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HOUSE BILL NO. 876

House Amendments in [] — January 29, 2004

A BILL to amend and reenact §§ 37.1-226 through 37.1-230 of the Code of Virginia, relating to disclosure of mental health information.

Patron Prior to Engrossment—Delegate O'Bannon

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.1-226 through 37.1-230 of the Code of Virginia are amended and reenacted as follows:

§ 37.1-226. Patient deemed to [~~consent or~~] authorize disclosure of certain information.

A patient who has requested a professional *or treatment facility* to submit a bill to a third party payor for payment under a contract or policy of insurance covering such patient shall be deemed to have [~~consented to~~ *authorized*] the disclosure of the following information to such third party payor:

1. The patient's name, *address, date of birth*, and the contract or policy number;
2. The date the patient was admitted to a treatment facility or the date the patient began receiving mental health, mental retardation or substance abuse services;
3. The date of onset of the patient's illness;
4. The date the patient was discharged from the treatment facility or the date the services terminated, if known;

5. The diagnosis, with brief information substantiating the diagnosis;

6. A brief description of the services provided such patient, including type of therapy, medications ordered and administered, and number of hours spent in individual, group, or family treatment, recreational therapy, or rehabilitative activities;

7. Status of the patient, whether in-patient or out-patient; and

8. The patient's relationship to the contract subscriber or policyholder.

§ 37.1-227. Disclosure of additional information.

If the third party payor is unable to settle the claim on the basis of the information provided pursuant to § 37.1-226, a physician *or other authorized professional* employed by the third party payor may request additional information stating the reasons therefor. Either the professional or the treatment facility, or both, may submit to the physician *or other authorized professional* the requested additional information which shall be treated as confidential by the third party payor, its agents, consultants and employees.

§ 37.1-228. Disclosure of information by third party payor prohibited; exceptions.

A. No third party payor shall disclose any information received from either a professional or a treatment facility, or both, about a patient without the patient's consent *or authorization*, except as hereafter provided in this section.

B. Such information may be disclosed by the third party payor without the patient's consent *or authorization* for the purposes of rate review, auditing or evaluation to the extent that such information is necessary to accomplish such purposes. Where a disclosure made to any person pursuant to this subsection includes patient identifying information, the records containing such information may not be removed from the premises of the third party payor and the information may not be used in connection with any legal, administrative, supervisory or other action whatsoever with respect to the patient.

C. Any third party payor participating in a coordination of benefit program with other third party payors may release such information to another third party payor without the patient's consent *or authorization*. Information released under this subsection shall be limited to:

1. The name of the patient;
2. The name of the professional;
- 2a 3. The name of the treatment facility;
- 3 4. The date of onset of the patient's illness and the period of treatment covered by the third party payor; and
- 4 5. The amount already paid.

D. No person receiving any information about a patient from a third party payor may disclose such information.

§ 37.1-229. Form of consent or authorization.

No consent *or authorization* required by § 37.1-228 of this chapter shall be valid unless such consent *or authorization* is in writing and states:

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1. The person to whom disclosure is to be made;
2. The nature of the information to be disclosed;
3. The purpose for which disclosure is to be made; and
4. The inclusive dates of the records to be disclosed.

No consent or authorization shall be valid unless it is dated and signed by the person consenting or authorizing. Any consent or authorization may be revoked except to the extent that action has already been taken in reliance on the consent or authorization.

Any consent or authorization pursuant to this section shall also comply with the relevant requirements of subsection G of § 32.1-127.1:03.

§ 37.1-230. Disclosure to patient of information released.

Any patient who is the subject of information received by a third party payor pursuant to the provisions of this chapter may request and shall be entitled to receive from such third party payor a statement as to the substance of such information. ~~Provided, however~~

~~However, if either the professional treating the patient or the treatment facility, or both, have advised the third party payor that the patient's treating physician or treating clinical psychologist has determined that such information, if given to the patient might adversely affect the patient's health, would be reasonably likely to endanger the life or physical safety of the patient or another person, or that such record makes reference to a person other than a health care provider, and the access requested would be reasonably likely to cause substantial harm to such referenced person, the third party payor shall, if requested by the patient, (i) provide such information to an attorney designated by the patient rather than to the patient or (ii) to a physician or clinical psychologist designated by the patient whose licensure, training, and experience, relative to the patient's condition, are at least equivalent to that of the treating physician or treating clinical psychologist upon whose opinion the denial is based, who, at the patient's expense, shall make a judgment as to whether to make the information available to the patient.~~

~~[In the alternative~~ Alternatively, upon the patient's request] , the third party payor shall instead provide such information to a physician or clinical psychologist selected by the third party payor, whose licensure, training, and experience relative to the patient's condition are at least equivalent to that of the physician or clinical psychologist who initially advised the third party payor to deny the patient access to his records and who did not participate in the original decision to make, at the third party payor's expense, a judgment as to whether to make the information available to the patient.

The third party payor shall comply with the judgment of the reviewing physician or clinical psychologist.