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HOUSE BILL NO. 879

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact § 32.1-127.1:03 of the Code of Virginia, relating to health records privacy.

Patron—O'Bannon

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-127.1:03 of the Code of Virginia is amended and reenacted as follows:

§ 32.1-127.1:03. Health records privacy.

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

~~Patient~~ *Patient* Health records shall not be removed from the premises where they are maintained without the approval of the ~~provider health care~~ *entity that maintains such health records*, 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 health~~ *patient health* records promulgated by a health regulatory board established in Title 54.1.

No person to whom ~~disclosure of patient health records was made by a patient or a provider~~ *are disclosed* shall redisclose or otherwise reveal the ~~health records of a patient~~ *an individual's*, beyond the purpose for which such disclosure was made, without first obtaining the ~~patient's individual's~~ *specific consent authorization* to such redisclosure. This redisclosure prohibition shall not, however, prevent (i) any ~~provider who~~ *health care entity that* receives health records from another ~~provider health care~~ *entity* from making subsequent disclosures as permitted under this section and the federal Department of Health and Human Services regulations relating to the electronic transmission of data and ~~patient privacy~~ *protected health information* promulgated by the United States Department of Health and Human Services as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. § 1320d et seq.) or (ii) any ~~provider health care~~ *entity* from furnishing ~~health~~ *health* records and aggregate or other data, from which ~~patient-~~ *individually* 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~~ *an individual'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.).

"Certification" means a written representation that is delivered by hand, by first-class mail, by overnight delivery service, or by facsimile if the sender obtains a facsimile-machine-generated confirmation reflecting that all facsimile pages were successfully transmitted.

"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.

"Health care clearinghouse" means, consistent with the definition set out in 45 C.F.R. § 160.103, a public or private entity, such as a billing service, repricing company, community health management information system or community health information system, and "value-added" networks and switches, that performs either of the following functions: (i) processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction; or (ii) receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

INTRODUCED

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59 *"Health care entity" means any health care provider, health plan or health care clearinghouse.*

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

66 *"Health plan" means an individual or group plan that provides, or pays the cost of, medical care.*

67 *"Health plan" shall include any entity included in such definition as set out in 45 C.F.R. § 160.103.*

68 *"~~Record~~Health record" means any written, printed or electronically recorded material maintained by a*
69 *~~provider~~ health care entity in the course of providing health services to a ~~patient~~ an individual*
70 *concerning the ~~patient~~ individual and the services provided. "~~Record~~Health record" also includes the*
71 *substance of any communication made by a ~~patient~~ an individual to a ~~provider~~ health care entity in*
72 *confidence during or in connection with the provision of health services to a ~~patient~~ or information*
73 *otherwise acquired by the ~~provider~~ health care entity about a ~~patient~~ an individual in confidence and in*
74 *connection with the provision of health services to the ~~patient~~ individual.*

75 *"Health services" means, but shall not be limited to, examination, diagnosis, evaluation, treatment,*
76 *pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind, as well*
77 *as payment or reimbursement for any such services.*

78 *"Individual" means a patient who is receiving or has received health services from a health care*
79 *entity.*

80 *"Individually identifying prescription information" means all prescriptions, drug orders or any other*
81 *prescription information that specifically identifies an individual.*

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

83 *C. Except as specifically provided herein, the provisions of this section shall not apply to any of the*
84 *following:*

85 *1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia*
86 *Workers' Compensation Act;*

87 *2. ~~Except where specifically provided herein,~~ The health records of ~~minor patients~~ minors; or*

88 *3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to*
89 *§ 16.1-248.3.*

90 *D. ~~Providers~~ Health care entities may disclose the health records of a ~~patient~~:*

