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## HOUSE BILL NO. 2373

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on January 31, 2011)

(Patrons Prior to Substitute—Delegates Peace and Cleaveland [HB 2377])

A *BILL to amend and reenact § 8.01-581.17 of the Code of Virginia, relating to medical malpractice; privileged communications of certain committees.*

**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.

"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 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 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 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. *Nothing in this section shall be construed as providing any privilege to any health care provider, emergency medical services agency, community services board, or behavioral health authority with respect to any factual information regarding specific patient health care or treatment, including patient health care incidents, whether oral, electronic, or written. However, the analysis, findings, conclusions, recommendations, and the deliberative process of any medical staff committee, utilization review committee, or other committee, board, group, commission, or other entity specified in § 8.01-581.16, as well as the proceedings, minutes, records, and reports, including the opinions and reports of experts, of such entities shall be privileged in their entirety under this section. Information known by a witness with knowledge of the facts or treating health care provider is not privileged or protected from discovery merely because it is provided to a committee, board, group, commission, or other entity specified in § 8.01-581.16, and may be discovered by deposition or otherwise in the course of discovery. A person involved in the work of the entities referenced in this subsection shall not be made a witness with knowledge of the facts by virtue of his involvement in the quality assurance, peer review, or credentialing process.*

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 records kept with respect to ~~any~~ a patient, *whose treatment is at issue*, 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~~ *medical* records, nor shall

60 this section preclude or affect discovery of or production of evidence relating to hospitalization or  
61 treatment of ~~any such~~ patient in the ordinary course of *the patient's* hospitalization of ~~such patient~~ or  
62 treatment. However, the proceedings, minutes, records, reports, analysis, findings, conclusions,  
63 recommendations, and the deliberative process, including opinions and reports of experts, of any  
64 medical staff committee, utilization review committee, or other committee, board, group, commission, or  
65 other entity specified in § 8.01-581.16 shall not constitute medical records, are privileged in their  
66 entirety, and are not discoverable.

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

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

79 F. Exchange of (i) patient safety data among health care providers or patient safety organizations that  
80 does not identify any patient or (ii) information privileged pursuant to subsection B between committees,  
81 boards, groups, commissions, or other entities specified in § 8.01-581.16 shall not constitute a waiver of  
82 any privilege established in this section.

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

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

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