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HOUSE BILL NO. 2741

Offered January 16, 2003

A BILL to amend and reenact §§ 8.01-66.2, 8.01-66.5, 8.01-66.6, 8.01-66.8 and 8.01-66.9 of the Code of Virginia, relating to liens of the Commonwealth for medical services.

Patron—Kilgore

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-66.2, 8.01-66.5, 8.01-66.6, 8.01-66.8 and 8.01-66.9 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-66.2. Lien against person whose negligence causes injury.

Whenever any person sustains personal injuries caused by the alleged negligence of another and receives treatment in any hospital, public or private, *or nursing home*, or receives medical attention or treatment from any physician, or receives nursing service or care from any registered nurse, or receives physical therapy treatment from any registered physical therapist in this Commonwealth, or receives medicine from a pharmacy, such hospital, *nursing home*, physician, nurse, physical therapist or pharmacy shall each have a lien for the amount of a just and reasonable charge for the service rendered, but not exceeding \$2,000 in the case of a hospital *or nursing home*, and \$500 for each physician, nurse, physical therapist, or pharmacy on the claim of such injured person or of his personal representative against the person, firm or corporation whose negligence is alleged to have caused such injuries.

§ 8.01-66.5. Written notice required.

A. No lien provided for in § 8.01-66.2 or § 8.01-66.9 shall be created or become effective in favor of the Commonwealth, an institution thereof, or a hospital, *nursing home*, physician, nurse or physical therapist unless and until a written notice of lien setting forth the name of the Commonwealth, or the institution, hospital, *nursing home*, physician, nurse or physical therapist and the name of the injured person, has been served upon or given to the person, firm or corporation whose negligence is alleged to have caused such injuries, or to the attorney for the injured party, or to the injured party. Such written notice of lien shall not be required if the attorney for the injured party knew that medical services were either provided or paid for by the Commonwealth.

B. *The injured party or the attorney for the injured party shall, within 30 days of filing a lawsuit, give written notice to the Department of Medical Assistance Services that a claim for personal injuries has been filed if the Department of Medical Assistance Services has paid for any health care services provided to the injured party at the time of or subsequent to the events giving rise to the personal injury.*

§ 8.01-66.6. Liability for reasonable charges for services.

The notice set forth in *subsection A of § 8.01-66.5*, when served upon or given to the person, firm or corporation whose negligence is alleged to have caused injuries or to the attorney for the injured party, shall have the effect of making such person, firm, corporation or attorney liable for the reasonable charges for the services rendered the injured person to the extent of the amount paid to or received by such injured party or his personal representative exclusive of attorney's fees, but, except in liens created under § 8.01-66.9, not in excess of the maximum amounts prescribed in § 8.01-66.2.

§ 8.01-66.8. Petition to enforce lien.

If suit is instituted by an injured person or his personal representative against the person, firm or corporation allegedly causing the person's injuries, a hospital, *nursing home*, physician or nurse, in lieu of proceeding according to §§ 8.01-66.5 to 8.01-66.7, may file in the court wherein such suit is pending a petition to enforce the lien provided for in § 8.01-66.2 or § 8.01-66.9. Such petition shall be heard and disposed of in a summary way.

§ 8.01-66.9. Lien in favor of Commonwealth, its programs, institutions or departments on claim for personal injuries.

Whenever any person sustains personal injuries and receives treatment in any hospital, public or private, *or nursing home*, or receives medical attention or treatment from any physician, or receives nursing services or care from any registered nurse in this Commonwealth, or receives pharmaceutical goods or any type of medical or rehabilitative device, apparatus, or treatment which is paid for pursuant to the Virginia Medical Assistance Program, the State/Local Hospitalization Program and other programs of the Department of Medical Assistance Services, the Maternal and Child Health Program, or the Children's Specialty Services Program, or provided at or paid for by any hospital or rehabilitation center operated by the Commonwealth, the Department of Rehabilitative Services or any state institution of

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59 higher education, the Commonwealth shall have a lien for the total amount paid pursuant to such
60 program, and the Commonwealth or such Department or institution *or a nursing home* shall have a lien
61 for the total amount due for the services, equipment or devices provided at or paid for by such hospital
62 or center operated by the Commonwealth or such Department or institution, or any portion thereof
63 compromised pursuant to the authority granted under § 2.2-514, on the claim of such injured person or
64 of his personal representative against the person, firm, or corporation who is alleged to have caused such
65 injuries.

66 The Commonwealth or such Department or institution shall also have a lien on the claim of the
67 injured person or his personal representative for any funds which may be due him from insurance
68 moneys received for such medical services under the injured party's own insurance coverage or through
69 an uninsured or underinsured motorist insurance coverage endorsement. The lien granted to the
70 Commonwealth for the total amounts paid pursuant to the Virginia Medical Assistance Program, the
71 State/Local Hospitalization Program and other programs of the Department of Medical Assistance
72 Services, the Maternal and Child Health Program, or the Children's Specialty Services Program shall
73 have priority over the lien for the amounts due for services, equipment or devices provided at a hospital
74 or center operated by the Commonwealth. The Commonwealth's or such Department's or institution's
75 lien shall be inferior to any lien for payment of reasonable attorney's fees and costs, but shall be
76 superior to all other liens created by the provisions of this chapter and otherwise. Expenses for
77 reasonable legal fees and costs shall be deducted from the total amount recovered. The amount of the
78 lien may be compromised pursuant to § 2.2-514.

79 The court in which a suit by an injured person or his personal representative has been filed against
80 the person, firm or corporation alleged to have caused such injuries or in which such suit may properly
81 be filed, may, upon motion or petition by the injured person, his personal representative or his attorney,
82 and after written notice is given to all those holding liens attaching to the recovery, reduce the amount
83 of the liens and apportion the recovery, whether by verdict or negotiated settlement, between the
84 plaintiff, the plaintiff's attorney, and the Commonwealth or such Department or institution as the equities
85 of the case may appear, provided that the injured person, his personal representative or attorney has
86 made a good faith effort to negotiate a compromise pursuant to § 2.2-514. The court shall set forth the
87 basis for any such reduction in a written order. *In order to protect the integrity of funds available to pay*
88 *for health care services for the eligible needy, the court shall not have the authority to compromise by*
89 *more than 10 percent any lien granted to the Commonwealth for any moneys paid by the Department of*
90 *Medical Assistance Services on behalf of the injured person.*