenues that would otherwise be transferred to the tobacco account established in subsection (b), section two, article eleven-a, chapter four of this code pursuant to the provisions of section fourteen, article three, chapter thirty-three of this code shall be transferred to the fund; during fiscal year 2006, $2,200,000 of the revenues that would otherwise be transferred to the tobacco account established in subsection (b), section two, article eleven-a, chapter four of this code pursuant to the provisions of section fourteen, article three, chapter thirty-three of this code shall be transferred to the fund; and during fiscal year 2007, $2,200,000 of the revenues that would otherwise be transferred to the tobacco account established in subsection (b), section two, article eleven-a, chapter four of this code pursuant to the provisions of section fourteen, article three, chapter thirty-three of this code shall be transferred to the fund.

(2) Beginning fiscal year 2008, if and to the extent additional funding for the fund is required, from time to time, to maintain the actuarial soundness of the fund, the additional funding may be provided by further act of the Legislature, either from the revenue stream identified in this subsection or otherwise. Payments to the tobacco fund shall be extended until the tobacco fund is repaid in full.

(c) The fund is not and shall not be considered a defendant in any civil action arising under article seven-b, chapter fifty-five of this code.

(d) The fund is not and shall not be considered an insurance company or insurer for any purpose under this code.

(e) Legal fees of claimants may not be recovered directly from the fund.

(f) The fund shall not provide compensation to claimants who file a claim with the Patient Injury Compensation Fund on or after July 1, 2016.

§29-12D-1a. Additional funding for Patient Injury Compensation Fund; assessment on licensed physicians; assessment on hospitals; assessment on certain awards.

(a) Annual assessment on licensed physicians. —

(1) The Board of Medicine and the Board of Osteopathic Medicine shall collect a biennial assessment in the amount of $125 from every physician licensed by each board for the privilege of practicing medicine in this state. The assessment is to be imposed and collected on forms prescribed by each licensing board. The assessment shall be collected as part of licensure or license renewal beginning July 1, 2016, for licenses issued or renewed through December 31, 2021: Provided, That the following physicians shall be exempt from the assessment:

(A) A resident physician who is a graduate of a medical school or college of osteopathic medicine enrolled and who is participating in an accredited full-time program of post-graduate medical education in this state;

(B) A physician who has presented suitable proof that he or she is on active duty in the armed forces of the United States and who will not be reimbursed by the armed forces for the assessment;

(C) A physician who practices solely under a special volunteer medical license authorized by §30-3-10a or §30-14-12b of this code;

(D) A physician who holds an inactive license pursuant to §30-3-12(j) or §30-14-10 of this code, or a physician who voluntarily surrenders his or her license: Provided, That a retired osteopathic physician who submits to the Board of Osteopathic Medicine an affidavit asserting that he or she receives no monetary remuneration for any medical services provided, executed under the penalty of perjury and if executed outside the State of West Virginia, verified, may be considered to be licensed on an inactive basis: Provided, however, That if a physician or osteopathic physician elects to resume an active license to practice in the state and the physician or osteopathic physician has not paid the assessments during his or her inactive status, then as a condition of receiving an active status license, the physician or osteopathic physician shall pay the assessment due in the year in which physicians or the osteopathic physician resumes an active license; and

(E) A physician who practices less than 40 hours a year providing medical genetic services to patients within this state.

(2) The entire proceeds of the annual assessment collected pursuant to §29-12D-1a(a) of this code shall be dedicated to the Patient Injury Compensation Fund. The Board of Medicine and the Board of Osteopathic Medicine shall promptly pay over to the Board of Risk and Insurance Management all amounts collected pursuant to this subsection for deposit in the fund.

(3) Notwithstanding any provision of the code to the contrary, a physician required to pay the annual assessment who fails to do so shall not be granted a license or renewal of an existing license by the Board of Medicine or the Board of Osteopathic Medicine. Any license which

expires as a result of a failure to pay the required assessment shall not be reinstated or reactivated until the assessment is paid in full.

