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SENATE BILL NO. 316

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 10, 2002)

(Patron Prior to Substitute—Senator Stolle)

*A BILL to amend and reenact §§ 8.01-581.16 and 8.01-581.17 of the Code of Virginia, relating to civil immunity, privileged communications, and confidentiality of patient safety data.***Be it enacted by the General Assembly of Virginia:****1. That §§ 8.01-581.16 and 8.01-581.17 of the Code of Virginia are amended and reenacted as follows:**

§ 8.01-581.16. Civil immunity for members of or consultants to certain boards or committees.

Every member of, or health care professional consultant to, any committee, board, group, commission or other entity shall be immune from civil liability for any act, decision, omission, or utterance done or made in performance of his duties while serving as a member of or consultant to such committee, board, group, commission or other entity, ~~with which~~ functions primarily to review, evaluate, or make recommendations on (i) the duration of patient stays in health care facilities, (ii) the professional services furnished with respect to the medical, dental, psychological, podiatric, chiropractic, veterinary or optometric necessity for such services, (iii) the purpose of promoting the most efficient use of available health care facilities and services, (iv) the adequacy or quality of professional services, (v) the competency and qualifications for professional staff privileges, ~~or~~ (vi) the reasonableness or appropriateness of charges made by or on behalf of health care facilities *or (vii) patient safety, including entering into contracts with patient safety organizations*; provided that such committee, board, group, commission or other entity has been established pursuant to federal or state law or regulation, or pursuant to Joint Commission on Accreditation of ~~Hospitals~~ *Healthcare Organizations* requirements, or established and duly constituted by one or more public or licensed private hospitals, community services boards, or behavioral health authorities, or with a governmental agency and provided further that such act, decision, omission, or utterance is not done or made in bad faith or with malicious intent.

§ 8.01-581.17. Privileged communications of certain committees and entities.

A. For the purposes of this section:

"Centralized credentialing service" means (i) gathering information relating to applications for professional staff privileges at any public or licensed private hospital or for participation as a provider in any health maintenance organization, preferred provider organization or any similar organization and (ii) providing such information to those hospitals and organizations that utilize the service.

"Patient safety data" means reports made to patient safety organizations together with all health care data, interviews, memoranda, analyses, root cause analyses, products of quality assurance or quality improvement processes, corrective action plans or information collected or created by a health care provider as a result of an occurrence related to the provision of health care services that exacerbate an existing medical condition or could result in injury, illness, or death.

"Patient safety organization" means any organization, group, or other entity that collects and analyzes patient safety data for the purpose of improving patient safety and health care outcomes and that is independent and not under the control of the entity that reports patient safety data.

B. The proceedings, minutes, records, and reports of any (i) medical staff committee, utilization review committee, or other committee, board, group, commission or other entity as specified in § 8.01-581.16 and or (ii) nonprofit entity that provides a centralized credentialing service, together with all communications, both oral and written, originating in or provided to such committees or entities, are privileged communications which may not be disclosed or obtained by legal discovery proceedings unless a circuit court, after a hearing and for good cause arising from extraordinary circumstances being shown, orders the disclosure of such proceedings, minutes, records, reports, or communications. Additionally, for the purposes of this section, accreditation and peer review records of the American College of Radiology and the Medical Society of Virginia are considered privileged communications.

C. Nothing in this section shall be construed as providing any privilege to hospital, community services board, or behavioral health authority medical records kept with respect to any patient in the ordinary course of business of operating a hospital, community services board, or behavioral health authority nor to any facts or information contained in such records nor shall this section preclude or affect discovery of or production of evidence relating to hospitalization or treatment of any patient in the ordinary course of hospitalization of such patient.

For purposes of this section "centralized credentialing service" means (i) gathering information relating to applications for professional staff privileges at any public or licensed private hospital or for participation as a provider in any health maintenance organization, preferred provider organization or

60 any similar organization and (ii) providing such information to those hospitals and organizations that
61 utilize the service. Additionally, for the purposes of this section, accreditation and peer review records of
62 the American College of Radiology and the Medical Society of Virginia are considered privileged
63 communications.

64 *D. Notwithstanding any other provision of this section, reports or patient safety data in possession of*
65 *a patient safety organization, together with the identity of the reporter and all related correspondence,*
66 *documentation, analysis, results or recommendations, shall be privileged and confidential and shall not*
67 *be subject to a civil, criminal, or administrative subpoena or admitted as evidence in any civil, criminal,*
68 *or administrative proceeding. Nothing in this subsection shall affect the discoverability or admissibility*
69 *of facts, information or records referenced in subsection C as related to patient care from a source*
70 *other than a patient safety organization.*

71 *E. Any patient safety organization shall promptly remove all patient-identifying information after*
72 *receipt of a complete patient safety data report unless such organization is otherwise permitted by state*
73 *or federal law to maintain such information. Patient safety organizations shall maintain the*
74 *confidentiality of all patient-identifying information and shall not disseminate such information except as*
75 *permitted by state or federal law.*

76 *F. Exchange of patient safety data among health care providers or patient safety organizations that*
77 *does not identify any patient shall not constitute a waiver of any privilege established in this section or*
78 *immunity granted in § 8.01-581.16.*

79 *G. Reports of patient safety data to patient safety organizations shall not abrogate obligations to*
80 *make reports to health regulatory boards or agencies as required by state or federal law.*

81 *H. No employer shall take retaliatory action against an employee who in good faith makes a report*
82 *of patient safety data to a patient safety organization.*