

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 927

An Act to amend and reenact §§ 2.1-1.4, 11-45 as it is currently effective and as it may become effective, and 32.1-127.1:03 of the Code of Virginia and to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 54, consisting of sections numbered 2.1-812, 2.1-813, and 2.1-814, relating to the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services.

[H 1034]

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.4, 11-45 as it is currently effective and as it may become effective, and 32.1-127.1:03 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 54, consisting of sections numbered 2.1-812, 2.1-813, and 2.1-814, as follows:

§ 2.1-1.4. State offices.

There shall be in addition to such others as may be established by law, the following offices:

Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services.

Office of the Secretary of the Commonwealth.

Virginia Liaison Office.

CHAPTER 54.

OFFICE OF THE INSPECTOR GENERAL FOR MENTAL HEALTH, MENTALRETARDATION AND SUBSTANCE ABUSE SERVICES.

§ 2.1-812. Office created; appointment of Inspector General for Mental Health, Mental Retardation and Substance Abuse Services.

There is hereby created the Office of Inspector General for Mental Health, Mental Retardation and Substance Abuse Services to inspect, monitor and review the quality of services provided in the facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The Inspector General for Mental Health, Mental Retardation and Substance Abuse Services shall be appointed by the Governor, subject to confirmation by the General Assembly, and report to the Governor. The Inspector General for Mental Health, Mental Retardation and Substance Abuse Services shall be appointed initially for a term that expires one full year following the end of the Governor's term of office, and, thereafter, the term shall be for four years. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until thirty days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of such term.

§ 2.1-813. Powers and duties of Inspector General for Mental Health, Mental Retardation and Substance Abuse Services.

The Inspector General for Mental Health, Mental Retardation and Substance Abuse Services shall have the following powers and duties:

1. To operate and manage the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services and to employ such personnel as may be required to carry out the provisions of this chapter.

2. To make and enter contracts and agreements as may be necessary and incidental to carry out the provisions of this chapter, and to apply for and accept grants from the United States government and agencies and instrumentalities thereof, and any other source, in furtherance of the provisions of this chapter.

3. To prepare reports for the Governor concerning inspections and reviews of facilities.

4. To prepare an annual report by December 1 concerning activities, inspections, reviews, and recommendations for the General Assembly.

§ 2.1-814. Powers and duties of the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services.

The Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services shall have the following powers and duties:

1. To provide oversight and conduct announced and unannounced inspections of the facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services on an ongoing basis, in response to specific complaints of abuse, neglect or inadequate care, and as a result of monitoring of serious-incident reports and reports of abuse, neglect or inadequate care or other information received, and to make recommendations to the Governor, the Secretary of Health and Human Resources and the Commissioner of the Department of Mental Health, Mental Retardation and

Substance Abuse Services on methods to improve the quality of care in such facilities.

2. To access any and all information related to the delivery of services, including confidential patient or resident information, to patients or residents in facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services. Such patient or resident information shall be maintained by the Office of the Inspector General as confidential in the same manner as is required by the state agency from which the information was obtained.

3. To monitor any reports prepared by the Department of Mental Health, Mental Retardation and Substance Abuse Services and the critical-incident data collected by the Department of Mental Health, Mental Retardation and Substance Abuse Services in accordance with regulations promulgated under § 37.1-84.1 to identify issues related to quality of care, seclusion and restraint, medication usage, abuse and neglect, staff recruitment and training, and other systemic issues.

4. To monitor and participate in the promulgation of regulations by the State Mental Health, Mental Retardation and Substance Abuse Services Board.

5. To receive reports, information and complaints from the Department for Rights of Virginians with Disabilities concerning issues related to quality of care and to conduct independent reviews and investigations.

§ 11-45. Exceptions to requirement for competitive procurement.

A. Any public body may enter into contracts without competition for the purchase of goods or services (i) which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; or (ii) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.

B. Any public body may enter into contracts without competition for (i) legal services, provided that the pertinent provisions of Chapter 11 (§ 2.1-117 et seq.) of Title 2.1 remain applicable; or (ii) expert witnesses and other services associated with litigation or regulatory proceedings.

C. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

D. An industrial development authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in § 15.2-4902.

E. The Department of Alcoholic Beverage Control may procure alcoholic beverages without competitive sealed bidding or competitive negotiation.

F. Any public body administering public assistance programs as defined in § 63.1-87, the fuel assistance program, community services boards as defined in § 37.1-1, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.1-745 et seq.) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) may procure goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 11-41.

G. Any public body may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

H. The Department of Health may enter into contracts with laboratories providing cytology and related services without competitive sealed bidding or competitive negotiation if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

I. The Director of the Department of Medical Assistance Services may enter into contracts without competitive sealed bidding or competitive negotiation for special services provided for eligible recipients pursuant to § 32.1-325 E, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

J. The Virginia Code Commission may enter into contracts without competitive sealed bidding or competitive negotiation when procuring the services of a publisher, pursuant to §§ 9-77.7 and 9-77.8, to publish the Code of Virginia or the Virginia Administrative Code.

K. (Effective until July 1, 2003) The State Health Commissioner may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the

development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.

L. A community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, with members selected pursuant to such article, may enter into contracts without competition with respect to the exercise of any of its powers permitted by § 15.2-5158; however, this exception shall not apply in cases where any public funds other than special assessments and incremental real property taxes levied pursuant to § 15.2-5158 are used as payment for such contract.

M. Virginia Correctional Enterprises may enter into contracts without competitive sealed bidding or competitive negotiation when procuring materials, supplies, or services for use in and support of its production facilities, provided such procurement is accomplished using procedures which ensure the efficient use of funds as practicable and, at a minimum, shall include obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

N. The Virginia Baseball Stadium Authority may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the operation of any facilities developed under the provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

O. The Department of Health may procure child restraint devices, pursuant to § 46.2-1097, without competitive sealed bidding or competitive negotiation.

P. With the consent of the Governor, the Jamestown-Yorktown Foundation may enter into agreements or contracts with private entities without competitive sealed bidding or competitive negotiation for the promotion of tourism through marketing provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

Q. The Virginia Racing Commission may designate an entity to administer and promote the Virginia Breeders Fund created pursuant to § 59.1-372.

R. The Chesapeake Hospital Authority may enter into contracts without competitive sealed bidding or competitive negotiation in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966.

S. The Hospital Authority of Norfolk may enter into contracts without competitive sealed bidding or competitive negotiation in the exercise of any power conferred under Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2. The Authority shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

T. The Department of Health may enter into contracts without competitive sealed bidding or competitive negotiation for health care services with Virginia corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge.

U. The Department for the Aging may enter into contracts with not-for-profit Virginia corporations granted tax-exempt status under § 501(c) (3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or designated area agencies on aging without competitive sealed bidding or competitive negotiation for the administration of elder rights programs.

V. The Inspector General for Mental Health, Mental Retardation and Substance Abuse Services may enter into contracts without competition to obtain the services of licensed health care professionals or other experts to assist in carrying out the duties of the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services.

§ 11-45. (Delayed contingent effective date) Exceptions to requirement for competitive procurement.

A. Any public body may enter into contracts without competition for the purchase of goods or services (i) which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; or (ii) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.

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V. *The Inspector General for Mental Health, Mental Retardation and Substance Abuse Services may enter into contracts without competition to obtain the services of licensed health care professionals or other experts to assist in carrying out the duties of the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services.*

§ 32.1-127.1:03. Patient health records privacy.

A. There is hereby recognized a patient's right of privacy in the content of a patient's medical record. Patient records are the property of the provider maintaining them, and, except when permitted by this section or by another provision of state or federal law, no provider, or other person working in a health care setting, may disclose the records of a patient.

Patient records shall not be removed from the premises where they are maintained without the approval of the provider, except in accordance with a court order or subpoena consistent with § 8.01-413 C or with this section or in accordance with the regulations relating to change of ownership of patient records promulgated by a health regulatory board established in Title 54.1.

