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HOUSE BILL NO. 810

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Moss
on February 4, 2000)

(Patron Prior to Substitute—Delegate Joannou)

A BILL to amend and reenact §§ 2.1-342.01, 8.01-413 and 32.1-127.1:03 of the Code of Virginia, relating to copies of medical records; release.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-342.01, 8.01-413 and 32.1-127.1:03 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-342.01. Exclusions to application of chapter.

A. The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records of all investigations of applications for licenses and permits, and all licensees and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, or the Charitable Gaming Commission.

2. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.

3. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of eighteen years. For scholastic records of students under the age of eighteen years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

4. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

5. Medical and mental records, except that such records may be personally reviewed by the subject person or a physician of the subject person's choice. However, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being cause actual harm to the patient's physical or mental health or cause the patient to be an imminent danger to himself or others.

Where the person who is the subject of medical records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the medical records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Medical records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the medical records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and copying as provided in § 2.1-342. No such summaries or data shall include any patient-identifying information. Where the person who is the subject of medical and mental records is under the age of eighteen, his right of access

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60 may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's
61 parental rights have been terminated or a court of competent jurisdiction has restricted or denied such
62 access. In instances where the person who is the subject thereof is an emancipated minor or a student in
63 a public institution of higher education, the right of access may be asserted by the subject person.

64 6. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the
65 Attorney General; the members of the General Assembly or the Division of Legislative Services; the
66 mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or
67 other chief executive officer of any public institution of higher education. However, no record which is
68 otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has
69 been attached to or incorporated within any working paper or correspondence.

70 As used in this subdivision:

71 "Working papers" means those records prepared by or for an above-named public official for his
72 personal or deliberative use.

73 "Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet
74 Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor
75 has delegated his authority pursuant to § 2.1-39.1.

76 7. Written advice of the county, city and town attorneys to their local government clients and any
77 other records protected by the attorney-client privilege.

78 8. Legal memoranda and other work product compiled specifically for use in litigation or for use in
79 an active administrative investigation concerning a matter which is properly the subject of a closed
80 meeting under § 2.1-344.

81 9. Confidential letters and statements of recommendation placed in the records of educational
82 agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an
83 application for employment, or (iii) receipt of an honor or honorary recognition.

84 10. Library records which can be used to identify both (i) any library patron who has borrowed
85 material from a library and (ii) the material such patron borrowed.

86 11. Any test or examination used, administered or prepared by any public body for purposes of
87 evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's
88 qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license
89 or certificate issued by a public body.

90 As used in this subdivision, "test or examination" shall include (i) any scoring key for any such test
91 or examination and (ii) any other document which would jeopardize the security of the test or
92 examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as
93 provided by law, or limit access to individual records as provided by law. However, the subject of such
94 employment tests shall be entitled to review and inspect all records relative to his performance on such
95 employment tests.

96 When, in the reasonable opinion of such public body, any such test or examination no longer has any
97 potential for future use, and the security of future tests or examinations will not be jeopardized, the test
98 or examination shall be made available to the public. However, minimum competency tests administered
99 to public school children shall be made available to the public contemporaneously with statewide release
100 of the scores of those taking such tests, but in no event shall such tests be made available to the public
101 later than six months after the administration of such tests.

102 12. Applications for admission to examinations or for licensure and scoring records maintained by
103 the Department of Health Professions or any board in that department on individual licensees or
104 applicants. However, such material may be made available during normal working hours for copying, at
105 the requester's expense, by the individual who is the subject thereof, in the offices of the Department of
106 Health Professions or in the offices of any health regulatory board, whichever may possess the material.

107 13. Records of active investigations being conducted by the Department of Health Professions or by
108 any health regulatory board in the Commonwealth.

109 14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to
110 § 2.1-344. However, no record which is otherwise open to inspection under this chapter shall be deemed
111 exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

112 15. Reports, documentary evidence and other information as specified in §§ 2.1-373.2 and 63.1-55.4.

113 16. Proprietary information gathered by or for the Virginia Port Authority as provided in
114 § 62.1-132.4 or § 62.1-134.1.

115 17. Contract cost estimates prepared for the confidential use of the Department of Transportation in
116 awarding contracts for construction or the purchase of goods or services, and records and automated
117 systems prepared for the Department's Bid Analysis and Monitoring Program.

118 18. Vendor proprietary information software which may be in the official records of a public body.
119 For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired
120 from a vendor for purposes of processing data for agencies or political subdivisions of the
121 Commonwealth.