91 *1. As set forth in subsection E of this section, pursuant to the written ~~consent~~ authorization of the*
92 *~~patient~~ individual or in the case of a minor ~~patient~~, his custodial parent, guardian or other person*
93 *authorized to consent to treatment of minors pursuant to § 54.1-2969; also, in emergency cases or*
94 *situations where it is impractical to obtain the ~~patient's~~ an individual's written ~~consent~~ authorization,*
95 *pursuant to the ~~patient's~~ individual's oral ~~consent~~ authorization for a health care provider or health plan*
96 *to discuss the ~~patient's~~ individual's health records with a third party specified by the ~~patient~~ individual;*

97 *2. In compliance with a subpoena issued in accord with subsection H of this section, pursuant to*
98 *court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C*
99 *of § 8.01-413;*

100 *3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure*
101 *is reasonably necessary to establish or collect a fee or to defend a ~~provider~~ health care entity or the*
102 *~~provider's~~ health care entity's employees or staff against any accusation of wrongful conduct; also as*
103 *required in the course of an investigation, audit, review or proceedings regarding a ~~provider's~~ health*
104 *care entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional*
105 *review entity;*

106 *4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;*

107 *5. In compliance with the provisions of § 8.01-413;*

108 *6. As required or authorized by law relating to public health activities, health oversight activities,*
109 *serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,*
110 *public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,*
111 *those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283,*
112 *32.1-283.1, 37.1-98.2, 53.1-40.10, 54.1-2403.3, 54.1-2506, 54.1-2906, 54.1-2907, 54.1-2966,*
113 *54.1-2966.1, 54.1-2967, 54.1-2968, 63.2-1606 and 63.2-1509;*

114 *7. Where necessary in connection with the care of the ~~patient~~ individual, including in the*
115 *implementation of a hospital routine contact process pursuant to subdivision B. 4. of § 32.1-127;*

116 *8. In the normal course of business in accordance with accepted standards of practice within the*
117 *health services setting; however, the maintenance, storage, and disclosure of the mass of prescription*
118 *dispensing records maintained in a pharmacy registered or permitted in Virginia shall only be*
119 *accomplished in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412;*

120 *9. When the ~~patient~~ individual has waived his right to the privacy of the ~~medical~~ health records;*

10. When examination and evaluation of a ~~patient~~ *an individual* are undertaken pursuant to judicial or administrative law order, but only to the extent as required by such order;

11. To the guardian ad litem *and any attorney representing the respondent* in the course of a guardianship proceeding of an adult patient ~~authorized~~ *who is the respondent in a proceeding* under Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1;

12. To the attorney appointed by the court to represent a ~~patient~~ *in an individual who is or has been a patient who was the subject of* a civil commitment proceeding under § 37.1-67.3 *or a judicial authorization for treatment proceeding pursuant to § 37.1-134.21*;

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~~ if 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~~ *health care entity* of such order;

14. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's *health* records in accord with § 9.1-156;

15. To an agent appointed under a ~~patient's~~ *an individual's* power of attorney or to an agent or decision maker designated in a ~~patient's~~ *an individual's* advance directive for health care or for decisions on anatomical gifts and organ, tissue or eye donation 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 or as necessary to the coordination of prevention and control of disease, injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

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~~ *an individual's* specific and immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

20. To the ~~patient~~ *individual who is the subject of the health record*, 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 *health* records are those of a deceased or mentally incapacitated ~~patient~~ *individual* to the personal representative or executor of the deceased ~~patient~~ *individual* or the legal guardian or committee of the incompetent or incapacitated ~~patient~~ *individual* 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~~ *individual* in order of blood relationship;

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 *health care* 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;

25. To the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services pursuant to Chapter 16 (§ 37.1-255 et seq.) of Title 37.1;

26. (Expires July 1, 2006) To an entity participating in the activities of a local health partnership authority established pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4 of Title 32.1, pursuant to subdivision D 1 of this section; and

27. To law-enforcement officials by each licensed emergency medical services agency, (i) when the ~~patient~~ *individual* is the victim of a crime or (ii) when the ~~patient~~ *individual* has been arrested and has received emergency medical services or has refused emergency medical services and the *health* records consist of the prehospital patient care report required by § 32.1-116.1.

