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Indicates New Matter

AS PASSED BY THE SENATE

June 6, 2012

**H. 4008**

Introduced by Reps. Harrison, H.B. Brown, G.R. Smith, Knight, Atwater, Branham, Viers, Bannister, Dillard, Erickson, Hamilton, Hearn, Hosey, Limehouse, D.C. Moss, Patrick, Pinson, Sandifer, G.M. Smith, J.R. Smith, Stringer, Toole, Willis, Bingham and Clemmons

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Read the first time March 27, 2012.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44‑7‑390 SO AS TO PROVIDE THAT THERE IS NO MONETARY LIABILITY, AND NO CAUSE OF ACTION IS CREATED, BY A HOSPITAL UNDERTAKING OR PERFORMING CERTAIN ACTS IF NOT DONE WITH MALICE; BY ADDING SECTION 44‑7‑392 SO AS TO PROVIDE THAT CERTAIN HOSPITAL PROCEEDINGS AND DATA, DOCUMENTS, RECORDS, AND INFORMATION RESULTING FROM THESE PROCEEDINGS ARE CONFIDENTIAL AND NOT SUBJECT TO DISCOVERY OR SUBPOENA AND MAY NOT BE USED AS EVIDENCE IN A CIVIL ACTION UNLESS THE HOSPITAL HAS WAIVED CONFIDENTIALITY OR THE DATA, DOCUMENTS, RECORDS, OR INFORMATION ARE OTHERWISE AVAILABLE AND SUBJECT TO DISCOVERY; TO PROVIDE THAT THE OUTCOME OF A PRACTITIONER’S APPLICATION FOR HOSPITAL STAFF MEMBERSHIP OR CLINICAL PRIVILEGES IS NOT CONFIDENTIAL BUT THAT THE APPLICATION AND SUPPORTING DOCUMENTS ARE CONFIDENTIAL; TO PROVIDE THAT DISCLOSURE OF CERTAIN INFORMATION BY A HOSPITAL THROUGH REPORTS TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, THE JOINT COMMISSION, OR THE BOARD OF MEDICAL EXAMINERS IS NOT A WAIVER OF ANY PRIVILEGE OR CONFIDENTIALITY; AND TO PROVIDE THAT AN AFFECTED PERSON MAY FILE AN ACTION TO ASSERT A CLAIM OF CONFIDENTIALITY AND TO ENJOIN THE HOSPITAL, THE JOINT COMMISSION, OR THE BOARD OF MEDICAL EXAMINERS FROM RELEASING SUCH INFORMATION, AND IF THE COURT FINDS THAT THE PERSON ACTED UNREASONABLY IN ASSERTING THIS CLAIM, THE COURT SHALL ASSESS ATTORNEY’S FEES AGAINST THAT PERSON; BY ADDING SECTION 44‑7‑394 SO AS TO PROVIDE THAT IF IN A JUDICIAL PROCEEDING THE COURT FINDS DOCUMENTS, OVER WHICH THE HOSPITAL ASSERTED A CLAIM OF CONFIDENTIALITY, ARE NOT SUBJECT TO CONFIDENTIALITY AND THAT THE HOSPITAL ACTED UNREASONABLY IN ASSERTING THIS CLAIM, THE COURT SHALL ASSESS ATTORNEY’S FEES AGAINST THE HOSPITAL FOR COSTS INCURRED BY THE REQUESTING PARTY TO OBTAIN THE DOCUMENTS; AND TO AMEND SECTION 40‑71‑10, RELATING TO THE EXEMPTION FROM TORT LIABILITY FOR MEMBERS OF CERTAIN PROFESSIONAL COMMITTEES, SO AS TO DELETE FROM THE EXEMPTION AN APPOINTED MEMBER OF A COMMITTEE OF A MEDICAL STAFF OF A HOSPITAL IF THE STAFF OPERATES PURSUANT TO WRITTEN BYLAWS APPROVED BY THE GOVERNING BOARD OF THE HOSPITAL.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 3, Chapter 7, Title 44 of the 1976 Code is amended by adding:

