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SENATE BILL NO. 660

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health on February 12, 1998)

(Patron Prior to Substitute—Senator Watkins)

A BILL to amend and reenact §§ 32.1-122.10:01, 32.1-276.6 through 32.1-276.9, 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, 32.1-276.6 through 32.1-276.9, 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 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 the 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.

§ 32.1-276.6. (Effective until July 1, 1999) Patient level data system continued; reporting requirements.

A. The Virginia Patient Level Data System is hereby continued, hereinafter referred to as the "System." Its purpose shall be to establish and administer an integrated system for collection and analysis of data which shall be used by consumers, employers, providers, and purchasers of health care and by state government to continuously assess and improve the quality, appropriateness, and accessibility of health care in the Commonwealth and to enhance their ability to make effective health care decisions.

B. Every inpatient hospital shall submit to the Board patient level data as set forth in this subsection. Any such hospital may report the required data directly to the nonprofit organization cited in § 32.1-276.4. Patient level data elements for hospital inpatients shall include:

1. Hospital identifier;
2. Attending physician identifier;
3. Operating physician identifier;
4. Payor identifier;
5. Employer identifier;
6. Patient identifier;
7. Patient sex, race, date of birth (including century indicator), zip code, patient relationship to insured, employment status code, status at discharge, and birth weight for infants;
8. Admission type, source, date and hour, and diagnosis;
9. Discharge date and status;
10. Principal and secondary diagnoses;
11. External cause of injury;
12. Co-morbid conditions existing but not treated;
13. Procedures and procedure dates;
14. Revenue center codes, units, and charges; and
15. Total charges.

C. State agencies providing coverage for outpatient services shall submit to the Board patient level data regarding paid outpatient claims. Information to be submitted shall be extracted from standard claims forms and, where available, shall include:

1. Provider identifier;
2. Patient identifier;
3. Physician identifier;
4. Dates of service and diagnostic, procedural, demographic, pharmaceutical, and financial information; and
5. Other related information.

The Board shall promulgate regulations specifying the format for submission of such outpatient data. State agencies may submit this data directly to the nonprofit organization cited in § 32.1-276.4.

D. The Commissioner shall compile and transmit to the Board all patient level data collected pursuant to subsection C of § 32.1-122.10:01.

§ 32.1-276.7. (Effective until July 1, 1999) Methodology to review and measure the efficiency and productivity of health care providers.

A. Pursuant to the contract identified in § 32.1-276.4, and consistent with recommendations set forth in strategic plans submitted and approved pursuant to § 32.1-276.4, the nonprofit organization shall administer and modify, as appropriate, the methodology to review and measure the efficiency and productivity of health care providers. The methodology shall provide for, but not be limited to, comparisons of a health care provider's performance to national and regional data, where available, and may include different methodologies and reporting requirements for the assessment of the various types of health care providers which report to it. Health care providers shall submit the data necessary for implementation of the requirements of this section pursuant to regulations of the Board. Individual health care provider filings *and the data compiled and transmitted by the Commissioner relating to health maintenance organizations* shall be open to public inspection once they have been received pursuant to the methodology adopted by the Board as required by this section.

B. The data reporting requirements of this section shall not apply to those health care providers enumerated in (iv) and (v) of the definition of health care providers set forth in § 32.1-276.3 until a strategic plan submitted pursuant to § 32.1-276.4 is approved requiring such reporting and any implementing laws and regulations take effect.

§ 32.1-276.8. (Effective until July 1, 1999) Fees for processing, verification, and dissemination of data.

A. The Board shall prescribe a reasonable fee, not to exceed one dollar per discharge, for each health care provider submitting patient level data pursuant to this chapter to cover the costs of the reasonable expenses in processing and verifying such data. The Board shall also prescribe a reasonable fee for each affected health care provider to cover the costs of the reasonable expenses of establishing and administering the methodology developed pursuant to § 32.1-276.7. The payment of such fees shall be at such time as the Board designates. The Board may assess a late charge on any fees paid after their due date.

The Board shall (i) maintain records of its activities; (ii) collect and account for all fees and deposit the moneys so collected into a special fund from which the expenses attributed to this chapter shall be paid; and (iii) enforce all regulations promulgated by it pursuant to this chapter.