No person to whom disclosure of patient records was made by a patient or a provider shall redisclose or otherwise reveal the records of a patient, beyond the purpose for which such disclosure was made, without first obtaining the patient's specific consent to such redisclosure. This redisclosure prohibition shall not, however, prevent (i) any provider who receives records from another provider from making subsequent disclosures as permitted under this section or (ii) any provider from furnishing records and aggregate or other data, from which patient-identifying prescription information has been removed, encoded or encrypted, to qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health services research.

B. As used in this section:

"Agent" means a person who has been appointed as a patient's agent under a power of attorney for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

"Guardian" means a court-appointed guardian of the person.

"Health services" includes, but is not limited to, examination, diagnosis, evaluation, treatment, pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind.

"Parent" means a biological, adoptive or foster parent.

"Patient" means a person who is receiving or has received health services from a provider.

"Patient-identifying prescription information" means all prescriptions, drug orders or any other prescription information that specifically identifies an individual patient.

"Provider" shall have the same meaning as set forth in the definition of "health care provider" in § 8.01-581.1, except that state-operated facilities shall also be considered providers for the purposes of this section. Provider shall also include all persons who are licensed, certified, registered or permitted by any of the health regulatory boards within the Department of Health Professions, except persons regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Record" means any written, printed or electronically recorded material maintained by a provider in the course of providing health services to a patient concerning the patient and the services provided. "Record" also includes the substance of any communication made by a patient to a provider in confidence during or in connection with the provision of health services to a patient or information otherwise acquired by the provider about a patient in confidence and in connection with the provision of health services to the patient.

C. The provisions of this section shall not apply to any of the following:

1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia Workers' Compensation Act; or
 2. Except where specifically provided herein, the records of minor patients.
- D. Providers may disclose the records of a patient:
1. As set forth in subsection E of this section, pursuant to the written consent of the patient or in the case of a minor patient, his custodial parent, guardian or other person authorized to consent to treatment of minors pursuant to § 54.1-2969; also, in emergency cases or situations where it is impractical to obtain the patient's written consent, pursuant to the patient's oral consent for a provider to discuss the patient's records with a third party specified by the patient;
 2. In compliance with a subpoena issued in accord with subsection H of this section, pursuant to court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C of § 8.01-413;
 3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure is reasonably necessary to establish or collect a fee or to defend a provider or the provider's employees or staff against any accusation of wrongful conduct; also as required in the course of an investigation, audit, review or proceedings regarding a provider's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity;
 4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;
 5. In compliance with the provisions of § 8.01-413;
 6. As required or authorized by any other provision of law including contagious disease, public safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-276.5, 32.1-283, 32.1-283.1, 37.1-98.2, 53.1-40.10, 54.1-2403.3, 54.1-2906, 54.1-2907, 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 63.1-55.3 and 63.1-248.11;
 7. Where necessary in connection with the care of the patient;
 8. In the normal course of business in accordance with accepted standards of practice within the health services setting; however, the maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a pharmacy registered or permitted in Virginia shall only be accomplished in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412;
 9. When the patient has waived his right to the privacy of the medical records;
 10. When examination and evaluation of a patient are undertaken pursuant to judicial or administrative law order, but only to the extent as required by such;
 11. To the guardian ad litem in the course of a guardianship proceeding of an adult patient authorized under §§ 37.1-128.1, 37.1-128.2 and 37.1-132;
 12. To the attorney appointed by the court to represent a patient in a civil commitment proceeding under § 37.1-67.3;
 13. To the attorney and/or guardian ad litem of a minor patient who represents such minor in any judicial or administrative proceeding, provided that the court or administrative hearing officer has entered an order granting the attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the provider of such order;
 14. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's records in accord with § 9-173.12;
 15. To an agent appointed under a patient's power of attorney or to an agent or decision maker designated in a patient's advance directive for health care or to any other person consistent with the provisions of the Health Care Decisions Act (§ 54.1-2981 et seq.);
 16. To third-party payors and their agents for purposes of reimbursement;
 17. As is necessary to support an application for receipt of health care benefits from a governmental agency or as required by an authorized governmental agency reviewing such application or reviewing benefits already provided;
 18. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;
 19. In accord with § 54.1-2400.1 B, to communicate a patient's specific and immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;
 20. To the patient, except as provided in subsections E and F of this section and subsection B of § 8.01-413;
 21. In the case of substance abuse records, when permitted by and in conformity with requirements of federal law found in 42 U.S.C. 290dd-2 and 42 C.F.R. Part 2;
 22. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the adequacy or quality of professional services or the competency and qualifications for professional staff privileges;
 23. If the records are those of a deceased or mentally incapacitated patient to the personal representative or executor of the deceased patient or the legal guardian or committee of the incompetent or incapacitated patient or if there is no personal representative, executor, legal guardian or committee appointed, to the following persons in the following order of priority: a spouse, an adult son or