122 19. Financial statements not publicly available filed with applications for industrial development
123 financings.

124 20. Data, records or information of a proprietary nature produced or collected by or for faculty or
125 staff of public institutions of higher education, other than the institutions' financial or administrative
126 records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly
127 issues, whether sponsored by the institution alone or in conjunction with a governmental body or a
128 private concern, where such data, records or information has not been publicly released, published,
129 copyrighted or patented.

130 21. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,
131 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by
132 the political subdivision.

133 22. Confidential proprietary records, voluntarily provided by private business pursuant to a promise
134 of confidentiality from the Department of Business Assistance, the Virginia Economic Development
135 Partnership, the Virginia Tourism Authority, or local or regional industrial or economic development
136 authorities or organizations, used by the Department, the Partnership, the Authority, or such entities for
137 business, trade and tourism development; and memoranda, working papers or other records related to
138 businesses that are considering locating or expanding in Virginia, prepared by the Partnership, where
139 competition or bargaining is involved and where, if such records are made public, the financial interest
140 of the governmental unit would be adversely affected.

141 23. Information which was filed as confidential under the Toxic Substances Information Act
142 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

143 24. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis
144 center or a program for battered spouses.

145 25. Computer software developed by or for a state agency, state-supported institution of higher
146 education or political subdivision of the Commonwealth.

147 26. Investigator notes, and other correspondence and information, furnished in confidence with
148 respect to an active investigation of individual employment discrimination complaints made to the
149 Department of Personnel and Training. However, nothing in this section shall prohibit the disclosure of
150 information taken from inactive reports in a form which does not reveal the identity of charging parties,
151 persons supplying the information or other individuals involved in the investigation.

152 27. Fisheries data which would permit identification of any person or vessel, except when required
153 by court order as specified in § 28.2-204.

154 28. Records of active investigations being conducted by the Department of Medical Assistance
155 Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

156 29. Records and writings furnished by a member of the General Assembly to a meeting of a standing
157 committee, special committee or subcommittee of his house established solely for the purpose of
158 reviewing members' annual disclosure statements and supporting materials filed under § 2.1-639.40 or of
159 formulating advisory opinions to members on standards of conduct, or both.

160 30. Customer account information of a public utility affiliated with a political subdivision of the
161 Commonwealth, including the customer's name and service address, but excluding the amount of utility
162 service provided and the amount of money paid for such utility service.

163 31. Investigative notes and other correspondence and information furnished in confidence with
164 respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice
165 under the Virginia Human Rights Act (§ 2.1-714 et seq.). However, nothing in this section shall prohibit
166 the distribution of information taken from inactive reports in a form which does not reveal the identity
167 of the parties involved or other persons supplying information.

168 32. Investigative notes; proprietary information not published, copyrighted or patented; information
169 obtained from employee personnel records; personally identifiable information regarding residents,
170 clients or other recipients of services; and other correspondence and information furnished in confidence
171 to the Department of Social Services in connection with an active investigation of an applicant or
172 licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1. However,
173 nothing in this section shall prohibit disclosure of information from the records of completed
174 investigations in a form that does not reveal the identity of complainants, persons supplying information,
175 or other individuals involved in the investigation.

176 33. Personal information, as defined in § 2.1-379, (i) filed with the Virginia Housing Development
177 Authority concerning individuals who have applied for or received loans or other housing assistance or
178 who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by
179 the Virginia Housing Development Authority, (ii) concerning persons participating in or persons on the
180 waiting list for federally funded rent-assistance programs, or (iii) filed with any local redevelopment and
181 housing authority created pursuant to § 36-4 concerning persons participating in or persons on the
182 waiting list for housing assistance programs funded by local governments or by any such authority.

183 However, access to one's own information shall not be denied.

184 34. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if
185 disclosure of them would have a detrimental effect upon the negotiating position of a governing body or
186 on the establishment of the terms, conditions and provisions of the siting agreement.

187 35. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior
188 to the completion of such purchase, sale or lease.

189 36. Records containing information on the site specific location of rare, threatened, endangered or
190 otherwise imperiled plant and animal species, natural communities, caves, and significant historic and
191 archaeological sites if, in the opinion of the public body which has the responsibility for such
192 information, disclosure of the information would jeopardize the continued existence or the integrity of
193 the resource. This exemption shall not apply to requests from the owner of the land upon which the
194 resource is located.

