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SENATE BILL NO. 660

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on March 5, 1998)

(Patron Prior to Substitute-Senator Watkins)

A BILL to amend and reenact §§ 32.1-122.10:01, 38.2-4308, 54.1-114, 54.1-2400.2, 54.1-2400.3, and 54.1-2909 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 29 of Title 54.1 a section numbered 54.1-2910.1, relating to practitioner information.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-122.10:01, 38.2-4308, 54.1-114, 54.1-2400.2, 54.1-2400.3, and 54.1-2909 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding in Article 1 of Chapter 29 of Title 54.1 a section numbered 54.1-2910.1 as follows:

§ 32.1-122.10:01. Review of health maintenance organizations.

A. The State Health Commissioner (the "Commissioner") shall examine the quality of health care services of any health maintenance organization ("HMO") licensed in Virginia pursuant to §§ 38.2-4301 and 38.2-4302 and the providers with whom the organization has contracts, agreements, or other arrangements according to the HMO's health care plan as often as considered necessary for the protection of the interests of the people of this Commonwealth. The Commissioner shall consult with HMOs and providers in carrying out his duties under this section.

B. For the purposes of examinations, the Commissioner may review records, take affidavits, and interview the officers and agents of the HMO and the principals of the providers concerning their business.

C. The Commissioner shall collect annually, for distribution to consumers who make health benefit enrollment decisions, data consistent with the latest version of the health employer data information set (HEDIS), as required by the National Committee for Quality Assurance, from health maintenance organizations to evaluate comparatively on a plan level the quality of care delivered by HMOs as follows: information concerning the quality and performance of medical services provided by the health maintenance organization relating to the (i) effectiveness of care, (ii) access and availability of care, (iii) member satisfaction with the experience of care, (iv) health plan stability, (v) use of services, (vi) cost of care, (vii) informed health care choices, and (viii) health plan descriptive information. The Board may promulgate regulations to assess upon HMOs a fee to cover the costs of distributing or disseminating to consumers information or reports pursuant to this subsection.

The Commissioner may, at his discretion, contract with the nonprofit organization pursuant to § 32.1-276.4 to carry out the provisions of this subsection.

D. Expenses of examinations by or for the Commissioner under this section shall be assessed against the organization being examined and remitted to the Commissioner. Further, the Commissioner may report any noncompliance with the provisions of this section to the State Corporation Commission.

~~D.E.~~ In making his examination, the Commissioner may consider the report of an examination of a foreign HMO certified by the insurance supervisory official, a similar regulatory agency, an independent recognized accrediting organization, or the state health commissioner of another state.

~~E.F.~~ The Commissioner also shall: (i) consult with HMOs in the establishment of their complaint systems as provided in § 38.2-4308; (ii) review and analyze HMOs' complaint reports which are required in subsection B of § 38.2-4308; ~~and~~ (iii) prepare, and make available to consumers, an annual summary of all complaints filed by enrollees of HMOs; and (iv) assist the State Corporation Commission in examining such complaint systems, as provided in subsection C of § 38.2-4308. The Commissioner, in making this report, may contract with the nonprofit organization pursuant to § 32.1-276.4. The Commissioner may charge consumers requesting copies of the summary a fee to cover actual costs of copying or publishing the document.

~~F.G.~~ The Commissioner shall coordinate the activities undertaken pursuant to this section with the State Corporation Commission to ensure an appropriate level of regulatory oversight and to avoid any undue duplication of effort or regulation.

§ 38.2-4308. Complaint system.

A. Each health maintenance organization shall establish and maintain a complaint system to provide reasonable procedures for the resolution of written complaints. The complaint system shall be established after consultation with the State Health Commissioner and approval by the Commission.

B. Each health maintenance organization shall submit to the Commission and the State Health Commissioner an annual complaint report in a form prescribed by the Commission, after consultation with the State Health Commissioner. The complaint report shall include (i) a description of the

59 procedures of the complaint system, (ii) the total number of complaints handled through the complaint
60 system, (iii) a compilation of causes underlying the complaints filed, and (iv) the number, amount, and
61 disposition of malpractice claims settled or adjudicated during the year by the health maintenance
62 organization and any of its health care providers. A record of the complaints shall be maintained for the
63 period set forth in § 38.2-511.

