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SENATE BILL NO. 1030

Offered January 12, 2005

Prefiled January 12, 2005

A BILL to amend and reenact § 2.2-3705.5 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 32.1-283.4, relating to the Virginia Freedom of Information Act; confidentiality of certain information and records collected and maintained by the Office of the Chief Medical Examiner.

Patrons—Lambert; Delegate: Stump

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3705.5 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 32.1-283.4, as follows:

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

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. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

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.

Where the person who is the subject of medical and mental records is under the age of 18, his right of access may be asserted only by his guardian or his 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. In instances where the person who is the subject thereof is an emancipated minor or a student in a public institution of higher education, the right of access may be asserted by the subject person.

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 § 2.2-3704. No such summaries or data shall include any patient-identifying information.

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

3. Reports, documentary evidence and other information as specified in §§ 2.2-706 and 63.2-104.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

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

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.1-67.3.

7. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical

INTRODUCED

SB1030

59 equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

60 8. Information required to be provided to the Department of Health Professions by certain licensees
61 pursuant to § 54.1-2506.1.

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

67 10. Patient level data collected by the Board of Health and not yet processed, verified, and released,
68 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of
69 Health has contracted pursuant to § 32.1-276.4.

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

73 12. Records submitted as a grant application, or accompanying a grant application, to the
74 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of
75 Title 51.5, to the extent such records contain (i) medical or mental records, or other data identifying
76 individual patients or (ii) proprietary business or research-related information produced or collected by
77 the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,
78 technical or scholarly issues, when such information has not been publicly released, published,
79 copyrighted or patented, if the disclosure of such information would be harmful to the competitive
80 position of the applicant.

81 13. Any record copied, recorded or received by the Commissioner of Health in the course of an
82 examination, investigation or review of a managed care health insurance plan licensee pursuant to
83 §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or
84 all computer or other recordings.

85 14. Records, information and statistical registries required to be kept confidential pursuant to
86 §§ 63.2-102 and 63.2-104.

87 15. All data, records, and reports relating to the prescribing and dispensing of covered substances to
88 recipients and any abstracts from such data, records, and reports that are in the possession of the
89 Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any
90 material relating to the operation or security of the Program.

91 16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be
92 kept confidential pursuant to § 38.2-5002.2.

93 17. Records of the State Health Commissioner relating to the health of any person or persons subject
94 to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of
95 Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of
96 statistical summaries, abstracts or other information in aggregate form.

97 18. Records containing the names and addresses or other contact information of persons receiving
98 transportation services from a state or local public body or its designee under Title II of the Americans
99 with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy
100 Families (TANF) created under § 63.2-600.

101 19. *Confidential records and information obtained from private and public entities and provided to*
102 *the Office of the Chief Medical Examiner during the course of a death investigation, records collected*
103 *and maintained during the course of investigations or surveillance programs, or research or studies of*
104 *deaths having a public health importance by the Office of the Chief Medical Examiner pursuant to*
105 *§32.1-283.4.*

106 *§ 32.1-283.4. Confidentiality of certain information and records collected and maintained by the*
107 *Office of the Chief Medical Examiner.*

108 *A. Confidential records and information obtained from private and public entities and provided to*
109 *the Office of the Chief Medical Examiner during the course of a death investigation shall remain*
110 *confidential and shall not be subject to the provisions of the Virginia Freedom of Information Act*
111 *(§ 2.2-3700 et seq.).*

112 *B. Information and records concerning a decedent collected and maintained by the Office of the*
113 *Chief Medical Examiner during the course of surveillance programs or research or studies of deaths*
114 *having public health importance shall be confidential and may only be published in summary or*
115 *aggregate form or as authorized by the Chief Medical Examiner.*

116 *C. The confidential records and information set forth in subsections A and B shall not be subject to*
117 *subpoena, subpoena duces tecum, or discovery when in the possession of the Office of the Chief Medical*
118 *Examiner, or be admissible in any criminal or civil proceeding through any discovery relating to the*
119 *Office. If available from other sources, however, such records and information shall not be immune*
120 *from subpoena duces tecum, or discovery when obtained through such other sources solely because the*

121 *records and information were presented to the Office during a death investigation.*

122 *D. Nothing in this section shall be construed to prohibit the disclosure or publication of the findings*
123 *of investigations, surveillance programs, research, and studies in aggregate, statistical, or other form*
124 *from which personal identifiers have been removed.*

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SB1030