

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 32.1-276.3, 32.1-276.6, 32.1-276.8 and 32.1-276.9 of the Code of Virginia, relating to health care data reporting.

[H 2763]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-276.3, 32.1-276.6, 32.1-276.8 and 32.1-276.9 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-276.3. (Effective until July 1, 2003) Definitions.

As used in this chapter:

"Board" means the Board of Health.

"Consumer" means any person (i) whose occupation is other than the administration of health activities or the provision of health services, (ii) who has no fiduciary obligation to a health care institution or other health agency or to any organization, public or private, whose principal activity is an adjunct to the provision of health services, or (iii) who has no material financial interest in the rendering of health services.

"Health care provider" means (i) a general hospital, ordinary hospital, outpatient surgical hospital, nursing home or certified nursing facility licensed or certified pursuant to Article 1 of Chapter 5 (§ 32.1-123 et seq.) of Title 32.1; (ii) a mental or psychiatric hospital licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1; (iii) a hospital operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services; (iv) a hospital operated by the University of Virginia or the Virginia Commonwealth University Health System Authority; (v) any person licensed to practice medicine or osteopathy in the Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1; or (vi) any person licensed to furnish health care policies or plans pursuant to Chapter 34 (§ 38.2-3400 et seq.), Chapter 42 (§ 38.2-4200), or Chapter 43 (§ 38.2-4300) of Title 38.2. In no event shall such term be construed to include continuing care retirement communities which file annual financial reports with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 or any nursing care facility of a religious body which depends upon prayer alone for healing.

"Health maintenance organization" means any person who undertakes to provide or to arrange for one or more health care plans pursuant to Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2.

"Inpatient hospital" means a hospital providing inpatient care and licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of this title, a hospital licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1, a hospital operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services for the care and treatment of the mentally ill, or a hospital operated by the University of Virginia or the Virginia Commonwealth University Health System Authority.

"Nonprofit organization" means a nonprofit, tax-exempt health data organization with the characteristics, expertise, and capacity to execute the powers and duties set forth for such entity in this chapter.

"Outpatient surgery" means all surgical procedures performed on an outpatient basis in a general hospital, ordinary hospital, outpatient surgical hospital or other facility licensed or certified pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of this title or in a physician's office. Outpatient surgery refers only to those surgical procedure groups on which data are collected by the nonprofit organization as a part of a pilot study.

"Physician" means a person licensed to practice medicine or osteopathy in the Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1.

"Physician's office" means a place (i) owned or operated by a licensed physician or group of physicians practicing in any legal form whatsoever or by a corporation, partnership, limited liability company or other entity that employs or engages physicians, and (ii) designed and equipped solely for the provision of fundamental medical care, whether diagnostic, therapeutic, rehabilitative, preventive or palliative, to ambulatory patients.

"Surgical procedure group" means at least five procedure groups, identified by the nonprofit organization designated pursuant to § 32.1-276.4 in compliance with regulations adopted by the Board, based on criteria that include, but are not limited to, the frequency with which the procedure is performed, the clinical severity or intensity, and the perception or probability of risk. The nonprofit organization shall form a technical advisory group consisting of members nominated by its Board of Directors' nominating organizations to assist in selecting surgical procedure groups to recommend to

57 *the Board for adoption.*

58 "System" means the Virginia Patient Level Data System.

59 § 32.1-276.6. (Effective until July 1, 2003) Patient level data system continued; reporting
60 requirements.

61 A. The Virginia Patient Level Data System is hereby continued, hereinafter referred to as the
62 "System." Its purpose shall be to establish and administer an integrated system for collection and
63 analysis of data which shall be used by consumers, employers, providers, and purchasers of health care
64 and by state government to continuously assess and improve the quality, appropriateness, and
65 accessibility of health care in the Commonwealth and to enhance their ability to make effective health
66 care decisions.

