WEST VIRGINIA CODE: §55-7B-12

§55-7B-12. Self-funding program; requirements; minimum standards.

(a) An irrevocable trust may be established by or for the benefit of the physician and funded by conveyance to the trustee of the sum of not less than $1 million, in cash or cash equivalents, subject to disbursement and replenishment from time to time, as described in this section, and exclusive of funds needed for maintenance, administration, legal defense and all other costs.

(b) A physician who has established a trust pursuant to this section may subsequently terminate the trust and elect to acquire coverage from a commercial medical professional liability insurance carrier. The assets of the trust may not be distributed to the physician settlor until the costs associated with the administration of the trust have been satisfied and the trustee receives certification that the physician has acquired medical professional liability insurance tail coverage or prior acts coverage, whichever is applicable. The tail coverage or prior acts coverage must cover the time period from the establishment of the trust to the effective date of the newly acquired medical professional liability insurance coverage or twelve years, whichever is shorter.

(c) For a period of not less than the applicable statute of limitations for medical professional liability, a physician who has established an actuarially sound physician self-funding insurance program under this section and has such a program in effect at the time of retirement shall, following his or her retirement, either maintain the trust in effect at funding levels required by this section, or purchase and maintain in force and effect tail insurance as required by article twenty-d, chapter thirty-three of this code.

(d) The trustee for the trust must be an independent professional, bank or other qualified institutional fiduciary. The trustee has all necessary and appropriate powers to fulfill the purposes of the trust, including, but not limited to, the powers to:

(1) Disburse funds for the maintenance and administration of the trust, and for defense costs, judgments, arbitration indemnity awards and settlements;

(2) Hire an actuary who is a member of the Casualty Actuarial Society and experienced in medical professional liability protection programs to provide a periodic opinion, but not less frequently than annually, as to the actuarial soundness of the fund, a copy of which opinion shall be provided upon request to any facility where the physician maintains clinical privileges;

(3) Hire a qualified, third-party claims manager experienced in handling medical professional liability claims, with the power and authority to set reserves and administer and oversee the defense of all claims; and

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(4) Require that the physician replenish the trust so as to maintain at all times a funding level of no less than $1 million or such greater amount as set forth in the most current actuarial opinion as described in subdivision (2) of this subsection, exclusive of funds needed for maintenance, administration, defense or other costs.

(e) The trustee, acting directly or through its hired professionals, as appropriate, shall periodically, but not less frequently than annually, evaluate and set required trust funding levels for the trust; make assessments against the physician for payments into the trust in order to replenish and maintain the trust at levels required by this subsection and required to render the trust actuarially sound from time to time; and otherwise take such actions as may appear necessary, desirable or appropriate to fulfill the purposes and integrity of the trust. Should the physician fail to timely meet any of the requests or requirements of the trustee with regard to funding of the trust or otherwise, or should the trust at any time fail to meet all the requirements of this subsection, thereupon the trust arrangement will conclusively no longer qualify under this article as an actuarially sound self-funding program: Provided, That all assets of the trust at the time of any such disqualifying event or circumstance will remain trust assets and may not be distributed to the physician settlor of the trust until the latter of the date on which any and all medical professional liability claims asserted or pending against the physician at the time of such disqualifying event or circumstance or within the applicable statute of limitations for medical malpractice liability thereafter have been finally adjudicated or otherwise resolved and fully satisfied to the extent of trust assets available for such purpose.

(f) In the event that more than one claim arises within the period since the last annual evaluation, a new evaluation will be performed within sixty days or at the time of the next annual audit, whichever is shorter, in order to evaluate the trust and replenish funds to ensure that its assets total not less than $1 million, or such other amount that is actuarially determined necessary to satisfy the aggregate outstanding claims, whichever is greater, exclusive of funds needed for maintenance, administration, legal defense or other costs.

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