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HOUSE BILL NO. 2373

Offered January 13, 2011

A *BILL to amend and reenact § 8.01-581.17 of the Code of Virginia, relating to medical malpractice; privileged communications of certain committees.*

Patrons—Peace, Cox, J.A., Garrett, Keam, Rust and Stolle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-581.17 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-581.17. Privileged communications of certain committees and entities.

A. For the purposes of this section:

"Centralized credentialing service" means (i) gathering information relating to applications for professional staff privileges at any public or licensed private hospital or for participation as a provider in any health maintenance organization, preferred provider organization or any similar organization and (ii) providing such information to those hospitals and organizations that utilize the service.

"First-hand witness" means a person who is employed or engaged by a health care provider and who has knowledge of an occurrence involving the actual or potential injury or death of a patient or business invitee of the health care provider by virtue of his direct involvement in or observation of the occurrence.

"Incident report" means the electronic or written document contemporaneously prepared by a first-hand witness that memorializes the facts and provides notice of an occurrence involving the actual or potential injury or death of a patient or business invitee.

"Medical record" means a health record as defined in § 32.1-127.1:03.

"Patient safety data" means reports made to patient safety organizations together with all health care data, interviews, memoranda, analyses, root cause analyses, products of quality assurance or quality improvement processes, corrective action plans or information collected or created by a health care provider as a result of an occurrence related to the provision of health care services.

"Patient safety organization" means any organization, group, or other entity that collects and analyzes patient safety data for the purpose of improving patient safety and health care outcomes and that is independent and not under the control of the entity that reports patient safety data.

B. The proceedings, minutes, records, and reports of any (i) medical staff committee, utilization review committee, or other committee, board, group, commission or other entity as specified in § 8.01-581.16; (ii) nonprofit entity that provides a centralized credentialing service; or (iii) quality assurance, quality of care, or peer review committee established pursuant to guidelines approved or adopted by (a) a national or state physician peer review entity, (b) a national or state physician accreditation entity, (c) a national professional association of health care providers or Virginia chapter of a national professional association of health care providers, (d) a licensee of a managed care health insurance plan (MCHIP) as defined in § 38.2-5800, (e) the Office of Emergency Medical Services or any regional emergency medical services council, or (f) a statewide or local association representing health care providers licensed in the Commonwealth, together with all communications, ~~both whether~~ *electronic, oral and, or written and whether factual or deliberative*, originating in or provided to such committees or entities *listed in this subsection*, are privileged communications which may not be disclosed or obtained by legal discovery proceedings unless a circuit court, after a hearing and for good cause arising from extraordinary circumstances being shown, orders the disclosure of such proceedings, minutes, records, reports, or communications. Additionally, for the purposes of this section, accreditation and peer review records of the American College of Radiology and the Medical Society of Virginia are considered privileged communications. Oral communications regarding a specific ~~medical incident~~ *occurrence* involving patient care, made to a quality assurance, quality of care, or peer review committee established pursuant to clause (iii), shall be privileged only to the extent made more than 24 hours after the occurrence ~~of the medical incident~~.

C. Nothing in this section shall be construed as providing any privilege to (i) ~~medical records maintained by a health care provider, emergency medical services agency, community services board, or behavioral health authority medical records kept with respect to any patient in the ordinary course of business of operating a hospital, emergency medical services agency, community services board, or behavioral health authority nor to or any facts or information contained in such records nor shall this section preclude or affect discovery of or production of evidence relating to hospitalization or treatment of any patient in the ordinary course of hospitalization of such patient, or~~ (ii) *an incident report*

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59 *pertaining to an occurrence that is the subject of litigation.*

60 D. Notwithstanding any other provision of this section, reports or patient safety data in possession of
61 a patient safety organization, together with the identity of the reporter and all related correspondence,
62 documentation, analysis, results or recommendations, shall be privileged and confidential and shall not
63 be subject to a civil, criminal, or administrative subpoena or admitted as evidence in any civil, criminal,
64 or administrative proceeding. Nothing in this subsection shall affect the discoverability or admissibility
65 of facts, information or records referenced in subsection C as related to patient care from a source other
66 than a patient safety organization.

67 E. Any patient safety organization shall promptly remove all patient-identifying information after
68 receipt of a complete patient safety data report unless such organization is otherwise permitted by state
69 or federal law to maintain such information. Patient safety organizations shall maintain the
70 confidentiality of all patient-identifying information and shall not disseminate such information except as
71 permitted by state or federal law.

72 F. Exchange of (i) patient safety data among health care providers or patient safety organizations that
73 does not identify any patient or (ii) information privileged pursuant to subsection B between ~~committees,~~
74 ~~boards, groups, commissions,~~ *health care providers* or other entities specified in § 8.01-581.16 shall not
75 constitute a waiver of any privilege established in this section.

76 G. Reports of patient safety data to patient safety organizations shall not abrogate obligations to
77 make reports to health regulatory boards or other agencies as required by state or federal law.

78 H. No employer shall take retaliatory action against an employee who in good faith makes a report
79 of patient safety data to a patient safety organization.

80 I. Reports produced solely for purposes of self-assessment of compliance with requirements or
81 standards of the Joint Commission on Accreditation of Healthcare Organizations shall be privileged and
82 confidential and shall not be subject to subpoena or admitted as evidence in a civil or administrative
83 proceeding. Nothing in this subsection shall affect the discoverability or admissibility of facts,
84 information, or records referenced in subsection C as related to patient care from a source other than
85 such accreditation body. A health care provider's release of such reports to such accreditation body shall
86 not constitute a waiver of any privilege provided under this section.