E. Requests for copies of ~~medical~~ *health* 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~~ *health care entity* shall accept a photocopy, facsimile, or other copy of the original signed by the requestor as if it were an original. Within 15 days of receipt of a request for copies of ~~medical~~ *health* records, the ~~provider~~ *health care entity* shall do one of the following: (i)

182 furnish such copies to any requester authorized to receive them; (ii) inform the requester if the
 183 information does not exist or cannot be found; (iii) if the ~~provider~~ *health care entity* does not maintain a
 184 record of the information, so inform the requester and provide the name and address, if known, of the
 185 ~~provider~~ *health care entity* who maintains the record; or (iv) deny the request (a) under subsection F, (b)
 186 on the grounds that the requester has not established his authority to receive such *health* records or
 187 proof of his identity, or (c) as otherwise provided by law. Procedures set forth in this section shall apply
 188 only to requests for *health* records not specifically governed by other provisions of this Code, federal
 189 law or state or federal regulation.

190 F. Except as provided in subsection B of § 8.01-413, copies of a ~~patient's~~ *an individual's health*
 191 records shall not be furnished to such ~~patient individual~~ or anyone authorized to act on the ~~patient's~~
 192 ~~individual's behalf where when the patient's attending individual's treating~~ physician or the ~~patient's~~
 193 ~~individual's treating~~ clinical psychologist has made a part of the ~~patient's individual's~~ record a written
 194 statement that, in ~~his opinion~~ *the exercise of his professional judgment*, the furnishing to or review by
 195 the ~~patient~~ *individual* of such *health* records would be ~~injurious~~ *reasonably likely to endanger the*
 196 ~~patient's health or well-being~~ *life or physical safety of the individual or another person, or that such*
 197 *health record makes reference to a person who is not a health care provider and the access requested*
 198 *would be reasonably likely to cause substantial harm to such referenced person.* If any ~~eustodian of~~
 199 ~~medical records~~ *health care entity* denies a request for copies of *health* records based on such statement,
 200 the ~~eustodian~~ shall ~~permit examination and copying of the medical record by another such physician or~~
 201 ~~clinical psychologist selected by the patient~~ *health care entity* shall ~~inform the individual of the~~
 202 ~~individual's right to designate, in writing, at his own expense, another reviewing physician or clinical~~
 203 ~~psychologist, whose licensure, training and experience relative to the patient's individual's condition are~~
 204 ~~at least equivalent to that of the physician or clinical psychologist upon whose opinion the denial is~~
 205 ~~based. The person or entity denying the request shall inform the patient of the patient's right to select~~
 206 ~~another reviewing physician or clinical psychologist under this subsection who designated reviewing~~
 207 ~~physician or clinical psychologist shall make a judgment as to whether to make the health record~~
 208 ~~available to the patient individual.~~

209 *The health care entity denying the request shall also inform the individual of the individual's right to*
 210 *request in writing that such health care entity designate, at its own expense, a physician or clinical*
 211 *psychologist, whose licensure, training, and experience relative to the individual's condition are at least*
 212 *equivalent to that of the physician or clinical psychologist upon whose professional judgment the denial*
 213 *is based and who did not participate in the original decision to deny the health records, who shall make*
 214 *a judgment as to whether to make the health record available to the individual. The health care entity*
 215 *shall comply with the judgment of the reviewing physician or clinical psychologist. The health care*
 216 *entity shall permit copying and examination of the health record by such other physician or clinical*
 217 *psychologist designated by either the individual at his own expense or by the health care entity at its*
 218 *expense.*

219 Any *health* record copied for review by ~~the any such designated~~ physician or clinical psychologist
 220 ~~selected by the patient~~ shall be accompanied by a statement from the custodian of the *health* record that
 221 the ~~patient's attending individual's treating~~ physician or clinical psychologist determined that the ~~patient's~~
 222 ~~individual's review of his health record would be injurious to the patient's health or well-being~~
 223 ~~reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely~~
 224 ~~to cause substantial harm to a person referenced in the health record who is not a health care provider.~~