195 37. Records, memoranda, working papers, graphics, video or audio tapes, production models, data
196 and information of a proprietary nature produced by or for or collected by or for the State Lottery
197 Department relating to matters of a specific lottery game design, development, production, operation,
198 ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to
199 holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning,
200 advertising, or marketing, where such official records have not been publicly released, published,
201 copyrighted or patented. Whether released, published or copyrighted, all game-related information shall
202 be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game
203 to which it pertains.

204 38. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii)
205 lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or
206 regulations which cause abuses in the administration and operation of the lottery and any evasions of
207 such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling
208 where such official records have not been publicly released, published or copyrighted. All studies and
209 investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection and copying upon
210 completion of the study or investigation.

211 39. Those portions of engineering and construction drawings and plans submitted for the sole purpose
212 of complying with the Building Code in obtaining a building permit which would identify specific trade
213 secrets or other information the disclosure of which would be harmful to the competitive position of the
214 owner or lessee. However, such information shall be exempt only until the building is completed.
215 Information relating to the safety or environmental soundness of any building shall not be exempt from
216 disclosure.

217 40. Records concerning reserves established in specific claims administered by the Department of
218 General Services through its Division of Risk Management as provided in Article 5.1 (§ 2.1-526.1 et
219 seq.) of Chapter 32 of this title, or by any county, city, or town.

220 41. Information and records collected for the designation and verification of trauma centers and other
221 specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to
222 Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

223 42. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3.

224 43. Investigative notes, correspondence and information furnished in confidence, and records
225 otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i)
226 Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the
227 State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste
228 and Abuse Hotline; or (iv) the committee or the auditor with respect to an investigation or audit
229 conducted pursuant to § 15.2-825. Records of completed investigations shall be disclosed in a form that
230 does not reveal the identity of the complainants or persons supplying information to investigators.
231 Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to,
232 the agency involved, the identity of the person who is the subject of the complaint, the nature of the
233 complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective
234 action, the identity of the person who is the subject of the complaint may be released only with the
235 consent of the subject person.

236 44. Data formerly required to be submitted to the Commissioner of Health relating to the
237 establishment of new or the expansion of existing clinical health services, acquisition of major medical
238 equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

239 45. Documentation or other information which describes the design, function, operation or access
240 control features of any security system, whether manual or automated, which is used to control access to
241 or use of any automated data processing or telecommunications system.

242 46. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections
243 provided to the Department of Rail and Public Transportation, provided such information is exempt
244 under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws

administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

47. In the case of corporations organized by the Virginia Retirement System (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors and (ii) records concerning the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate, the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.

48. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

49. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

50. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

51. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

52. Information required to be provided pursuant to § 54.1-2506.1.

53. Confidential information designated as provided in subsection D of § 11-52 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 11-46.

54. All information and records acquired during a review of any child death by the State Child Fatality Review team established pursuant to § 32.1-283.1, during a review of any child death by a local or regional child fatality review team established pursuant to § 32.1-283.2, and all information and records acquired during a review of any death by a family violence fatality review team established pursuant to § 32.1-283.3.

55. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

56. Confidential proprietary records which are voluntarily provided by a private entity pursuant to a proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.), pursuant to a promise of confidentiality from the responsible public entity, used by the responsible public entity for purposes related to the development of a qualifying transportation facility; and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995, where, if such records were made public, the financial interest of the public or private entity involved with such proposal or the process of competition or bargaining would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this subdivision, the terms "public entity" and "private entity" shall be defined as they are defined in the Public-Private Transportation Act of 1995.

57. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public; or records of emergency service agencies to the extent that such records contain specific tactical plans relating to antiterrorist activity.

58. All records of the University of Virginia or the University of Virginia Medical Center which contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center, including its business development or marketing strategies and its activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia

306 Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of
307 such information would be harmful to the competitive position of the Medical Center.

308 59. Patient level data collected by the Board of Health and not yet processed, verified, and released,
309 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of
310 Health has contracted pursuant to § 32.1-276.4.

311 60. Records of the Medical College of Virginia Hospitals Authority pertaining to any of the
312 following: an individual's qualifications for or continued membership on its medical or teaching staffs;
313 proprietary information gathered by or in the possession of the Authority from third parties pursuant to a
314 promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for
315 construction or the purchase of goods or services; data, records or information of a proprietary nature
316 produced or collected by or for the Authority or members of its medical or teaching staffs; financial
317 statements not publicly available that may be filed with the Authority from third parties; the identity,
318 accounts or account status of any customer of the Authority; consulting or other reports paid for by the
319 Authority to assist the Authority in connection with its strategic planning and goals; and the
320 determination of marketing and operational strategies where disclosure of such strategies would be
321 harmful to the competitive position of the Authority; and data, records or information of a proprietary
322 nature produced or collected by or for employees of the Authority, other than the Authority's financial
323 or administrative records, in the conduct of or as a result of study or research on medical, scientific,
324 technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a
325 governmental body or a private concern, when such data, records or information have not been publicly
326 released, published, copyrighted or patented.

