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SENATE BILL NO. 508

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on March 8, 1994)

(Patron Prior to Substitute—Senator Gartlan)

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

Be it enacted by the General Assembly of Virginia:**1. That §§ 8.01-581.1, 8.01-581.13 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 regardless of whether such person or entity is required to obtain a certificate as a private review agent*.

"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 *or any cause of action based on a pre-admission or concurrent medical necessity determination or review by a person or entity performing utilization review as defined in § 38.2-5300 regardless of whether such person or entity is required to obtain a certificate as a private review agent*.

"Physician" means a person licensed to practice medicine or osteopathy in this Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1.

"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 drug addiction, has impaired the ability of any such health professional to practice his profession and (ii)

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

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

96 This chapter shall not be construed to create a private right of action against a private review agent
97 or other person or entity performing utilization review on behalf of a subscriber, policyholder, member,
98 enrollee or other person, *except that a private right of action for medical malpractice against a person
99 or entity performing utilization review may be maintained pursuant to Chapter 21.1 (§ 8.01-581.1 et
100 seq.) of Title 8.01.*