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HOUSE BILL NO. 667

Offered January 8, 2014

Prefiled January 7, 2014

A *BILL to amend the Code of Virginia by adding a section numbered 2.2-1837.1 and by adding in Title 32.1 a chapter numbered 17, containing a section numbered 32.1-370, relating to Department of the Treasury; risk management plan for volunteer health care providers.*

Patron—Marshall, R.G.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 2.2-1837.1 and by adding in Title 32 a chapter numbered 17, consisting of a section numbered 32.1-370, as follows:

§ 2.2-1837.1. Risk management plan for volunteer health care providers.

A. As used in this section, unless the context requires a different meaning,

"Free clinic" means a health care facility that is operated by a nonprofit private entity and that, in providing health services through the facility, (i) does not accept reimbursement from any third-party payor, including reimbursement under any insurance policy or health plan or under a federal or state health benefit program, and (ii) does not impose charges on the individuals to whom the services are provided.

"Free clinic offsite program" means a program or event operated by a free clinic through which qualifying health services are provided to patients at a site other than the free clinic, which may include a volunteer health care provider's customary practice location or another appropriate location.

"Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical diagnosis, care, treatment or confinement.

"Malpractice" means any tort action or breach of contract action for personal injuries or wrongful death, based on health care or professional services rendered, or which should have been rendered, by a health care provider to a patient.

"Qualifying health services" means any medical assistance required or authorized to be provided in the program under Title XIX of the Social Security Act (42 USC §§ 1396 et seq.) without regard to whether the medical assistance is included in the plan submitted under such program by the state in which the health care provider involved provides the medical assistance.

"Volunteer health care provider" means a health care provider certified by the Department in accordance with subsection B of § 32.1-370.

B. The Division shall establish a risk management plan, which may be purchased insurance, self-insurance, or a combination of self-insurance and purchased insurance to provide protection against liability imposed by law for damages resulting from any claim of malpractice against a health care provider who is certified as a volunteer health care provider in accordance with § 32.1-370.

C. Participation in the risk management plan established pursuant to this section shall be voluntary. No physician who is certified as a volunteer health care provider in accordance with § 32.1-370 shall be required to pay any premium to the Division for providing a risk management plan established pursuant to this section, except that any volunteer health care provider who practices in a specialty designated as a high-risk specialty may be required to pay a premium to the Division for participation in the risk management plan pursuant to regulations promulgated by the Department.

D. The Division shall provide for the legal defense of participating entities and shall reserve the right to settle or defend claims presented under the plan. All prejudgment settlements shall be approved in advance by the Division.

E. Any risk management plan established pursuant to this section shall provide for the establishment of a trust fund or contribution to the State Insurance Reserve Trust Fund for the payment of claims covered under the plan. The funds shall be invested as provided in § 2.2-1806 and interest shall be added to the fund as earned. The trust fund shall also provide for payment of legal defense costs, actuarial costs, administrative costs, contractual costs, and other expenses related to the administration of such plan.

F. The State Treasurer shall adopt regulations to implement the provisions of this act, which shall include provisions governing the designation of high-risk specialties and determination of the amount of any premium required to be paid by volunteer health care providers practicing in designated high-risk specialties.

INTRODUCED

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CHAPTER 17.

VOLUNTEER HEALTH CARE PROVIDERS.

§ 32.1-370. Volunteer health care providers; certification; immunity from liability.

A. As used in this chapter, unless the context requires a different meaning:

"Free clinic" means a health care facility operated by a nonprofit private entity and that, in providing health services through the facility, (i) does not accept reimbursement from any third-party payor, including reimbursement under any insurance policy or health plan or under a federal or state health benefit program, and (ii) does not impose charges on the individuals to whom the services are provided.

"Free clinic offsite program" means a program or event operated by a free clinic through which qualifying health services are provided to patients at a site other than the free clinic, which may include a volunteer health care provider's customary practice location or another appropriate location.

"Qualifying health services" means any medical assistance required or authorized to be provided in the program under Title XIX of the Social Security Act (42 USC §§ 1396 et seq.) without regard to whether the medical assistance is included in the plan submitted under such program by the state in which the health care provider involved provides the medical assistance.

"Volunteer health care provider" means a health care provider certified by the Department in accordance with subsection B.

B. The Department shall certify a health care provider as a volunteer health care provider upon application and submission of evidence, satisfactory to the Department, that the applicant:

1. Is a resident of the Commonwealth;

2. Holds a current, valid license as a doctor of medicine or osteopathy issued by the Board of Medicine or holds a current, valid license as a dentist issued by the Board of Dentistry;

3. Is deemed to be an employee of the federal Public Health Service as a free clinic health professional providing qualifying health services pursuant to 42 U.S.C. § 233; and

4. Has, without compensation, provided at least four hours of qualifying health services at a free clinic or free clinic offsite program per week for four consecutive weeks during the three-month period immediately preceding the date of application.

C. Certification as a volunteer health care provider shall be renewed annually, upon submission to the Department of an application and evidence satisfactory to the Department indicating that the health care provider (i) continues to meet the criteria for certification set forth in subdivisions 1, 2, and 3 of subsection B and (ii) has, without compensation, provided no fewer than 192 hours of qualifying health services at a free clinic or free clinic offsite program in the calendar year immediately preceding application for renewal, with at least 48 hours of qualifying health services provided in each calendar quarter of the year immediately preceding application for renewal, which shall be verified by the medical director of the free clinic at which such services were provided or by which such free clinic offsite program was operated.

D. The Department may refuse to issue or refuse to renew a health care provider's certification as a volunteer health care provider if the health care provider fails to satisfy the requirements set out in subsection B or C.

E. A health care provider who is certified as a volunteer health care provider in accordance with this section shall be exempt from civil liability for any injury or wrongful death of any person resulting from the provision of any health care provided in his professional capacity, regardless of where such services are performed, unless such act or omission was the result of the volunteer health care provider's gross negligence or willful misconduct.