(b) Assessment on trauma centers. —The Board of Risk and Insurance Management shall levy an assessment of $25 for each trauma patient treated at a health care facility designated by the Office of Emergency Medical Services as a trauma center, as reported to the West Virginia Trauma Registry, from January 1, 2016, through June 30, 2021. The assessment is due June 30 following each calendar year for which assessments are levied: Provided, That the assessment for the period January 1, 2021, through June 30, 2021, shall be due by December 31, 2021.

(c) Assessment on claims filed under the Medical Professional Liability Act. — From July 1, 2016, through December 31, 2021, an assessment of one percent of the gross amount of any settlement or judgment in a qualifying claim shall be levied.

(1) For purposes of this subsection, a qualifying claim is any claim for which a screening certificate of merit is required, or for which a statement setting forth the basis of the alleged liability of the health care provider is allowed in lieu of the screening certificate of merit, as defined in §55-7B-6 of this code.

(2) For any assessment levied pursuant to this subsection for which a judgment is entered by a court, the date of the entry of judgment shall be used to determine applicability of this provision. The defendant or defendants shall remit the assessment to the clerk of the court in which the qualified claim was filed. The clerk of the court shall then remit the assessment monthly to the State Treasury to be deposited in the fund.

(3) For any assessment levied pursuant to this subsection on a settlement entered into by the parties, the date on which the agreement is formalized in writing by the parties shall be used to determine applicability of this provision. At the time that an action alleging a qualified claim is dismissed by the parties, the assessment shall be remitted by the plaintiff or his or her counsel to the clerk of the court, who shall then remit the assessment to the State Treasury to be deposited in the fund. Collected assessments shall be remitted no less often than monthly. If a qualifying claim is settled prior to the filing of an action, the claimant, or his or her counsel, shall remit the payment to the Board of Risk and Insurance Management within 60 days of the date of the settlement agreement to be paid into the fund.

(d) Annual Report; transfer of fund balance. — The requirements of this section shall terminate on the dates set forth in this section or sooner if the liability of the Patient Injury Compensation Fund has been paid or has been funded in its entirety. The Board of Risk and Insurance Management shall submit a report to the Joint Committee of Government and Finance each year beginning January 1, 2018, giving recommendations based on actuarial analysis of the fund's liability. The recommendations shall include, but not be limited to, discontinuance of the assessments provided for in this section, closure of the fund and transfer of the fund's liability. Any funds remaining in the fund on June 30, 2022, and determined by the Board of Risk and Insurance Management to not be necessary for claim payments or administrative costs of the fund, shall be transferred to the General Revenue Fund.

§29-12D-2. Administration of fund; investment of fund assets; annual actuarial review and audit; fund assets and liabilities not assets and liabilities of the state.

(a) The patient injury compensation fund shall be implemented, administered and operated by the board of Risk and Insurance Management. In addition to any other powers and authority expressly or impliedly conferred on the board of Risk and Insurance Management in this code, the board may:

(1) Receive, collect and deposit all revenues and moneys due the fund;

(2) Employ, or in accordance with the provisions of law applicable contract for personal, professional or consulting services, retain the services of a qualified competent actuary to perform the annual actuarial study of the fund required by this section and advise the board on all aspects of the fund's administration, operation and defense which require application of the actuarial science;

(3) Contract for any services necessary or advisable to implement the authority and discharge the responsibilities conferred and imposed on the board by this article;

(4) Employ, or contract with, legal counsel of the board's choosing to advise and represent the board and represent the fund in respect of any and all matters relating to the operation of the fund and payments out of the fund;

(5) Employ necessary or appropriate clerical personnel to carry out the responsibilities of the board under this part; and

(6) Promulgate rules, in accordance with article three, chapter twenty-nine-a of this code as it considers necessary or advisable to implement the authority of and discharge the responsibilities conferred and imposed on the board by this article.

