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SENATE BILL NO. 159

Offered January 10, 2018

Prefiled December 28, 2017

A BILL to amend and reenact §§ 8.01-66.9 and 8.01-66.10 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 8.01-66.10:1, relating to the Commonwealth's lien for payment of medical services; limitations.

Patron—Edwards

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-66.9 and 8.01-66.10 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 8.01-66.10:1 as follows:

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

The Commonwealth or such Department or institution shall also have a lien on the claim of the injured person or his personal representative for any funds which may be due him from insurance moneys received for such medical services under the injured party's own insurance coverage or through an uninsured or underinsured motorist insurance coverage endorsement. The lien granted to the Commonwealth for the total amounts paid 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 Children's Specialty Services Program shall have priority over the lien for the amounts due for services, equipment or devices provided at a hospital or center operated by the Commonwealth. The Commonwealth's or such Department's or institution's lien shall be inferior to any lien for payment of reasonable attorney's fees and costs, but shall be superior to all other liens created by the provisions of this chapter and otherwise. *The lien granted to the Commonwealth for the total amounts paid pursuant to the Virginia Medical Assistance Program shall attach only to the portion of the claim representing the medical expenses incurred by the injured person.* Expenses for reasonable legal fees and costs shall be deducted from the total amount recovered. The amount of the lien may be compromised pursuant to § 2.2-514.

The court in which a suit by an injured person or his personal representative has been filed against the person, firm or corporation alleged to have caused such injuries or in which such suit may properly be filed~~, may~~, upon motion or petition by the injured person, his personal representative or his attorney, and after written notice is given to all those holding liens attaching to the recovery, *(i) may* reduce the amount of the liens and apportion the recovery, whether by verdict or negotiated settlement, between the plaintiff, the plaintiff's attorney, and the Commonwealth or such Department or institution as the equities of the case may appear, provided that the injured person, his personal representative or attorney has made a good faith effort to negotiate a compromise pursuant to § 2.2-514 *and (ii) shall, in the case of a lien granted to the Commonwealth for amounts paid for medical expenses pursuant to the Virginia Medical Assistance Program, reduce the amount of the lien and apportion the recovery by determining the portion of the recovery representing compensation for such medical expenses and deducting from such amount the pro rata share of attorney fees, costs, and expenses incurred by the injured party or his personal representative*. The court shall set forth the basis for any such reduction in a written order.

§ 8.01-66.10. Death claims settled by compromise or suit.

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In case of personal injuries resulting in death and settlement therefor by compromise or suit under the provisions of §§ 8.01-50 to 8.01-56, the liens provided for in this article may be asserted against the recovery, or against the estate of the decedent, but not both, *except liens granted to the Commonwealth for the total amounts paid pursuant to the Virginia Medical Assistance Program, which may be asserted only against the estate of the decedent.* If asserted against the recovery and paid, such liens shall attach pro rata to the amounts received respectively by such beneficiaries as are designated to receive the moneys distributed and in their respective amounts; and such beneficiaries, or the personal representative for their benefit, shall be subrogated to the liens against the estate of such decedent provided for by § 64.2-528. *In the case of a lien granted to the Commonwealth for the total amounts paid for medical expenses pursuant to the Virginia Medical Assistance Program, the court shall reduce the amount of the lien and apportion the recovery by determining the portion of the recovery representing compensation for such medical expenses and deducting from such amount the pro rata share of attorney fees, costs, and expenses incurred by the decedent or his personal representative.*

§ 8.01-66.10:1. Personal injury claims of infants settled by compromise or suit.

In case of personal injuries to an infant and settlement therefor by compromise or suit in which a lien is granted to the Commonwealth for the total amounts paid for medical expenses pursuant to the Virginia Medical Assistance Program during the infant's minority, the court shall reduce the amount of the lien and apportion the recovery by determining the portion of the recovery representing compensation for such medical expenses and deducting from such amount the pro rata share of attorney fees, costs, and expenses incurred by the parent or guardian of the infant or his personal representative.