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SENATE BILL NO. 633

Senate Amendments in [] - February 9, 2022

A BILL to amend and reenact §§ 8.01-413.01 and 16.1-88.2 of the Code of Virginia, relating to civil actions; health care bills and records.

Patron Prior to Engrossment—Senator Stanley

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-413.01 and 16.1-88.2 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-413.01. Authenticity and reasonableness of medical bills; presumption.

A. For the purposes of this section, "bill" means [~~a~~ any] statement [~~or summary~~] of charges, an invoice, or any other form prepared by a health care provider or its agent, or third-party agent, identifying the costs of health care services provided.

B. In any action for personal injuries, wrongful death, or for medical expense benefits payable under a motor vehicle insurance policy issued pursuant to § 38.2-124 or § 38.2-2201, the authenticity of bills for medical services provided and the reasonableness of the charges of the health care provider shall be rebuttably presumed upon identification by the plaintiff of the original bill or a duly authenticated copy and the plaintiff's testimony (i) identifying the health care provider, (ii) explaining the circumstances surrounding his receipt of the bill, (iii) describing the services rendered, and (iv) (iii) stating that the services were rendered in connection with treatment for the injuries received in the event giving rise to the action. If the court finds the plaintiff is unable to provide such testimony, the plaintiff's guardian, agent under an advance directive, or agent under a power of attorney may identify the bill or an authenticated copy and provide testimony in lieu of the plaintiff. The presumption herein shall not apply unless the opposing party or his attorney has been furnished such medical records at least 30 days prior to the trial.

C. Where no medical bill is rendered or specific charge made by a health care provider to the insured, an insurer, or any other person, the usual and customary fee charged for the service rendered may be established by the testimony or the affidavit of an expert having knowledge of the usual and customary fees charged for the services rendered. If the fee is to be established by affidavit, the affidavit shall be submitted to the opposing party or his attorney at least 30 days prior to trial. The testimony or the affidavit is subject to rebuttal and may be admitted in the same manner as an original bill or authenticated copy described in subsection A.

§ 16.1-88.2. Evidence of medical reports, statements, or records; testimony of health care provider or custodian of records.

In a civil suit tried in a general district court or appealed to the circuit court to recover damages for personal injuries or to resolve any dispute with an insurance company or health care provider, either party may present evidence as to the extent, nature, and treatment of the injury, the examination of the person so injured, and the costs of such treatment and examination by the following:

1. A report or statement from the treating or examining health care provider as defined in § 8.01-581.1 or a health care provider licensed outside of the Commonwealth for his treatment of the plaintiff outside of the Commonwealth. Such ~~medical~~ report or statement shall be admitted if the party intending to present such evidence by the use of a report gives the opposing party or parties a copy of the report such evidence and written notice of such intention 10 days in advance of trial and if attached to or contained in such report evidence is a sworn statement declaration of (i) the treating or examining health care provider that (a) the person named therein was treated or examined by such health care provider, (b) the information contained in the report or statement is true and accurate and fully descriptive as to the nature and extent of the injury, and (c) any statement of costs contained in the report or statement is true and accurate or (ii) the custodian of such report or statement that the same is a true and accurate copy of the report or statement; or

2. The records or bills as defined in subsection A of § 8.01-413.01 or records of a hospital or similar medical facility at which the treatment or examination was performed treating or examining health care provider as defined in § 8.01-581.1 or a health care provider licensed outside of the Commonwealth for its treatment of the plaintiff outside of the Commonwealth. Such hospital or other medical facility provider's records or bills shall be admitted if (i) the party intending to present evidence by the use of records or bills gives the opposing party or parties a copy of the records or bills and written notice of such intention 10 days in advance of trial and (ii) attached to the records or bills is a sworn statement

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59 *declaration* of the custodian thereof that the same is a true and accurate copy of the records or bills of
60 such ~~hospital or other medical facility~~ *provider*.

61 If, thereafter, the plaintiff or defendant summons the health care provider or custodian making such
62 statement to testify in proper person or by deposition, the court shall determine which party shall pay
63 the fee and costs for such appearance or depositions, or may apportion the same among the parties in
64 such proportions as the ends of justice may require. If such health care provider or custodian is not
65 subject to subpoena for cross-examination in court or by a deposition, then the court shall allow a
66 reasonable opportunity for the party seeking the subpoena for such health care provider or custodian to
67 obtain his testimony as the ends of justice may require. The plaintiff may only present evidence
68 pursuant to this section in circuit court if he has not requested an amount in excess of the ad damnum
69 in the motion for judgment filed in the general district court.