“Section 44‑7‑390. There is no monetary liability on the part of, and no cause of action for damages arising against, a hospital licensed under this article, its parent, subsidiaries, health care system, physician practices owned by the hospital (its parent or subsidiaries), directors, officers, agents, employees, medical staff members, external reviewers, witnesses, or a member of any committee of a licensed hospital, whether permanent or ad hoc, including the hospital’s governing body, for any act or proceeding undertaken or performed without malice, made after reasonable effort to obtain the facts, and the action taken was in the belief that it is warranted by the facts known, arising out of or relating to:

(1) sentinel event investigations or root cause analyses, or both, as prescribed by the joint commission or any other organization under whose accreditation a hospital is deemed to meet the Centers for Medicare and Medicaid Services’ conditions of participation;

(2) investigations into the competence or conduct of hospital employees, agents, members of the hospital’s medical staff or other practitioners, relating to the quality of patient care, and any disciplinary proceedings or fair hearings related thereto, provided the medical staff operates pursuant to written bylaws that have been approved by the governing body of the hospital;

(3) quality assurance reviews;

(4) the medical staff credentialing process, provided the medical staff operates pursuant to written bylaws that have been approved by the governing body of the hospital;

(5) reports by a hospital to its insurance carriers;

(6) reviews or investigations to evaluate the quality of care provided by hospital employees, agents, members of the hospital’s medical staff, or other practitioners; or

(7) reports or statements, including, but not limited to, those reports or statements to the National Practitioner Data Bank and the South Carolina Board of Medical Examiners, that provide analysis or opinion (including external reviews) relating to the quality of care provided by hospital employees, agents, members of the hospital’s medical staff, or other practitioners.

Section 44‑7‑392. (A)(1) All proceedings of, and all data, documents, records, and information prepared or acquired by, a hospital licensed under this article, its parent, subsidiaries, health care system, committees, whether permanent or ad hoc, including the hospital’s governing body, or physician practices owned by the hospital (its parent or subsidiaries), relating to the following are confidential:

(a) sentinel event investigations or root cause analyses, or both, as prescribed by the joint commission or any other organization under whose accreditation a hospital is deemed to meet the Centers for Medicare and Medicaid Services’ conditions of participation;

(b) investigations into the competence or conduct of hospital employees, agents, members of the hospital’s medical staff or other practitioners, relating to the quality of patient care, and any disciplinary proceedings or fair hearings related thereto;

(c) quality assurance reviews;

(d) the medical staff credentialing process;

(e) reports by a hospital to its insurance carriers;

(f) reviews or investigations to evaluate the quality of care provided by hospital employees, agents, members of the hospital’s medical staff, or other practitioners; or

(g) reports or statements, including, but not limited to, those reports or statements to the National Practitioner Data Bank and the South Carolina Board of Medical Examiners, that provide analysis or opinion (including external reviews) relating to the quality of care provided by hospital employees, agents, members of the hospital’s medical staff, or other practitioners; or

(h) incident or occurrence reports and related investigations, unless the report is part of the medical record.

(2) The proceedings and data, documents, records, and information described in subsection (A)(1) may be shared with a parent corporation, subsidiaries, other hospitals in the health care system, directors, officers, employees, and agents of the hospital and if shared, remain confidential. These proceedings and data, documents, records, and information in subsection (A)(1) are not subject to discovery, subpoena, or introduction into evidence in any civil action unless the hospital and any affected person who is a party to such action waives the confidentiality in writing. Notwithstanding the foregoing, however, in the event an affected person asserts a claim in any civil action against a hospital, its parent, affiliates, directors, officers, agents, employees, or member of any committee of a licensed hospital, relating to any proceeding identified in subsection (A)(1), the hospital may, without consultation with the affected person, waive confidentiality in that civil action. Likewise, if a hospital asserts a claim in any civil action against an affected person relating to any proceeding identified in subsection (A)(1) in which the affected person was a party, the affected person may use information in the affected person’s possession that is otherwise confidential under this section in that civil action.