64 C. The Commission, in cooperation with the State Health Commissioner, shall examine the complaint
65 system. However, at its discretion, the Commission may accept the report of examination conducted by
66 the State Health Commissioner instead of making its own examination.

67 D. *The Commissioner of Health or the nonprofit organization pursuant to § 32.1-276.4 may prepare*
68 *a summary of the information submitted pursuant to this provision and § 32.1-122.10:01 to be included*
69 *in the patient level data base.*

70 § 54.1-114. Biennial report.

71 The Board of Bar Examiners, the Department of Professional and Occupational Regulation and the
72 Department of Health Professions shall submit biennial reports to the Governor and General Assembly
73 on or before November 1 of each even-numbered year. The biennial report shall contain at a minimum
74 the following information for the Board of Bar Examiners and for each board within the two
75 Departments: (i) a summary of the board's fiscal affairs, (ii) a description of the board's activities, (iii)
76 statistical information regarding the administrative hearings and decisions of the board, (iv) a general
77 summary of all complaints received against licensees and the procedures used to resolve the complaints,
78 and (v) a description of any action taken by the board designed to increase public awareness of board
79 operations and to facilitate public participation. *The Department of Health Professions shall include, in*
80 *those portions of its report relating to the Board of Medicine, a compilation of the data required by*
81 *§ 54.1-2910.1. The biennial report shall be distributed in accordance with the provisions of § 2.1-467.*

82 § 54.1-2400.2. Confidentiality of information obtained during an investigation or disciplinary
83 proceeding.

84 A. Any reports, information or records received and maintained by any health regulatory board in
85 connection with possible disciplinary proceedings, including any material received or developed by a
86 board during an investigation or proceeding, shall be strictly confidential. A board may only disclose
87 such confidential information:

88 1. In a disciplinary proceeding before a board or in any subsequent trial or appeal of an action or
89 order;

90 2. To regulatory authorities concerned with granting, limiting or denying licenses, certificates or
91 registrations to practice a health profession;

92 3. To hospital committees concerned with granting, limiting or denying hospital privileges if a final
93 determination regarding a violation has been made;

94 4. Pursuant to an order of a court of competent jurisdiction; or

95 5. To qualified personnel for bona fide research or educational purposes, if personally identifiable
96 information relating to any person is first deleted. Such release shall be made pursuant to a written
97 agreement to ensure compliance with this section.

98 B. In no event shall confidential information received, maintained or developed by any board, or
99 disclosed by the board to others, pursuant to this section, be available for discovery or court subpoena
100 or introduced into evidence in any medical malpractice suit or other action for damages arising out of
101 the provision of or failure to provide services. This section shall not, however, be construed to inhibit an
102 investigation or prosecution under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

103 C. Any claim of a physician-patient or practitioner-patient privilege shall not prevail in any
104 investigation or proceeding by any health regulatory board acting within the scope of its authority. The
105 disclosure, however, of any information pursuant to this provision shall not be deemed a waiver of such
106 privilege in any other proceeding.

107 D. Orders and notices of a board relating to disciplinary action shall be disclosed.

108 E. This section shall not prohibit the Director of the Department of Health Professions, after
109 consultation with the relevant health regulatory board president or his designee, from disclosing to the
110 Attorney General, or the appropriate attorney for the Commonwealth, investigatory information which
111 indicates a possible violation of any provision of law relating to the manufacture, distribution,
112 dispensing, prescribing or administration of drugs, other than drugs classified as Schedule VI drugs and
113 devices, by any individual regulated by any health regulatory board.

114 F. This section shall not prohibit the Director of the Department of Health Professions from
115 disclosing matters listed in subdivision A 1, A 2, or A 3 of § 54.1-2909 ~~or~~; from making the reports of
116 aggregate information and summaries required by § 54.1-2400.3; *or from disclosing the information*
117 *required to be made available to the public pursuant to § 54.1-2910.1.*

118 G. Orders and notices of the health regulatory boards relating to disciplinary actions shall be
119 disclosed.

120 H. Any person found guilty of the unlawful disclosure of confidential information possessed by a

health regulatory board shall be guilty of a Class 1 misdemeanor.

§ 54.1-2400.3. Disciplinary actions to be reported.