225 G. A written ~~consent~~ authorization to allow release of ~~patient~~ *an individual's health* records ~~may, but~~
 226 ~~need not, be in~~ shall substantially include the following ~~form~~ information:

227 **CONSENT AUTHORIZATION TO RELEASE OF CONFIDENTIAL HEALTH CARE**
 228 **INFORMATION RECORDS**

229 ~~Patient~~ *Individual's Name*-
 230

231 ~~Provider~~ *Health Care Entity's Name*-
 232

233 ~~Person, agency or provider~~ *Health Care Entity* to whom disclosure is to be made-
 234

235 ~~Person, agency or provider to whom disclosure is to be made~~
 236 *Information or Health Records to be disclosed*-
 237

238
 239 *Purpose of Disclosure or At the Request of the Individual*
 240
 241

As the person signing this ~~consent~~ authorization, I understand that I am giving my permission to the above-named ~~provider or other named third party~~ health care entity for disclosure of confidential health care records. *I understand that the health care entity may not condition treatment or payment on my willingness to sign this authorization unless the specific circumstances under which such conditioning is permitted by law are applicable and are set forth in this authorization.* I also understand that I have the right to revoke this ~~consent~~ authorization at any time, but that my revocation is not effective until delivered in writing to the person who is in possession of my health records *and that such revocation will be prospective and is not effective as to health records that were already disclosed under the authorization prior to delivery of my revocation.* A copy of this ~~consent~~ authorization and a notation concerning the persons or agencies to whom disclosure was made shall be included with my original health 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~~ *I understand that health information disclosed under this authorization might be redisclosed by a recipient is a provider who makes a disclosure permitted by law and may, as a result of such disclosure, no longer be protected to the same extent as such health information was protected by law while solely in the possession of the health care entity.*

This ~~consent~~ authorization expires on (date) or (event).....,

Signature of ~~Patient~~ Individual or Individual's Legal Representative if Individual is Unable to Sign

Relationship or Authority of Legal Representative

Date of Signature

H. Pursuant to this subsection:

1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or administrative action or proceeding shall request the issuance of a subpoena duces tecum for another party's ~~medical~~ health records or cause a subpoena duces tecum to be issued by an attorney unless a copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the other party's counsel or to the other party if pro se, simultaneously with filing the request or issuance of the subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces tecum for the ~~medical~~ health records of a nonparty witness unless a copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the request or issuance of the attorney-issued subpoena.

No subpoena duces tecum for ~~medical~~ health records shall set a return date earlier than 15 days from the date of the subpoena except by order of a court or administrative agency for good cause shown. When a court or administrative agency directs that ~~medical~~ health records be disclosed pursuant to a subpoena duces tecum earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the subpoena.

Any party requesting a subpoena duces tecum for ~~medical~~ health records or on whose behalf the subpoena duces tecum is being issued shall have the duty to determine whether the ~~patient~~ individual whose health records are being sought is pro se or a nonparty.

In instances where ~~medical~~ health records being subpoenaed are those of a pro se party or nonparty witness, the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness together with the copy of the request for subpoena, or a copy of the subpoena in the case of an attorney-issued 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 INDIVIDUAL

The attached document means that (insert name of party requesting or causing issuance of the subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has been issued by the other party's attorney to your doctor ~~or~~, other health care providers (names of health care providers inserted here) *or other health care entity (name of health care entity to be inserted here)* requiring them to produce your ~~medical~~ health records. Your doctor ~~or~~, other health care provider *or other health care entity* is required to respond by providing a copy of your ~~medical~~ health records. If you believe your health records should not be disclosed and object to their disclosure, you have the right to file a motion with the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued subpoena. You may contact the clerk's office or the administrative agency 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, you must notify your doctor ~~or~~, other health care provider(s), *or other health care entity*, that you are filing the motion so that the health care provider *or health care entity* knows to send the health records to the clerk of

303 court or administrative agency in a sealed envelope or package for safekeeping while your motion is
304 decided.