(3) Data, documents, records, or information which are otherwise available from original sources are not confidential and are not immune from discovery from the original source under this section or use in a civil action merely because they were acquired by the hospital.

(4) This subsection does not make confidential the outcome of a practitioner’s application for medical staff membership or clinical privileges, nor does it make confidential the list of clinical privileges requested by the practitioner or the list of clinical privileges that were approved. However, the practitioner’s application for medical staff membership or clinical privileges, and all supporting documentation submitted or requested for the application are confidential. Nevertheless, the application itself may be obtained from the physician requesting privileges or the practice where the physician works as an employee or an independent contractor.

(5) If a practitioner is the subject of a disciplinary proceeding or fair hearing, this subsection does not, subject to the provisions of the medical staff bylaws, prohibit the practitioner from receiving data, documents, records, and information relating to this practitioner that is relevant to the proceeding or fair hearing, even if the data, documents, records, and information are otherwise confidential under this section. Such a disclosure to a practitioner in a disciplinary proceeding or fair hearing must not be considered a waiver of any privilege or confidentiality provided for in subsection (A)(1). The practitioner must not, however, without the written consent of the hospital, publish to any third party, other than legal counsel or a person retained for the purposes of representing the practitioner in a disciplinary proceeding or fair hearing, the data, documents, records, or information that were disclosed to him as part of the disciplinary proceeding or fair hearing.

(6) There is nothing in this section which makes any part of a patient’s medical record confidential from the patient, including any redactions, corrections, supplements, or amendments to the patient’s record, whether electronic or written.

(B) The confidentiality provisions of subsection (A) do not prevent committees appointed by the Department of Health and Environmental Control from issuing reports containing solely non-identifying data and information.

(C) Nothing in this section affects the duty of a hospital licensed by the Department of Health and Environmental Control to report accidents or incidents pursuant to the department’s regulations. However, anything reported pursuant to the department’s regulations must not be considered a waiver of any privilege or confidentiality provided in subsection (A).

(D) Any data, documents, records or information that is reported to or reviewed by the joint commission or other accrediting bodies must not be considered a waiver of any privilege or confidentiality provided for in subsection (A).

(E) Any data, documents, records, or information of an action by a hospital to suspend, revoke, or otherwise limit the medical staff membership or clinical privileges of a practitioner that is submitted to the South Carolina Board of Medical Examiners pursuant to a report required by Section 44‑7‑70 or the National Practitioner Data Bank must not be considered a waiver of any privilege or confidentiality provided for in subsection (A).

(F) An affected person may file a civil action to assert a claim of confidentiality before a court of competent jurisdiction and file a motion to request the court to issue an order to enjoin a hospital from releasing data, documents, records, or information to the department, the South Carolina Board of Medical Examiners, the National Practitioner Data Bank, and the joint commission or other accrediting bodies that are not required by law or regulation to be released by a hospital. The data, documents, records, or information in controversy must be filed under seal with the court having jurisdiction over the pending action and are subject to judicial review. If court finds that a party acted unreasonably in unsuccessfully asserting the claim of confidentiality under this subsection, the court shall assess attorney’s fees against that party.

(G) For purposes of this section, an ‘affected person’ means a person, other than a patient, who is a subject of a proceeding enumerated in subsection (A)(1).

Section 44‑7‑394. (A) If a hospital or affected person asserts a claim of confidentiality over documents pursuant to Section 44‑7‑392 and the party seeking the documents objects, then upon motion to the court having jurisdiction over the pending action the court shall review the documents under seal to determine if any of the documents are subject to discovery. The court may order production of the documents to the requesting party. If the court finds that a hospital or affected person acted unreasonably in unsuccessfully asserting the claim of confidentiality, the court may assess attorney’s fees against that party for any fees incurred by the requesting party in obtaining the documents.