327 61. Confidential proprietary information or trade secrets, not publicly available, provided by a private
328 person or entity to the Virginia Resources Authority or to a fund administered in connection with
329 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such
330 information were made public, the financial interest of the private person or entity would be adversely
331 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of
332 confidentiality.

333 62. Confidential proprietary records which are provided by a franchisee under § 15.2-2108 to its
334 franchising authority pursuant to a promise of confidentiality from the franchising authority which
335 relates to the franchisee's potential provision of new services, adoption of new technologies or
336 implementation of improvements, where such new services, technologies or improvements have not been
337 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such
338 records were made public, the competitive advantage or financial interests of the franchisee would be
339 adversely affected. In order for confidential proprietary information to be excluded from the provisions
340 of this chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other
341 materials for which protection from disclosure is sought, (ii) identify the data or other materials for
342 which protection is sought, and (iii) state the reason why protection is necessary.

343 63. Records of the Intervention Program Committee within the Department of Health Professions, to
344 the extent such records may identify any practitioner who may be, or who is actually, impaired to the
345 extent disclosure is prohibited by § 54.1-2517.

346 64. Records submitted as a grant application, or accompanying a grant application, to the
347 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of
348 Chapter 2 of Title 32.1, to the extent such records contain (i) medical or mental records, or other data
349 identifying individual patients or (ii) proprietary business or research-related information produced or
350 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,
351 scientific, technical or scholarly issues, when such information has not been publicly released, published,
352 copyrighted or patented, if the disclosure of such information would be harmful to the competitive
353 position of the applicant.

354 65. Information which would disclose the security aspects of a system safety program plan adopted
355 pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety
356 Oversight agency; and information in the possession of such agency, the release of which would
357 jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway
358 safety.

359 66. Documents and other information of a proprietary nature furnished by a supplier of charitable
360 gaming supplies to the Charitable Gaming Commission pursuant to subsection E of § 18.2-340.34.

361 67. Personal information, as defined in § 2.1-379, provided to the Board of the Virginia Higher
362 Education Tuition Trust Fund or its employees by or on behalf of individuals who have requested
363 information about, applied for, or entered into prepaid tuition contracts or savings trust account
364 agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be
365 construed to prohibit disclosure or publication of information in a statistical or other form which does
366 not identify individuals or provide personal information. Individuals shall be provided access to their
367 own personal information.

68. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

69. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security or employee safety of (i) the Virginia Museum of Fine Arts or any of its warehouses; (ii) any government store or warehouse controlled by the Department of Alcoholic Beverage Control; (iii) any courthouse, jail, detention or law-enforcement facility; or (iv) any correctional or juvenile facility or institution under the supervision of the Department of Corrections or the Department of Juvenile Justice.

70. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ 3.1-622 and 3.1-624.

B. Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et seq.) of this title shall be construed as denying public access to (i) contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 4 of subsection A; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

C. No provision of this chapter shall be construed to afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an incarcerated person from exercising his constitutionally protected rights, including, but not limited to, his rights to call for evidence in his favor in a criminal prosecution.

§ 8.01-413. Certain copies of health care provider's records or papers of patient admissible; right of patient or his attorney to copies of such records or papers; subpoena; damages, costs and attorney's fees.

A. In any case where the hospital, nursing facility, physician's, or other health care provider's original records or papers of any patient in a hospital or institution for the treatment of physical or mental illness are admissible or would be admissible as evidence, any typewritten copy, photograph, photostatted copy, or microphotograph or printout or other hard copy generated from computerized or other electronic storage, microfilm, or other photographic, mechanical, electronic or chemical storage process thereof shall be admissible as evidence in any court of this Commonwealth in like manner as the original, if the printout or hard copy or microphotograph or photograph is properly authenticated by the employees having authority to release or produce the original records.

