086914404

HOUSE BILL NO. 382

Offered January 9, 2008

Prefiled January 4, 2008

A BILL to amend and reenact § 8.01-581.17 of the Code of Virginia, relating to privileged communications with medical malpractice and health care advisory committees.

Patron—O'Bannon

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-581.17 of the Code of Virginia is amended and reenacted as follows:

§ 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.

"Health record" shall have the same meaning as in § 32.1-127.1:03.

"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.

"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~~*"Restricted information" means 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; (ii) nonprofit entity that provides a centralized credentialing service; or (iii) quality assurance, quality of care, or peer review committee established pursuant to guidelines approved or adopted by (a) a national or state physician peer review entity, (b) a national or state physician accreditation entity, (c) a national professional association of health care providers or Virginia chapter of a national professional association of health care providers, (d) a licensee of a managed care health insurance plan (MCHIP) as defined in § 38.2-5800, (e) the Office of Emergency Medical Services or any regional emergency medical services council, ~~or~~ (f) a statewide or local association representing health care providers licensed in the Commonwealth, ~~together with~~ *and (g)* 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. Oral~~*However, oral* communications regarding a specific medical incident involving patient care, made to a quality assurance, quality of care, or peer review committee established pursuant to clause (iii), shall be privileged only to the extent made more than 24 hours after the occurrence of the medical incident.

B. Restricted information shall be privileged and confidential and may not be disclosed outside of the authorized activities of a committee or other entity specified in § 8.01-581.16 that created or received it except as otherwise required by law. No restricted information shall be subject to subpoena or legal discovery proceedings and no restricted information shall be admissible in any civil, criminal, or administrative proceeding unless a circuit court, after a hearing and for good cause shown, arising from extraordinary circumstances, orders the production or admission of such restricted information. 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 restricted information.

B1. Delivery to a committee or other entity specified in § 8.01-581.16 of information that was not restricted information prior to its delivery to such committee or other entity shall not make such document restricted information; however, the fact of delivery to such committee or other entity and the content of any communication accompanying the information shall be restricted information. Information created at the request of or for the express purpose of review by a committee or other entity specified in § 8.01-581.16 shall constitute restricted information without regard to the nature of the information

INTRODUCED

3/24/10 15:56

contained therein.

C. Nothing in this section shall be construed as providing any privilege to health care provider, emergency medical services agency, community services board, or behavioral health authority ~~medical~~ *health* records kept with respect to any patient in the ordinary course of business of operating a hospital, emergency medical services agency, 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.

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

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

F. Exchange of *(i)* patient safety data among health care providers or patient safety organizations *or (ii) restricted information among health care providers* that does not identify any patient shall not constitute a waiver of any privilege established in this section.

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

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

I. Reports produced solely for purposes of self-assessment of compliance with requirements or standards of the Joint Commission on Accreditation of Healthcare Organizations shall be privileged and confidential and shall not be subject to subpoena or admitted as evidence in a civil or administrative proceeding. Nothing in this subsection shall affect the discoverability or admissibility of facts, information, or records referenced in subsection C as related to patient care from a source other than such accreditation body. A health care provider's release of such reports to such accreditation body shall not constitute a waiver of any privilege provided under this section.