67 B. Every inpatient hospital shall submit to the Board patient level data as set forth in this subsection.
68 *Every general hospital, ordinary hospital, outpatient surgical hospital or other facility licensed or*
69 *certified pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of this title and every physician*
70 *performing surgical procedures in his office shall also submit to the board outpatient surgical data as*
71 *set forth in this subsection.* Any such hospital, facility or physician may report the required data directly
72 to the nonprofit organization cited in § 32.1-276.4. *Unless otherwise noted,* patient level data elements
73 for hospital inpatients *and patients having outpatient surgery* shall include, *where applicable and*
74 *included on standard claim forms:*

- 75 1. Hospital identifier;
- 76 2. Attending physician identifier (*inpatient only*);
- 77 3. Operating physician identifier;
- 78 4. Payor identifier;
- 79 5. Employer identifier;
- 80 6. Patient identifier (*all submissions*);
- 81 7. Patient sex, race (*inpatient only*), date of birth (including century indicator), zip code, patient
82 relationship to insured, employment status code, status at discharge, and birth weight for infants
83 (*inpatient only*);
- 84 8. Admission type, source (*inpatient only*), date and hour, and diagnosis;
- 85 9. Discharge date (*inpatient only*) and status;
- 86 10. Principal and secondary diagnoses;
- 87 11. External cause of injury;
- 88 12. Co-morbid conditions existing but not treated;
- 89 13. Procedures and procedure dates;
- 90 14. Revenue center codes, units, and charges; and
- 91 15. Total charges.

92 C. State agencies providing coverage for outpatient services shall submit to the Board patient level
93 data regarding paid outpatient claims. Information to be submitted shall be extracted from standard
94 claims forms and, where available, shall include:

- 95 1. Provider identifier;
- 96 2. Patient identifier;
- 97 3. Physician identifier;
- 98 4. Dates of service and diagnostic, procedural, demographic, pharmaceutical, and financial
99 information; and
- 100 5. Other related information.

101 The Board shall promulgate regulations specifying the format for submission of such outpatient data.
102 State agencies may submit this data directly to the nonprofit organization cited in § 32.1-276.4.

103 § 32.1-276.8. (Effective until July 1, 2003) Fees for processing, verification, and dissemination of
104 data.

105 A. The Board shall prescribe a reasonable fee, not to exceed one dollar per discharge, for each health
106 care provider submitting patient level data *on inpatients* pursuant to this chapter to cover the costs of the
107 reasonable expenses in processing and verifying such data. The Board shall also prescribe a reasonable
108 fee for each affected health care provider to cover the costs of the reasonable expenses of establishing
109 and administering the methodology developed pursuant to § 32.1-276.7. The payment of such fees shall
110 be at such time as the Board designates. The Board may assess a late charge on any fees paid after their
111 due date.

112 In addition, the Board shall prescribe a tiered-fee structure based on the number of enrollees for each
113 health maintenance organization to cover the costs of collecting and making available such data. Such
114 fees shall not exceed \$3,000 for each health maintenance organization required to provide information
115 pursuant to this chapter. The payment of such fees shall also be at such time as the Board designates.
116 The Board may also assess a late charge on any fees paid by health maintenance organizations after
117 their due dates.

The Board shall (i) maintain records of its activities; (ii) collect and account for all fees and deposit the moneys so collected into a special fund from which the expenses attributed to this chapter shall be paid; and (iii) enforce all regulations promulgated by it pursuant to this chapter.

