



## **Virginia's Birth-Related Neurological Injury Compensation Program (Birth Injury Fund/BIF)**

### **Support HB 1306 and SB 568**

#### **Issue Background**

In the 1980's Virginia's physicians faced soaring medical malpractice insurance rates and insurance companies on the brink of eliminating coverage to obstetricians. To alleviate this crisis, MSV sponsored legislation to establish an innovative solution. In 1987 the Virginia Birth-Related Neurological Injury Compensation Program was created and was the first of its kind nationally.

The fund created a no-fault way of providing care to children who qualify based on criteria outlined by state law. Awards are exclusive, preventing a family from seeking compensation through lawsuit. The child receives a lifetime of benefits including medical, hospitalization, rehab/therapy, residential or custodial care, compensation for lost earnings, equipment, legal fees and medically necessary travel.

BIF is funded by legislatively allowed sources including:

- Participating physicians and midwives @ \$5,200 per year each
- Non-participating physicians @ \$270 each per year
- Participating hospitals @ \$50 per live birth in the prior year
- Liability insurance assessments

By keeping many of the most expensive cases out of the court system, combined with a medical malpractice award cap, the medical insurance industry has been reasonably stabilized in Virginia.

#### **Problem**

The Birth Injury Fund (BIF) is facing a deficit of well over \$100 million. BIF continues to be a ripe target for negative press regarding its financial stability, the treatment of families currently in the BIF and those families seeking entry to the BIF. The BIF Board

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has generally exercised its fiduciary responsibilities in following the law and addressing the reported shortfalls in its actuarial soundness. It has attempted to address these financial issues using restrictions on benefits, restricting the definition to reduce the number of eligible infants and increasing the fees from existing funding sources. These actions have contributed to the perception that the BIF has moved from what was intended to be a relatively straight forward administrative process to what is now perceived to be an adversarial process (which is in opposition to its intent as a no-fault system).

As the deficits continue to increase annually, the long term stability of the Fund must be addressed. MSV has participated in a facilitated discussion process with members of the BIF Board and representatives from the VA OB/GYN society, the hospital association, the property and casualty carriers and families with children in the program.

The facilitated process led the majority of the participants to agree to legislation for the 2008 session. MSV supports HB 1306, patroned by Del. Harvey Morgan, and SB 568, patroned by Sen. Dick Saslaw.

### **BIF Talking Points**

- Virginia Birth Injury Fund (BIF) is a proven program that has ensured care for its recipients, while sustaining availability of OB's in the Commonwealth.
- However, due to actuarial unsoundness, the fund will not sustain the needs of the program participants over the long term without funding changes.
- If BIF were to go away a constitutional challenge to the medical malpractice cap would be more difficult to defend and it is possible the cap would be eliminated.
- MSV has been in mediation with key stakeholders for over a year attempting to find a solution.
- MSV believes in the program and wants to ensure care for its participants.

**PLEASE SUPPORT HB 1306 and SB 568**

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