daughter, either parent, an adult brother or sister, or any other relative of the deceased patient in order of blood relationship; ~~and~~

24. For the purpose of conducting record reviews of inpatient hospital deaths to promote identification of all potential organ, eye, and tissue donors in conformance with the requirements of applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the provider's designated organ procurement organization certified by the United States Health Care Financing Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks; *and*

25. *To the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services pursuant to Chapter 54 (§ 2.1-812 et seq.) of Title 2.1.*

E. Requests for copies of medical records shall (i) be in writing, dated and signed by the requester; (ii) identify the nature of the information requested; and (iii) include evidence of the authority of the requester to receive such copies and identification of the person to whom the information is to be disclosed. Within fifteen days of receipt of a request for copies of medical records, the provider shall do one of the following: (i) furnish such copies to any requester authorized to receive them; (ii) inform the requester if the information does not exist or cannot be found; (iii) if the provider does not maintain a record of the information, so inform the requester and provide the name and address, if known, of the provider who maintains the record; or (iv) deny the request (a) under subsection F, (b) on the grounds that the requester has not established his authority to receive such records or proof of his identity, or (c) as otherwise provided by law. Procedures set forth in this section shall apply only to requests for records not specifically governed by other provisions of this Code, federal law or state or federal regulation.

F. Except as provided in subsection B of § 8.01-413, copies of a patient's records shall not be furnished to such patient or anyone authorized to act on the patient's behalf where the patient's attending physician or the patient's clinical psychologist has made a part of the patient's record a written statement that, in his opinion, the furnishing to or review by the patient of such records would be injurious to the patient's health or well-being. If any custodian of medical records denies a request for copies of records based on such statement, the custodian shall permit examination and copying of the medical record by another such physician or clinical psychologist selected by the patient, whose licensure, training and experience relative to the patient's condition are at least equivalent to that of the physician or clinical psychologist upon whose opinion the denial is based. The person or entity denying the request shall inform the patient of the patient's right to select another reviewing physician or clinical psychologist under this subsection who shall make a judgment as to whether to make the record available to the patient. Any record copied for review by the physician or clinical psychologist selected by the patient shall be accompanied by a statement from the custodian of the record that the patient's attending physician or clinical psychologist determined that the patient's review of his record would be injurious to the patient's health or well-being.

G. A written consent to allow release of patient records may, but need not, be in the following form:

**CONSENT TO RELEASE OF CONFIDENTIAL HEALTH CARE
INFORMATION**

Patient Name

Provider Name

Person, agency or provider to whom disclosure is to be made

Information or Records to be disclosed

As the person signing this consent, I understand that I am giving my permission to the above-named provider or other named third party for disclosure of confidential health care records. I also understand that I have the right to revoke this consent, but that my revocation is not effective until delivered in writing to the person who is in possession of my records. A copy of this consent and a notation concerning the persons or agencies to whom disclosure was made shall be included with my original records. The person who receives the records to which this consent pertains may not redisclose them to anyone else without my separate written consent unless such recipient is a provider who makes a disclosure permitted by law.

This consent expires on (date)

Signature of Patient Date.....

H. 1. No party to an action shall request the issuance of a subpoena duces tecum for an opposing party's medical records unless a copy of the request for the subpoena is provided to opposing counsel or the opposing party if they are pro se, simultaneously with filing the request. No party to an action shall request the issuance of a subpoena duces tecum for the medical records of a nonparty witness unless a copy of the request for the subpoena is provided to the nonparty witness simultaneously with filing the request.