B. The nonprofit organization providing services pursuant to an agreement or contract as provided in

§ 32.1-276.4 shall be authorized to charge and collect the fees prescribed by the Board in subsection A of this section when the data are provided directly to the nonprofit organization. Such fees shall not exceed the amount authorized by the Board as provided in subsection A of this section. The nonprofit organization, at its discretion, may grant a reduction or waiver of the patient level data submission fees upon a determination by the nonprofit organization that the health care provider has submitted processed, verified data.

C. State agencies shall not be assessed fees for the submission of patient level data required by subsection C of § 32.1-276.6. Individual employers, insurers, and other organizations may voluntarily provide the nonprofit organization with outpatient data for processing, storage, and comparative analysis and shall be subject to fees negotiated with and charged by the nonprofit organization for services provided*; however, no health maintenance organization shall be charged any fee for data compiled and submitted by the Commissioner pursuant to subsection D of § 32.1-276.6.*

D. The nonprofit organization providing services pursuant to an agreement or contract with the Commissioner shall be authorized to charge and collect reasonable fees for the dissemination of patient level data; however, the Commissioner shall be entitled to receive publicly available data from the nonprofit organization at no charge.

§ 32.1-276.9. (Effective until July 1, 1999) Confidentiality, subsequent release of data and relief from liability for reporting; penalty for wrongful disclosure; individual action for damages.

A. Patient level data collected pursuant to this chapter shall be exempt from the provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq.), shall be considered confidential, and shall not be disclosed other than as specifically authorized by this chapter; however, upon processing and verification by the nonprofit organization, all patient level data shall be publicly available, except patient, physician, and employer identifier elements, which may be released solely for research purposes if otherwise permitted by law and only if such identifier is encrypted and cannot be reasonably expected to reveal patient identities. No report published by the nonprofit organization, the Commissioner, or other person may present information that reasonably could be expected to reveal the identity of any patient. Publicly available information shall be designed to prevent persons from being able to gain access to combinations of patient characteristic data elements that reasonably could be expected to reveal the identity of any patient. The nonprofit organization, in its discretion, may release physician and employer identifier information.

B. *In addition to making patient level data available to the public pursuant to this chapter, the nonprofit organization shall annually prepare a summary, in a form designed to enhance informed health care decisions among consumers, of such data for the public. A fee may be charged for purchasing such summary. Such summary shall be prepared with the goal of improving consumers' participation.*

C. No person or entity, including the nonprofit organization contracting with the Commissioner, shall be held liable in any civil action with respect to any report or disclosure of information made under this article unless such person or entity has knowledge of any falsity of the information reported or disclosed.

~~C~~*D.* Any disclosure of information made in violation of this chapter shall be subject to a civil penalty of not more than $5,000 per violation. This provision shall be enforceable upon petition to the appropriate circuit court by the Attorney General, any attorney for the Commonwealth, or any attorney for the county, city or town in which the violation occurred. Any penalty imposed shall be payable to the Literary Fund. In addition, any person or entity who is the subject of any disclosure in violation of this article shall be entitled to initiate an action to recover actual damages, if any, or $500, whichever is greater, together with reasonable attorney's fees and court costs.

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

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

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

§ 54.1-114. Biennial report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 which has taken any disciplinary action against an employed or participating physician, or which is the subject of a judgment or of two settlements within a three-year period regarding the medical care of an employed or participating physician.

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 the following information:

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

2. Any graduate medical education;

3. Any specialty board certification or eligibility for certification;

4. The number of years in practice;

5. The names of any hospital, integrated delivery system, and health maintenance organization in which the physician practices or has privileges to practice;

6. Any appointments, within the most recent ten-year period, of the physician to a medical school faculty, any responsibilities for graduate medical education, and any publications in peer-reviewed literature;

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

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

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

10. Any final disciplinary or other action required to be reported to the Board by health care institutions, other practitioners, insurance companies, health maintenance organizations, and

professional organizations pursuant to §§ 54.1-2906, 54.1-2908, and 54.1-2909 that results in a suspension or revocation of privileges or the termination of employment or a final order of the Board relating to disciplinary action.

The Board shall promulgate regulations to facilitate the implementation of this section, including, but not limited to, the release, upon request from a consumer, of such information relating to a physician. The Board may contract with a nonprofit organization pursuant to § 32.1-276.4 to collect, verify, and develop data and reports from this information.