(b) The assets of the fund, and any and all income, dividends, distributions or other income or moneys earned by or accruing to the benefit of the fund, shall be held in trust for the purposes contemplated by this article, and shall not be spent for any other purpose: Provided, That the assets of the fund may be used to pay for all reasonable costs and expenses of any nature whatsoever associated with the ongoing administration and operation of the fund. All assets of the fund from time to time shall be deposited with, held and invested by, and accounted for separately by the Investment Management Board. All moneys and assets of the fund shall be invested and reinvested by the Investment Management Board in the same manner as provided by law for the investment of other trust fund assets held and invested by the Investment Management Board.

(c) The board shall cause an annual review of the assets and liabilities of the fund to be conducted on an annual basis by a qualified, independent actuary.

(d) The board shall cause an audit of the fund to be conducted on an annual basis by a qualified, independent Auditor.

(e) The state of West Virginia is not liable for any liabilities of the fund. Claims or expenses against the fund are not a debt of the State of West Virginia or a charge against the General Revenue Fund of the State of West Virginia.

§29-12D-3. Payments from the Patient Injury Compensation Fund.

(a) Other than payments in connection with the ongoing operation and administration of the fund, no payments may be made from the fund other than in satisfaction of claims for economic damages to qualified claimants who would have collected economic damages but for the operation of the limits on economic damages set forth in article seven-b, chapter fifty-five of this code.

(b) For purposes of this article, a qualified claimant must be both a "patient" and a "plaintiff" as those terms are defined in article seven-b, chapter fifty-five of this code.

(c) Any qualified claimant seeking payment from the fund must establish to the satisfaction of the board that he or she has exhausted all reasonable means to recover from all applicable liability insurance an award of economic damages, following procedures prescribed by the board by legislative rule.

(d) Upon a determination by the board that a qualified claimant to the fund for compensation has exhausted all reasonable means to recover from all applicable liability insurance an award of economic damages arising under article seven-b, chapter fifty-five of this code, the board shall make a payment or payments to the claimant for economic damages. The economic damages must have been awarded but be uncollectible after the exhaustion of all reasonable means of recovery of applicable insurance proceeds. In no event shall the amount paid by the board in respect to any one occurrence exceed $1 million or the maximum amount of money that could have been collected from all applicable insurance prior to the creation of the patient injury compensation fund under this article, regardless of the number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number of distributees.

(e) The board, in its discretion, may make payments to a qualified claimant in a lump sum amount or in the form of periodic payments. Periodic payments are to be based upon the present value of the total amount to be paid by the fund to the claimant by using federally approved qualified assignments.

(f) In its discretion, the board may make a payment or payments out of the fund to a qualified claimant in connection with the settlement of claims arising under article seven-b, chapter fifty-five of this code all according to rules promulgated by the board. The board shall prior to making payment determine that payment from the fund to a qualified claimant is in the best interests of the fund. When the claimant and the board agree upon a settlement amount, the following procedure shall be followed:

(1) A petition shall be filed by the claimant with the court in which the action is pending, or if none is pending, in a court of appropriate jurisdiction, for approval of the agreement between the claimant and the board.

(2) The court shall set the petition for hearing as soon as the court’s calendar permits. Notice of the time, date and place of hearing shall be given to the claimant and to the board.

(3) The authority of the court is limited to denial of the final proposed settlement or, if the court finds it to be valid, just and equitable, approval of the proposed settlement.

(g) If and to the extent that any payment to one or more qualified claimants under this section would deplete the fund during any fiscal year, payments to and among qualified claimant's shall, at the discretion of the board, be prorated, made in periodic installments during the fiscal year according to the rules promulgated by the board or be placed in a nonpayment status until such time as sufficient moneys are received by the fund to initiate or resume payments. Any amounts due and unpaid to qualified claimants in any fiscal year shall be paid in subsequent fiscal years from available funds, but only to the extent funds are available in any fiscal year, according to the board's rules.

(h) The claimant may appeal a final decision made by the board pursuant to the provisions of article five, chapter twenty-nine-a of this code.