305 2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued
306 for a ~~patient's medical~~ *an individual's health* records shall include a Notice to ~~Providers~~ in the same part
307 of the request in which the ~~provider~~ *recipient of the subpoena duce tecum* is directed where and when to
308 return the *health* records. Such notice shall be in boldface capital letters and shall include the following
309 language:

310 NOTICE TO PROVIDERS

311 A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO YOUR PATIENT
312 OR YOUR PATIENT'S ~~THE INDIVIDUAL WHOSE HEALTH RECORDS ARE BEING REQUESTED~~
313 OR HIS COUNSEL. YOU OR YOUR PATIENT HAVE THAT INDIVIDUAL HAS THE RIGHT TO
314 FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED SUBPOENA. IF YOU ELECT TO
315 FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION WITHIN 15 DAYS OF THE DATE
316 OF THIS SUBPOENA.

317 YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN
318 CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED
319 THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:

320 NO MOTION TO QUASH WAS FILED; OR

321 ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE
322 ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH
323 SUCH RESOLUTION.

324 IF YOU RECEIVE NOTICE THAT YOUR PATIENT ~~THE INDIVIDUAL WHOSE HEALTH~~
325 ~~RECORDS ARE BEING REQUESTED~~ HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR
326 IF YOU FILE A MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE *HEALTH*
327 RECORDS ONLY TO THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT
328 ISSUED THE SUBPOENA OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE
329 SUBPOENA USING THE FOLLOWING PROCEDURE:

330 PLACE THE *HEALTH* RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED
331 ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY
332 WHICH STATES THAT CONFIDENTIAL HEALTH CARE RECORDS ARE ENCLOSED AND ARE
333 TO BE HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE
334 SUBPOENA. THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN
335 OUTER ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR
336 ADMINISTRATIVE AGENCY.

337 3. Upon receiving a valid subpoena duces tecum for ~~medical health~~ records, health care ~~providers~~
338 *entities* shall have the duty to respond to the subpoena in accordance with the provisions of subdivisions
339 4, 5, 6, 7, and 8.

340 4. Except to deliver to a clerk of the court or administrative agency subpoenaed ~~medical health~~
341 records in a sealed envelope as set forth, health care ~~providers~~ *entities* shall not respond to a subpoena
342 duces tecum for such ~~medical health~~ records until they have received a certification as set forth in
343 subdivisions 5 or 8 of this subsection from the party on whose behalf the subpoena duces tecum was
344 issued.

345 If the health care ~~provider~~ *entity* has actual receipt of notice that a motion to quash the subpoena has
346 been filed or if the health care ~~provider~~ *entity* files a motion to quash the subpoena for ~~medical health~~
347 records, then the health care ~~provider~~ *entity* shall produce the *health* records, in a securely sealed
348 envelope, to the clerk of the court or administrative agency issuing the subpoena or in whose court or
349 administrative agency the action is pending. The court or administrative agency shall place the *health*
350 records under seal until a determination is made regarding the motion to quash. The securely sealed
351 envelope shall only be opened on order of the judge or administrative agency. In the event the court or
352 administrative agency grants the motion to quash, the *health* records shall be returned to the health care
353 ~~provider~~ *entity* in the same sealed envelope in which they were delivered to the court or administrative
354 agency. In the event that a judge or administrative agency orders the sealed envelope to be opened to
355 review the *health* records in camera, a copy of the order shall accompany any *health* records returned to
356 the ~~provider~~ *health care entity*. The *health* records returned to the ~~provider~~ *health care entity* shall be in
357 a securely sealed envelope.

358 5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued
359 subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the
360 subpoenaed health care ~~provider~~ *entity* that the time for filing a motion to quash has elapsed and that no
361 motion to quash was filed. Any ~~provider~~ *health care entity* receiving such certification shall have the
362 duty to comply with the subpoena duces tecum by returning the specified ~~medical health~~ records by
363 either the return date on the subpoena or 5 days after receipt of the certification, whichever is later.

