

LD8787661

SENATE BILL NO. 508

Offered January 25, 1994

A *BILL to amend and reenact §§ 8.01-581.1, 8.01-581.13, 38.2-5300 and 38.2-5308 of the Code of Virginia, relating to utilization review; malpractice.*

Patrons—Gartlan, Hawkins, Holland, C.A., Howell and Marye; Delegates: Connally, Davies, Melvin and Orrock

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-581.1, 8.01-581.13, 38.2-5300 and 38.2-5308 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-581.1. Definitions.

As used in this chapter:

"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.

"Health care provider" means (i) a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services as a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, health maintenance organization, (ii) a professional corporation, all of whose shareholders or members are so licensed, (iii) a partnership, all of whose partners are so licensed, (iv) a nursing home as defined in § 54.1-3100 except those nursing institutions conducted by and for those who rely upon treatment by spiritual means alone through prayer in accordance with a recognized church or religious denomination, ~~or~~ (v) a professional limited liability company comprised of members as described in § 13.1-1102 A 2, or an officer, employee or agent thereof acting in the course and scope of his employment *or* (vi) *any person or entity performing utilization review as defined in §38.2-5300.*

"Health maintenance organization" means any person licensed pursuant to Chapter 43 of Title 38.2 who undertakes to provide or arrange for one or more health care plans.

"Hospital" means a public or private institution licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 or Chapter 8 (§ 37.1-179 et seq.) of Title 37.1.

"Impartial attorney" means an attorney who has not represented (i) the claimant, his family, his partners, co-proprietors or his other business interests; or (ii) the health care provider, his family, his partners, co-proprietors or his other business interests.

"Impartial health care provider" means a health care provider who (i) has not examined, treated or been consulted regarding the claimant or his family; (ii) does not anticipate examining, treating, or being consulted regarding the claimant or his family; or (iii) has not been an employee, partner or co-proprietor of the health care provider against whom the claim is asserted.

"Malpractice" means any tort based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient.

"Physician" means (i) a person licensed to practice medicine or osteopathy in this Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 *or* (ii) *any cause of action based on a pre-admission, concurrent or retrospective medical necessity determination or review related to the appropriateness of the site or provider from which services were or are to be received.*

"Patient" means any natural person who receives or should have received health care from a licensed health care provider except those persons who are given health care in an emergency situation which exempts the health care provider from liability for his emergency services in accordance with § 8.01-225.

§ 8.01-581.13. Civil immunity for certain health professionals and health profession students serving as members of certain entities.

A. For the purposes of this subsection, "health professional" means any certified substance abuse counselor, clinical psychologist, dentist, licensed professional counselor, optometrist, physician, chiropractor, podiatrist, or veterinarian who is actively engaged in the practice of his profession.

Unless such act, decision, or omission resulted from such health professional's bad faith or malicious intent, any health professional, as defined in this subsection, shall be immune from civil liability for any act, decision or omission resulting from his duties as a member or agent of any entity which functions primarily (i) to investigate any complaint that a physical or mental impairment, including alcoholism or

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60 drug addiction, has impaired the ability of any such health professional to practice his profession and (ii)
61 to encourage, recommend and arrange for a course of treatment, if deemed appropriate, or (iii) to review
62 the duration of patient stays in health facilities or delivery of professional services for the purpose of
63 promoting the most efficient use of available health facilities and services, the adequacy and quality of
64 professional services, or the reasonableness or appropriateness of charges made by or on behalf of such
65 health professionals. Such entity shall have been established pursuant to a federal or state law, or by one
66 or more public or licensed private hospitals, or a relevant health professional society, academy or
67 association affiliated with the American Medical Association, the American Dental Association, the
68 American Pharmaceutical Association, the American Psychological Association, the American Podiatric
69 Medical Association, the American Society of Hospitals and Pharmacies, the American Veterinary
70 Medical Association, the American Association for Counseling and Development, the American
71 Optometric Association, International Chiropractic Association, the American Chiropractic Association or
72 a governmental agency. *This section shall not be construed to grant immunity from civil liability to a*
73 *private review agent as defined in § 38.2-5300.*

74 B. Unless such act, decision, or omission resulted from such pharmacist's or nurse's bad faith or
75 malicious intent, any licensed pharmacist or nurse who is actively engaged in the practice of his
76 profession shall be immune from civil liability for any act, decision or omission resulting from his
77 duties while serving as a member or agent of any entity which functions primarily (i) to investigate any
78 complaint that a physical or mental impairment, including alcoholism or drug addiction, has impaired the
79 ability of any pharmacist or nurse to practice his profession and (ii) to encourage, recommend and
80 arrange for a course of treatment, if deemed appropriate.

81 C. For the purposes of this subsection, "health profession student" means a student in good standing
82 who is enrolled in an accredited school, program, or curriculum in clinical psychology, dentistry,
83 medicine, nursing, pharmacy, chiropractic, substance abuse counseling, or veterinary medicine and has
84 received training relating to substance abuse.

85 Unless such act, decision, or omission resulted from such health profession student's bad faith or
86 malicious intent, any health profession student, as defined in this subsection, shall be immune from civil
87 liability for any act, decision, or omission resulting from his duties as a member of an entity established
88 by the institution of higher education in which he is enrolled or a professional student's organization
89 affiliated with such institution which functions primarily (i) to investigate any complaint of a physical or
90 mental impairment, including alcoholism or drug addiction, of any health profession student and (ii) to
91 encourage, recommend, and arrange for a course of treatment, if deemed appropriate.

92 D. The immunity provided hereunder shall not extend to any person with respect to actions, decisions
93 or omissions, liability for which is limited under the provisions of the federal Social Security Act or
94 amendments thereto.

95 § 38.2-5300. Definitions.

96 In this chapter, the following words have the meanings indicated:

97 "Certificate" means a certificate of registration granted by the Commission to a private review agent.

98 "Commission" means the State Corporation Commission.

99 "Physician advisor" means a physician licensed to practice medicine who provides medical advice or
100 information to a private review agent in connection with its utilization review activities.

101 "Private review agent" means a person or entity performing utilization review, ~~except that the term~~
102 ~~shall not include the following entities or employees of any such entity so long as they conduct~~
103 ~~utilization review solely for subscribers, policyholders, members or enrollees:~~

104 1. ~~A health maintenance organization authorized to transact business in Virginia; or~~

105 2. ~~A health insurer, hospital service corporation, health services plan or preferred provider~~
106 ~~organization authorized to offer health benefits in this state.~~

107 "Utilization review" means a system for reviewing the necessity, appropriateness and efficiency of
108 hospital, medical or other health care resources given or proposed to be given to a patient or group of
109 patients for the purpose of determining whether such services should be covered or provided by an
110 insurer, health services plan, health maintenance organization, or other entity or person. For purposes of
111 this chapter, "utilization review" shall include, but not be limited to, preadmission, concurrent and
112 retrospective medical necessity determination and review related to the appropriateness of the site at
113 which services were or are to be delivered. "Utilization review" shall not include review of issues
114 concerning insurance contract coverage or contractual restrictions on facilities to be used for the
115 provision of services or any review of patient information by an employee of or consultant to any
116 licensed hospital for patients of such hospital.

117 "Utilization review program" means a program for conducting utilization review by a private review
118 agent.

119 § 38.2-5308. No private right of action created.

120 This chapter shall not be construed to create a private right of action against a private review agent
121 on behalf of a subscriber, policyholder, member, enrollee or other person, *except that a private right of*

122 *action for medical malpractice may be maintained pursuant to Chapter 21.1 (§ 8.01-581.1 et seq.) of*
123 *Title 8.01.*

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