In instances where medical records being subpoenaed are those of a pro se party or nonparty witness, the party requesting the issuance of the subpoena shall deliver to the pro se party or nonparty witness together with the copy of the request for subpoena, a statement informing them of their rights and remedies. The statement shall include the following language and the heading shall be in boldface

capital letters:

NOTICE TO PATIENT

The attached Request for Subpoena means that (insert name of party requesting subpoena) has asked the court to issue a subpoena to your doctor or other health care providers (names of health care providers inserted here) requiring them to produce your medical records. Your doctor or other health care provider is required to respond by providing a copy of your medical records. If you believe your records should not be disclosed and object to their disclosure, you have the right to file a motion with the clerk of the court to quash the subpoena. You may contact the clerk's office to determine the requirements that must be satisfied when filing a motion to quash and you may elect to contact an attorney to represent your interest. If you elect to file a motion to quash, it must be filed as soon as possible before the provider sends out the records in response to the subpoena. If you elect to file a motion to quash, you must notify your doctor or other health care provider(s) that you are filing the motion so that the provider knows to send the records to the clerk of court in a sealed envelope or package for safekeeping while your motion is decided.

2. Any party filing a request for a subpoena duces tecum for a patient's medical records shall include a Notice to Providers in the same part of the request where the provider is directed where and when to return the records. Such notice shall be in boldface capital letters and shall include the following language:

NOTICE TO PROVIDERS

IF YOU RECEIVE NOTICE THAT YOUR PATIENT HAS FILED A MOTION TO QUASH (OBJECTING TO) THIS SUBPOENA, OR IF YOU FILE A MOTION TO QUASH THIS SUBPOENA, SEND THE RECORDS ONLY TO THE CLERK OF THE COURT WHICH ISSUED THE SUBPOENA USING THE FOLLOWING PROCEDURE: PLACE THE RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED ENVELOPE A COVER LETTER TO THE CLERK OF COURT WHICH STATES THAT CONFIDENTIAL HEALTH CARE RECORDS ARE ENCLOSED AND ARE TO BE HELD UNDER SEAL PENDING THE COURT'S RULING ON THE MOTION TO QUASH THE SUBPOENA. THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT.

3. Health care providers shall provide a copy of all records as required by a subpoena duces tecum or court order for such medical records. If the health care provider has, however, actual receipt of notice that a motion to quash the subpoena has been filed or if the health care provider files a motion to quash the subpoena for medical records, then the health care provider shall produce the records to the clerk of the court issuing the subpoena, where the court shall place the records under seal until a determination is made regarding the motion to quash. The securely sealed envelope shall only be opened on order of the judge. In the event the court grants the motion to quash, the records shall be returned to the health care provider in the same sealed envelope in which they were delivered to the court. In the event that a judge orders the sealed envelope to be opened to review the records in camera, a copy of the judge's order shall accompany any records returned to the provider. The records returned to the provider shall be in a securely sealed envelope.

4. It is the duty of any party requesting a subpoena duces tecum for medical records to determine whether the patient whose records are sought is pro se or a nonparty. Any request for a subpoena duces tecum for the medical records of a nonparty or of a pro se party shall direct the provider (in boldface type) not to produce the records until ten days after the date on which the provider is served with the subpoena duces tecum and shall be produced no later than twenty days after the date of such service.

In the event that the individual whose records are being sought files a motion to quash the subpoena, the court shall decide whether good cause has been shown by the discovering party to compel disclosure of the patient's private records over the patient's objections. In determining whether good cause has been shown, the court shall consider (i) the particular purpose for which the information was collected; (ii) the degree to which the disclosure of the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or proceeding; and (v) any other relevant factor.

The provisions of this subsection have no application to subpoenas for medical records requested under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation, audit, review or proceedings regarding a provider's conduct. The provisions of this subsection apply to the medical records of both minors and adults.

A subpoena for substance abuse records must conform to the requirements of federal law found in 42 C.F.R. Part 2, Subpart E.

Providers may testify about the medical records of a patient in compliance with §§ 8.01-399 and 8.01-400.2.