In addition to the information required by § 54.1-114, the Director shall include in the Department's biennial report the number of reports or complaints of misconduct received and the investigations, charges, findings, and sanctions resulting therefrom. The report shall reflect the categories of allegations, kinds of complaints and the rates of disciplinary activity for the various regulated professions and the health regulatory boards having jurisdiction; summaries explaining the reported data shall be included with the report. The information shall be reported only in the aggregate without reference to any individual's name or identifying particulars. *In those portions of this report relating to the Board of Medicine, the Director shall include a summary of the data required by § 54.1-2910.1.*

§ 54.1-2909. Further reporting requirements.

A. The following matters shall be reported to the Board:

1. Any disciplinary action taken against a person licensed under this chapter in another state or in a federal health institution or voluntary surrender of a license in another state while under investigation;

2. Any malpractice judgment against a person licensed under this chapter;

3. Any incident of two settlements of malpractice claims against one person licensed under this chapter within a three-year period; and

4. Any evidence that indicates a reasonable probability that a person licensed under this chapter is or may be professionally incompetent, guilty of unprofessional conduct or mentally or physically unable to engage safely in the practice of his profession.

B. The following persons and entities are subject to the reporting requirements set forth in this section:

1. Any person licensed under this chapter who is the subject of a disciplinary action, settlement judgment or evidence for which reporting is required pursuant to this section;

2. Any other person licensed under this chapter, except as provided in the protocol agreement entered into by the Medical Society of Virginia and the Board for the Operation of the Impaired Physicians Program;

3. The presidents of all professional societies in the Commonwealth, and their component societies whose members are regulated by the Board, except as provided for in the protocol agreement entered into by the Medical Society of Virginia and the Board for the Operation of the Impaired Physicians Program;

4. All health care institutions licensed by the Commonwealth; ~~and~~

5. The malpractice insurance carrier of any person who is the subject of a judgment or of two settlements within a three-year period. The carrier shall not be required to report any settlements except those in which it has participated which have resulted in at least two settlements on behalf of one person during a three-year period; *and*

6. *Any health maintenance organization licensed by the Commonwealth.*

C. No person or entity shall be obligated to report any matter to the Board if the person or entity has actual notice that the matter has already been reported to the Board.

D. Any report required by this section shall be in writing directed to the Board, shall give the name and address of the person who is the subject of the report and shall describe the circumstances surrounding the facts required to be reported.

E. Any person making a report required by this section or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability or criminal prosecution resulting therefrom unless such person acted in bad faith or with malicious intent.

F. The clerk of any circuit court or any district court in the Commonwealth shall report to the Board the conviction of any person known by such clerk to be licensed under this chapter of any (i) misdemeanor involving a controlled substance, marijuana or substance abuse or involving an act of moral turpitude or (ii) felony.

§ 54.1-2910.1. *Certain data required.*

The Board of Medicine shall require all physicians of medicine or osteopathy to report and shall make available the following information:

1. *The names of medical schools and dates of graduation;*

2. *Any graduate medical education at any institution approved by the Accreditation Council for Graduation Medical Education or the American Osteopathic Association;*

3. *Any specialty board certification or eligibility for certification as approved by the American Board of Medical Specialties;*

4. *The number of years in active, clinical practice as specified by regulations of the Board;*

5. *Any insurance plans accepted, managed care plans in which the physician participates, and hospital affiliations;*

6. *Any appointments, within the most recent ten-year period, of the physician to a medical school*

182 *faculty and any publications in peer-reviewed literature within the most recent five-year period and as*
183 *specified by regulations of the Board;*

184 *7. The location of any primary and secondary practice settings and the approximate percentage of*
185 *the physician's time spent practicing in each setting;*

186 *8. The access to any translating service provided to the primary practice setting of the physician;*

187 *9. The status of the physician's participation in the Virginia Medicaid Program;*

188 *10. Any final disciplinary or other action required to be reported to the Board by health care*
189 *institutions, other practitioners, insurance companies, health maintenance organizations, and*
190 *professional organizations pursuant to §§ 54.1-2906, 54.1-2908, and 54.1-2909 that results in a*
191 *suspension or revocation of privileges or the termination of employment or a final order of the Board*
192 *relating to disciplinary action; and*

193 *11. Other information related to the competency of physicians as specified in the regulations of the*
194 *Board.*

195 *The Board shall promulgate regulations to implement the provisions of this section, including, but*
196 *not limited to, the release, upon request from a consumer, of such information relating to a physician.*
197 *The regulations promulgated by the Board shall provide for reports to include all paid claims in*
198 *categories indicating the level of significance of each award or settlement.*