

2004 SESSION

ENROLLED

HOUSE JOINT RESOLUTION NO. 134

Directing the Joint Commission on Health Care to study the use and disclosure of health records relative to Virginia law and the federal Health Insurance Portability and Accountability Act (HIPAA). Report.

Agreed to by the House of Delegates, February 17, 2004
Agreed to by the Senate, March 9, 2004

WHEREAS, the privacy of patient health records is a highly important and significant issue for the Commonwealth of Virginia and her citizens; and

WHEREAS, over time the Commonwealth has developed policy and a body of laws protecting the privacy of health records; and

WHEREAS, Congress has passed the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320(d), et seq.) (HIPAA) which, among other things, imposes a federal body of laws and regulations pertaining to the privacy of health records (federal privacy rule); and

WHEREAS, subsection A of § 32.1-127.1:03 of the Code of Virginia prohibits disclosure of health records, "except when permitted by this section or by another provision of state or federal law"; and

WHEREAS, the federal rule (i) permits the use or disclosure of protected health information under certain circumstances and (ii) preempts inconsistent state laws unless, among other things, the state law is more stringent than the federal privacy rule counterpart; and

WHEREAS, because of the significant interplay between subsection A of § 32.1-127.1:03 and the federal privacy rule, and because of the vagaries of the federal privacy rule and the lack of guidance from the federal Department of Health and Human Services on substantive aspects of the federal privacy rule and on preemption issues, it is inordinately difficult and often impossible for entities in Virginia that use or disclose protected health information to determine with certainty whether subsection A of § 32.1-127.1:03 or the federal privacy rule controls many factual situations; and

WHEREAS, although the General Assembly has enacted, and will continue to enact, necessary amendments to § 32.1-127.1:03 to address particular procedural or substantive privacy issues raised by the inconsistencies between Virginia law and the federal privacy rule there is no overall consensus on the proper analysis of the interplay between subsection A of § 32.1-127.1:03 and the federal privacy rule, resulting in inconsistent interpretations, confusion and uncertainty; and

WHEREAS, for the benefit of patients, health care providers and others subject to the federal privacy rule and Virginia Law, a review of subsection A of § 32.1-127.1:03 in light of the federal privacy rule is needed to determine how best to coordinate the two bodies of laws and regulations and the degree to which they should be made consistent; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Commission on Health Care be directed to study the use and disclosure of health records relative to Virginia law and the federal Health Insurance Portability and Accountability Act (HIPAA).

In conducting its study, the Commission shall review and determine the impact of the federal privacy rule pursuant to HIPAA on subsection A of § 32.1-127.1:03 regarding the use and disclosure of health records. The Commission shall also consider the need for amendments to relevant Virginia laws and recommend appropriate ways to assist health care providers and other relevant parties subject to the federal privacy rule in understanding and complying with state and federal health record privacy laws and regulations.

Technical assistance shall be provided to the Commission by the State Health Department and the Department of Health Professions. All agencies of the Commonwealth shall provide assistance to the Commission for this study, upon request.

The Joint Commission on Health Care shall complete its meetings by November 30, 2004, and the Director of the Commission shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2005 Regular Session of the General Assembly. The executive summary shall state whether the Commission intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

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