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HOUSE BILL NO. 1185

Offered January 14, 2002

A BILL to amend and reenact § 8.01-413 of the Code of Virginia, relating to copies of health care provider's records.

Patron—Kilgore

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 8.01-413 of the Code of Virginia is amended and reenacted as follows:**

§ 8.01-413. Certain copies of health care provider's records or papers of patient admissible; right of patient, his attorney and authorized insurer 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 as provided by law may comply with the subpoena by a timely mailing to the clerk issuing the subpoena or in whose court the action is pending properly authenticated copies, photographs or microphotographs in lieu of the originals. The court whose clerk issued the subpoena or, in the case of an attorney-issued subpoena, in which the action is pending, 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 duces tecum or on whose behalf an attorney-issued subpoena duces tecum was issued 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 or other hard copy generated from computerized or other electronic storage, or other photographic, mechanical, electronic, imaging or chemical storage process 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 *or an authorized insurer* upon such patient's, ~~or~~ attorney's *or authorized insurer's* written request, which request shall comply with the requirements of subsection E 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, but in any such case such records shall be furnished to the patient's attorney *or authorized insurer* 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 or other hard copy generated from computerized or other electronic storage, or other photographic, mechanical, electronic, imaging or chemical storage process 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 *or authorized insurer* shall require a writing signed by the patient confirming the attorney's *or authorized insurer'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

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59 specified in that subsection and within the manner specified in subsections E and F of § 32.1-127.1:03,
60 the patient, ~~or~~ his attorney *or authorized insurer* may cause a subpoena duces tecum to be issued. The
61 subpoena may be issued (i) upon filing a request therefor with the clerk of the circuit court wherein any
62 eventual suit, would be required to be filed, and payment of the fees required by subdivision A 18 of
63 § 17.1-275, and fees for service or (ii) by the patient's attorney in a pending civil case in accordance
64 with § 8.01-407 if issued by such attorney at least five business days prior to the date that production of
65 the record is desired upon payment of the fees required by subdivision A 23 of § 17.1-275 at the time
66 of filing of a copy of the subpoena duces tecum with the clerk. The subpoena shall be returnable within
67 twenty days of proper service, directing the hospital, nursing facility, physician, or other health care
68 provider to produce and furnish copies of the reports and papers to the clerk who shall then make the
69 same available to the patient, ~~or~~ his attorney *or authorized insurer*. If the court finds that a hospital,
70 nursing facility, physician, or other health care provider willfully refused to comply with a written
71 request made in accordance with subsection B, either by willfully or arbitrarily refusing or by imposing
72 a charge in excess of the reasonable expense of making the copies and processing the request for
73 records, the court may award damages for all expenses incurred by the patient *or authorized insurer* to
74 obtain such copies, including court costs and reasonable attorney's fees.

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

80 E. Health care provider, as used in this section, shall have the same meaning as provided in
81 § 32.1-127.1:03 and shall also include an independent medical copy retrieval service contracted to
82 provide the service of retrieving, reviewing, and preparing such copies for distribution.

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

86 **2. That provisions of this section are declarative of existing law.**