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SENATE BILL NO. 159

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Edwards
on February 9, 2018)

(Patron Prior to Substitute—Senator Edwards)

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.

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. 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 equitably apportion the recovery by determining the lien or assignment granted to the Commonwealth for amounts paid for care and services of the injured party by the Virginia Medical Assistance Program, by determining a reasonable compensation of counsel for the injured party or his personal representative under any attorney fee agreement including costs and expenses in accordance with § 54.1-3932, and by determining a just recovery to the injured party or his personal representative by considering the nature and extent of the injuries and other losses and damages incurred. 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.

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 or assignments granted to the

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60 *Commonwealth for the amounts paid for care and services of the decedent by the Virginia Medical*
61 *Assistance Program. If asserted against the recovery and paid, such liens shall attach pro rata to the*
62 *amounts received respectively by such beneficiaries as are designated to receive the moneys distributed*
63 *and in their respective amounts; and such beneficiaries, or the personal representative for their benefit,*
64 *shall be subrogated to the liens against the estate of such decedent provided for by § 64.2-528. In the*
65 *case of a lien or assignment granted to the Commonwealth, the court shall equitably apportion the*
66 *recovery by determining the lien or assignment granted to the Commonwealth for amounts paid for care*
67 *and services of the decedent by the Virginia Medical Assistance Program, by determining a reasonable*
68 *compensation of counsel for the decedent under any attorney fee agreement including costs and*
69 *expenses in accordance with § 54.1-3932, and by determining a just recovery to the decedent and his*
70 *estate and beneficiaries by considering the nature and extent of the injuries and other losses and*
71 *damages incurred by the decedent and his estate and beneficiaries as authorized by law.*

72 **§ 8.01-66.10:1. Personal injury claims of infants settled by compromise or suit.**

73 *In case of personal injuries to an infant and settlement therefor by compromise or suit in which a*
74 *lien or assignment is granted to the Commonwealth for the amounts paid for care and services by the*
75 *Virginia Medical Assistance Program during the infant's minority, the court shall equitably apportion*
76 *the recovery by determining the lien or assignment granted to the Commonwealth for amounts paid for*
77 *care and services of the injured infant by the Virginia Medical Assistance Program, by determining a*
78 *reasonable compensation of counsel for the injured infant under any attorney fee agreement including*
79 *costs and expenses in accordance with § 54.1-3932, and by determining a just recovery to the injured*
80 *infant and the parents or guardian of the infant, or the personal representative of the injured infant, by*
81 *considering the nature and extent of the injuries and other losses and damages incurred.*

82 **2. That the provisions of this act shall not become effective unless an appropriation effectuating**
83 **the purposes of this act is included in a general appropriation act passed in 2018 by the General**
84 **Assembly that becomes law.**