B. The nonprofit organization providing services pursuant to an agreement or contract as provided in § 32.1-276.4 shall be authorized to charge and collect the fees prescribed by the Board in subsection A of this section when the *patient level data on inpatients* are provided directly to the nonprofit organization. Such fees shall not exceed the amount authorized by the Board as provided in subsection A of this section. The nonprofit organization, at its discretion, may grant a reduction or waiver of the patient level data submission fees upon a determination by the nonprofit organization that the health care provider or health maintenance organization has submitted processed, verified data. *There shall be no fees for processing of outpatient surgical data for the first twelve months of data submission. Following that period, the nonprofit organization may charge a fee of up to one dollar for records that it determines are not processed, verified data.*

C. State agencies shall not be assessed fees for the submission of patient level data required by subsection C of § 32.1-276.6. Individual employers, insurers, and other organizations may voluntarily provide the nonprofit organization with outpatient data for processing, storage, and comparative analysis and shall be subject to fees negotiated with and charged by the nonprofit organization for services provided.

D. The nonprofit organization providing services pursuant to an agreement or contract with the Commissioner of Health shall be authorized to charge and collect reasonable fees for the dissemination of patient level data and Health Employer Data and Information Set (HEDIS) data or other approved quality of care or performance information set data; however, the Commissioner of Health, the State Corporation Commission, and the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services shall be entitled to receive relevant and appropriate data from the nonprofit organization at no charge.

§ 32.1-276.9. (Effective until July 1, 2003) Confidentiality, subsequent release of data and relief from liability for reporting; penalty for wrongful disclosure; individual action for damages.

A. Patient level data collected pursuant to this chapter shall be exempt from the provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq.), shall be considered confidential, and shall not be disclosed other than as specifically authorized by this chapter; however, upon processing and verification by the nonprofit organization, all patient level data shall be publicly available, except patient, physician, and employer identifier elements, which may be released solely for research purposes if otherwise permitted by law and only if such identifier is encrypted and cannot be reasonably expected to reveal patient identities. No report published by the nonprofit organization, the Commissioner, or other person may present information that reasonably could be expected to reveal the identity of any patient. Publicly available information shall be designed to prevent persons from being able to gain access to combinations of patient characteristic data elements that reasonably could be expected to reveal the identity of any patient. The nonprofit organization, in its discretion, may release physician and employer identifier information. *Outpatient surgical charge data shall be made publicly available only pursuant to a review by the Joint Commission on Health Care.*

B. No person or entity, including the nonprofit organization contracting with the Commissioner, shall be held liable in any civil action with respect to any report or disclosure of information made under this article unless such person or entity has knowledge of any falsity of the information reported or disclosed.

C. Any disclosure of information made in violation of this chapter shall be subject to a civil penalty of not more than \$5,000 per violation. This provision shall be enforceable upon petition to the appropriate circuit court by the Attorney General, any attorney for the Commonwealth, or any attorney for the county, city or town in which the violation occurred. Any penalty imposed shall be payable to the Literary Fund. In addition, any person or entity who is the subject of any disclosure in violation of this article shall be entitled to initiate an action to recover actual damages, if any, or \$500, whichever is greater, together with reasonable attorney's fees and court costs.

2. That the nonprofit health data organization referenced in § 32.1-276.4 shall review the impact of requiring the submission of outpatient surgical data by health care providers during a pilot study. A review of the pilot study shall be conducted in consultation with the various affected parties and shall include an assessment and evaluation of the logistics and costs borne by those submitting data and the actual or potential value, or both, of the outpatient data to the business community, consumers, public health and health policy officials, and health care providers. The nonprofit organization also shall consider the impact and benefit of federal regulations associated with the Health Insurance Portability and Accountability Act of 1996 as they relate to electronic transmission of data and privacy considerations. The nonprofit organization's review of the pilot study also shall assess the value of public release of information on charges for outpatient surgical

179 procedures in consultation with the various affected and interested parties. The study's findings
180 and recommendations shall be presented to the Joint Commission on Health Care prior to any
181 public release of charge information for outpatient surgical procedures. Such review and study
182 findings shall be submitted to the Joint Commission on Health Care as part of the nonprofit
183 organization's strategic plan pursuant to § 32.1-276.4 or as a separate report.
184 3. That the Board shall promulgate regulations to implement the provisions of this act to be
185 effective within 280 days of its enactment.