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HOUSE BILL NO. 2741

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 31, 2003)

(Patron Prior to Substitute—Delegate Kilgore)

*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.***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. *In any action for personal injuries or wrongful death against a nursing home or its agents, if the Department of Medical Assistance Services has paid for any health care services provided to the injured party or decedent relating to the action, the injured party or personal representative shall, within 60 days of filing a lawsuit or 21 days of determining that the Department of Medical Assistance Service has paid for such health care services, whichever is later, give written notice to the Department of Medical Assistance Services that the lawsuit has been filed. The Department of Medical Assistance Services shall provide a written response, stating the amount of the lien as of the date of their response, within 60 days of receiving a request for that information from the injured party or personal representative.*

§ 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

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

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

81 The court in which a suit by an injured person or his personal representative has been filed against
82 the person, firm or corporation alleged to have caused such injuries or in which such suit may properly
83 be filed, may, upon motion or petition by the injured person, his personal representative or his attorney,
84 and after written notice is given to all those holding liens attaching to the recovery, reduce the amount
85 of the liens and apportion the recovery, whether by verdict or negotiated settlement, between the
86 plaintiff, the plaintiff's attorney, and the Commonwealth or such Department or institution as the equities
87 of the case may appear, provided that the injured person, his personal representative or attorney has
88 made a good faith effort to negotiate a compromise pursuant to § 2.2-514. The court shall set forth the
89 basis for any such reduction in a written order.