Further, a party to a medical or hospital malpractice case shall not offer testimony of a person who was a witness to the medical or hospital care that is the subject of the medical or hospital malpractice case if their testimony would be inconsistent with a prior written, electronic, video, or audio statement of fact submitted by the person and that is confidential under Section 44-7-392 unless such prior inconsistent statement of fact is first produced to all parties in the medical or hospital malpractice case. Upon request by a party, a privilege log shall be provided by a hospital to all parties in the medical or hospital malpractice case identifying any prior written, electronic, video, or audio statements of fact relating to the medical or hospital care that is the subject of the medical or hospital malpractice case that were given by a witness who is identified in discovery and may testify at trial. Upon motion of any party, a prior statement of fact, whether written, electronic, video, or audio, that is confidential under Section 44-7-392, may be reviewed by the court in camera to determine whether the prior statement of fact is inconsistent with the trial testimony offered in the medical or hospital malpractice case. If the court concludes that the prior statement of fact is inconsistent, the court shall order that the prior written statement of fact be produced to the moving party.

(B) For purposes of this section an ‘affected person’ means a person, other than a patient, who is a subject of a proceeding enumerated in Section 44‑7‑392(A)(1).

(C) If the court orders a hospital or affected person to produce documents to a third party under this Section, the hospital or affected person shall have the right to immediately appeal that order, and the filing of the appeal shall stay the enforcement of the order compelling the production.”

SECTION 2. Section 40‑71‑10(B) of the 1976 Code is amended to read:

“(B) There is no monetary liability on the part of, and no cause of action for damages arising against, a member of an appointed committee which is formed to maintain professional standards of a state or local professional society as defined in this section or ~~an appointed member of a committee of a medical staff of a licensed hospital, provided the medical staff operates pursuant to written bylaws that have been approved by the governing board of the hospital, or~~ a committee appointed by the Department of Mental Health, or a committee appointed by the Department of Health and Environmental Control to review patient medical and health records in order to study the causes of death and disease for any act or proceeding undertaken or performed within the scope of the functions of the committee if the committee member acts without malice, has made a reasonable effort to obtain the facts relating to the matter under consideration, and acts in the belief that the action taken by him is warranted by the facts known to him.”

SECTION 3. Title 44 of the 1976 Code is amended by adding:

“Chapter 84

Commission on Hunger

Section 44‑84‑10. There is created within the Department of Health and Environmental Control the Commission on Hunger to develop, implement, and oversee a comprehensive strategy to reduce food insecurity and alleviate hunger in this State.

Section 44‑84‑20. As used in this chapter:

(1) ‘Food insecurity’ means a household‑level economic and social condition of uncertainty of being able to acquire, in socially acceptable ways, enough food, at any given time, to meet basic dietary needs because of insufficient funds or other resources for food.

(2) ‘Food recovery’ means collecting wholesome food for distribution to the food insecure and hungry, including, field gleaning, perishable food rescue or salvage, collecting perishable produce from wholesale and retail sources, collecting prepared foods from the food service industry, and nonperishable food collection.

(3) ‘Hunger’ means a physiological condition that is a potential consequence of food insecurity, which, because of prolonged, involuntary lack of food, results in discomfort, illness, weakness, or pain that goes beyond the usual uneasy sensation.

