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SENATE BILL NO. 508

Senate Amendments in [] — February 15, 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 [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, 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.]*

"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

ENGROSSED

SB508E

60 intent, any health professional, as defined in this subsection, shall be immune from civil liability for any
61 act, decision or omission resulting from his duties as a member or agent of any entity which functions
62 primarily (i) to investigate any complaint that a physical or mental impairment, including alcoholism or
63 drug addiction, has impaired the ability of any such health professional to practice his profession and (ii)
64 to encourage, recommend and arrange for a course of treatment, if deemed appropriate, or (iii) to review
65 the duration of patient stays in health facilities or delivery of professional services for the purpose of
66 promoting the most efficient use of available health facilities and services, the adequacy and quality of
67 professional services, or the reasonableness or appropriateness of charges made by or on behalf of such
68 health professionals. Such entity shall have been established pursuant to a federal or state law, or by one
69 or more public or licensed private hospitals, or a relevant health professional society, academy or
70 association affiliated with the American Medical Association, the American Dental Association, the
71 American Pharmaceutical Association, the American Psychological Association, the American Podiatric
72 Medical Association, the American Society of Hospitals and Pharmacies, the American Veterinary
73 Medical Association, the American Association for Counseling and Development, the American
74 Optometric Association, International Chiropractic Association, the American Chiropractic Association or
75 a governmental agency. *This section shall not be construed to grant immunity from civil liability to [a
76 private review agent a person or entity performing utilization review] as defined in § 38.2-5300 [,
77 regardless of whether such person or entity is required to obtain a certificate as a private review agent
78] .*

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

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

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

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

100 § 38.2-5300. Definitions.

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

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

103 "Commission" means the State Corporation Commission.

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

106 "Private review agent" means a person or entity performing utilization review [, except that the term
107 shall not include the following entities or employees of any such entity so long as they conduct
108 utilization review solely for subscribers, policyholders, members or enrollees:] ~~except that the term~~
109 ~~shall not include the following entities or employees of any such entity so long as they conduct~~
110 ~~utilization review solely for subscribers, policyholders, members or enrollees:~~

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

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

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

122 provision of services or any review of patient information by an employee of or consultant to any
123 licensed hospital for patients of such hospital.

124 "Utilization review program" means a program for conducting utilization review by a private review
125 agent.

126 § 38.2-5308. No private right of action created.

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

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