364 6. In the event that the individual whose *health* records are being sought files a motion to quash the

subpoena, the court or administrative agency shall decide whether good cause has been shown by the discovering party to compel disclosure of the ~~patient's private individual's health~~ records over the ~~patient's individual's~~ objections. In determining whether good cause has been shown, the court or administrative agency 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.

7. Concurrent with the court or administrative agency's resolution of a motion to quash, if subpoenaed ~~medical health~~ records have been submitted by a health care ~~provider entity~~ to the court or administrative agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no submitted ~~medical health~~ records should be disclosed, return all submitted ~~medical health~~ records to the ~~provider health care entity~~ in a sealed envelope; (ii) upon determining that all submitted ~~medical health~~ records should be disclosed, provide all the submitted ~~medical health~~ records to the party on whose behalf the subpoena was issued; or (iii) upon determining that only a portion of the submitted ~~medical health~~ records should be disclosed, provide such portion to the party on whose behalf the subpoena was issued and return the remaining ~~medical health~~ records to the ~~provider health care entity~~ in a sealed envelope.

8. Following the court or administrative agency's resolution of a motion to quash, the party on whose behalf the subpoena duces tecum was issued shall have the duty to certify in writing to the subpoenaed health care ~~provider entity~~ a statement of one of the following:

a. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the ~~medical health~~ records previously delivered in a sealed envelope to the clerk of the court or administrative agency will not be returned to the ~~provider health care entity~~;

b. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are consistent with such resolution and that, since no ~~medical health~~ records have previously been delivered to the court or administrative agency by the ~~provider health care entity~~, the ~~provider health care entity~~ shall comply with the subpoena duces tecum by returning the ~~medical health~~ records designated in the subpoena by the return date on the subpoena or five days after receipt of certification, whichever is later;

c. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no ~~medical health~~ records shall be disclosed and all ~~medical health~~ records previously delivered in a sealed envelope to the clerk of the court or administrative agency will be returned to the ~~provider health care entity~~;

d. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only limited disclosure has been authorized. The certification shall state that only the portion of the ~~health~~ records as set forth in the certification, consistent with the court or administrative agency's ruling, shall be disclosed. The certification shall also state that ~~medical health~~ records that were previously delivered to the court or administrative agency for which disclosure has been authorized will not be returned to the ~~provider health care entity~~; however, all ~~medical health~~ records for which disclosure has not been authorized will be returned to the ~~provider health care entity~~; or

e. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no ~~medical health~~ records have previously been delivered to the court or administrative agency by the ~~provider health care entity~~, the ~~provider health care entity~~ shall return only those ~~health~~ records specified in the certification, consistent with the court or administrative agency's ruling, by the return date on the subpoena or five days after receipt of the certification, whichever is later.

A copy of the court or administrative agency's ruling shall accompany any certification made pursuant to this subdivision.

9. The provisions of this subsection have no application to subpoenas for ~~medical health~~ records requested under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation, audit, review or proceedings regarding ~~provider's health care entity's~~ conduct.

The provisions of this subsection *shall apply to subpoenas for the ~~medical health~~ records of both minors and adults and to subpoenas for the health records of individuals in connection with hearings pursuant to Title 65.2 or any action at law brought to recover damages against any employer that is subject to Title 65.2.*

Nothing in this subsection shall have any effect on the existing authority of a court or administrative agency to issue a protective order regarding ~~medical health~~ records, including, but not limited to, ordering the return of ~~medical health~~ records to a health care ~~provider entity~~, after the period for filing a

426 motion to quash has passed.

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

429 I. ~~Providers~~ *Health care entities* may testify about the ~~medical~~ *health* records of a ~~patient~~ *an*
430 *individual* in compliance with §§ 8.01-399 and 8.01-400.2.