Section 44‑84‑30. (A) The Commission on Hunger must be comprised of the following officials or their designees, who shall serve ex officio:

(1) Commissioner of the Department of Health and Environmental Control;

(2) Director of the Department of Social Services;

(3) Superintendent of Education;

(4) Commissioner of the Department of Agriculture;

(5) Director of the Department of Health and Human Services;

(6) Director of the Department of Employment and Workforce;

(7) Director of the Division on Aging, Office of the Lieutenant Governor;

(8) Chair of the Joint Citizens and Legislative Committee on Children;

(9) President of the South Carolina Food Bank Association;

(10) President of the South Carolina Dietetic Association;

(11) Director of the School Nutrition Council of South Carolina;

(12) Director of the South Carolina Association of Counties;

(13) Director of the Municipal Association of South Carolina;

(14) President of the South Carolina Hospitality Association;

(15) Executive Minister of the Christian Action Council;

(16) President of the South Carolina State Conference of the National Association for the Advancement of Colored People;

(17) President of the Hispanic Leadership Council;

(18) Director of the United Way Association of South Carolina;

(19) Director of the South Carolina Retail Association.

(B) The commission shall elect from among its members a chairman and a vice chairman who shall serve terms of two years. The commission shall meet quarterly and otherwise at the call of the chair. A majority of the commission members constitutes a quorum for the purpose of conducting the business of the commission. The commission shall serve without per diem, mileage or subsistence.

Section 44‑84‑40. The Department of Health and Environmental Control shall provide from existing staff assistance to the commission in implementing the provisions of this chapter. No additional staff shall be hired and expenses shall be from the existing budget of the department.

Section 44‑84‑50. In carrying out its duties and responsibilities pursuant to this chapter, the commission has the authority to:

(1) establish ad hoc committees outside of the commission membership to assist the commission in fulfilling its duties;

(2) hold public hearings;

(3) review program and budget data of state agencies that engage in activities and provide services that involve the reduction of food insecurity and the alleviation of hunger and of other public and private entities that voluntarily agree to participate in these reviews.

Section 44‑84‑60. The commission shall:

(1) conduct research and analyze data, using existing data if possible, and undertake other studies and actions to determine:

(a) the dimension and demographics of food insecurity and hunger in this State;

(b) the cultural, community, and practical barriers to achieving food security;

(c) the availability and accessibility of emergency food sources and assistance among demographic groups and by geographic areas of the State, including gaps in availability and accessibility;

(d) other barriers to individuals receiving food from emergency food sources and programs;

(e) the effectiveness and efficiency of existing emergency food sources and programs;

(f) the participation rates of eligible persons in all federal food programs, including, but not limited to, the Supplemental Nutrition Assistance Program (SNAP, formerly food stamps), the Women, Infants, and Children Program, and school breakfast, lunch, and summer meal programs, and whether all federal programs and options have been adopted and maximized by the State;

(g) barriers to eligible individuals participating in federal food programs;

(h) the extent to which food recovery is used in this State to feed the food insecure and hungry and barriers to and opportunities for utilizing this resource;

(2) review the work of other public and private entities used to reduce food insecurity and alleviate hunger, including programs, approaches, and concepts addressing food source and program availability and access, program participation, and other matters as may be useful to the commission;

(3) evaluate existing and develop new opportunities for public‑private partnerships to address the needs of the food insecure and hungry, including, but not limited to, utilization of food recovery and promotion, by expansion, of existing public‑private endeavors and programs;

(4) identify strategies to overcome barriers to and develop solutions for improving delivery of and participation in food assistance programs;

(5) coordinate the effective and efficient provision of services and programs to the food insecure and hungry so that food sources and assistance will be readily available to the greatest number over the widest geographic area, including minimizing the duplication of services and programs and providing comprehensive public awareness and education campaigns throughout the State.

Section 44‑84‑70. All state agencies and political subdivisions of the State shall cooperate with the commission in providing information and assistance at the request of the commission.

Section 44‑84‑80. The commission annually shall submit a report to the Governor and General Assembly that includes the status of food insecurity and hunger in the State, progress being made to achieve food security and alleviate hunger, and proposals and recommendations for strengthening programs and services to further reduce food insecurity and alleviate hunger.”

SECTION 4. SECTIONS 1 and 2 of this act take effect upon approval by the Governor and apply to any investigative action undertaken as provided herein where the underlying event giving rise to the investigation occurs on or after the effective date. SECTION 3 of this act takes effect July 1, 2012.

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