Any hospital, nursing facility, physician, or other health care provider whose records or papers relating to any such patient are subpoenaed for production under this section or the Rules of the Supreme Court of Virginia may comply with the subpoena by a timely mailing to the clerk issuing the subpoena properly authenticated copies, photographs or microphotographs in lieu of the originals. The court whose clerk issued the subpoena may, after notice to such hospital, nursing facility, physician, or other health care provider, enter an order requiring production of the originals, if available, of any stored records or papers whose copies, photographs or microphotographs are not sufficiently legible. The party requesting the subpoena shall be liable for the reasonable charges of the hospital, nursing facility, physician, or other health care provider for the service of maintaining, retrieving, reviewing, preparing, copying and mailing the items produced. Except for copies of X-ray photographs, however, such charges shall not exceed fifty cents for each page up to fifty pages and twenty-five cents a page thereafter for copies from paper and one dollar per page for copies from microfilm or other micrographic process, plus all postage and shipping costs and a search and handling fee not to exceed ten dollars.

B. Copies of hospital, nursing facility, physician's, or other health care provider's records or papers shall be furnished within fifteen days of such request to the patient or his attorney upon such patient's or attorney's written request, which request shall comply with the requirements of § 32.1-127.1:03. However, copies of a patient's records shall not be furnished to such patient where the patient's treating physician has made a part of the patient's records 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~~ *cause actual harm to the patient's physical or mental health or cause the patient to be an imminent danger to himself or others*, but in any such case such records shall be furnished to the patient's attorney within fifteen days of the date of such request. A reasonable charge may be made for the service of

maintaining, retrieving, reviewing and preparing such copies. Except for copies of X-ray photographs, however, such charges shall not exceed fifty cents per page for up to fifty pages and twenty-five cents a page thereafter for copies from paper and one dollar per page for copies from microfilm or other micrographic process, plus all postage and shipping costs and a search and handling fee not to exceed ten dollars. Any hospital, nursing facility, physician, or other health care provider receiving such a request from a patient's attorney shall require a writing signed by the patient confirming the attorney's authority to make the request *and shall accept a photocopy, facsimile, or other copy of the original signed by the patient as if it were an original.*

C. Upon the failure of any hospital, nursing facility, physician, or other health care provider to comply with any written request made in accordance with subsection B within the period of time specified in that subsection and within the manner specified in § 32.1-127.1:03, the patient or his attorney may by affidavit filed with the clerk of the circuit court wherein any eventual suit, if any, would be required to be filed, upon payment of the fees required by subdivision A 18 of § 17.1-275, and fees for service, request that the clerk subpoena such records or papers. The clerk shall thereupon issue a subpoena, returnable within twenty days of proper service, directing the hospital, nursing facility, physician, or other health care provider to produce and furnish copies of the reports and papers to him, whereupon, the clerk shall make the same available to the patient or his attorney. If the court finds that a hospital, nursing facility, physician, or other health care provider willfully refused to comply with a written request made in accordance with subsection B, either by willfully or arbitrarily refusing or by imposing a charge in excess of the reasonable expense of making the copies and processing the request for records, the court may award damages for all expenses incurred by the patient to obtain such copies, including court costs and reasonable attorney's fees.

D. The provisions of subsections A, B, and C hereof shall apply to any health care provider whose office is located within or without the Commonwealth if the records pertain to any patient who is a party to a cause of action in any court in the Commonwealth of Virginia, and shall apply only to requests made by an attorney, or his client, in anticipation of litigation or in the course of litigation.

E. Health care provider, as used in this section, shall have the same meaning as provided in § 32.1-127.1:03 and shall also include an independent medical copy retrieval service contracted to provide the service of retrieving, reviewing, and preparing such copies for distribution.

F. Notwithstanding the authorization to admit as evidence patient records in the form of microphotographs, prescription dispensing records maintained in or on behalf of any pharmacy registered or permitted in Virginia shall only be stored in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412.

§ 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.

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. *The provider shall accept a photocopy, facsimile, or other copy of the original signed by the requestor as if it were an original.* 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~~ *cause actual harm to the patient's physical or mental health or cause the patient to be an imminent danger to himself or others.* A copy of the written statement shall be provided to the patient or anyone authorized to act on behalf of the patient at the time a request for copies of records is denied under this subsection. 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~~ *cause actual harm to the patient's physical or mental health or cause the patient to be an imminent danger to himself or others.*

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

675 type) not to produce the records until ten days after the date on which the provider is served with the
676 subpoena duces tecum and shall be produced no later than twenty days after the date of such service.

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

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

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

690 Providers may testify about the medical records of a patient in compliance with §§ 8.01-399 and
691 8.01-400.2.