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HOUSE BILL NO. 2520

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 2, 2007)

(Patron Prior to Substitute—Delegate Iaquinto)

A *BILL to amend and reenact § 32.1-127.1:03 of the Code of Virginia, relating to health records privacy.***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 an individual's right of privacy in the content of his health records. Health records are the property of the health care entity maintaining them, and, except when permitted or required by this section or by other provisions of state law, no health care entity, or other person working in a health care setting, may disclose an individual's health records.

Pursuant to this subsection:

1. Health care entities shall disclose health records to the 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.

2. Health records shall not be removed from the premises where they are maintained without the approval of the health care entity that maintains such health records, except in accordance with a court order or subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with the regulations relating to change of ownership of health records promulgated by a health regulatory board established in Title 54.1.

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

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

"Health care provider" means those entities listed in the definition of "health care provider" in § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the purposes of this section. Health care provider shall also include all persons who are licensed, certified, registered or permitted or who hold a multistate licensure privilege issued by any of the health regulatory boards within the Department of Health Professions, except persons regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

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

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

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60 "Health record" means any written, printed or electronically recorded material maintained by a health
61 care entity in the course of providing health services to an individual concerning the individual and the
62 services provided. "Health record" also includes the substance of any communication made by an
63 individual to a health care entity in confidence during or in connection with the provision of health
64 services or information otherwise acquired by the health care entity about an individual in confidence
65 and in connection with the provision of health services to the individual.

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

69 "Individual" means a patient who is receiving or has received health services from a health care
70 entity.

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

73 "Parent" means a biological, adoptive or foster parent.

74 "Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a
75 mental health professional, documenting or analyzing the contents of conversation during a private
76 counseling session with an individual or a group, joint, or family counseling session that are separated
77 from the rest of the individual's health record. "Psychotherapy notes" shall not include annotations
78 relating to medication and prescription monitoring, counseling session start and stop times, treatment
79 modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis,
80 functional status, treatment plan, or the individual's progress to date.

81 C. The provisions of this section shall not apply to any of the following:

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

84 2. Except where specifically provided herein, the health records of minors; or

85 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to
86 § 16.1-248.3.

87 D. Health care entities may, and, when required by other provisions of state law, shall, disclose
88 health records:

89 1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the
90 case of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of
91 minors pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment
92 pursuant to § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an
93 individual's written authorization, pursuant to the individual's oral authorization for a health care
94 provider or health plan to discuss the individual's health records with a third party specified by the
95 individual;

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

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

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

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

106 6. As required or authorized by law relating to public health activities, health oversight activities,
107 serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,
108 public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,
109 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,
110 32.1-283.1, 37.2-710, 37.2-839, 53.1-40.10, 54.1-2400.6, 54.1-2400.7, 54.1-2403.3, 54.1-2506,
111 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 63.2-1509 and 63.2-1606;

112 7. Where necessary in connection with the care of the individual;

113 8. In connection with the health care entity's own health care operations or the health care operations
114 of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in
115 accordance with accepted standards of practice within the health services setting; however, the
116 maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a
117 pharmacy registered or permitted in Virginia shall only be accomplished in compliance with
118 §§ 54.1-3410, 54.1-3411 and 54.1-3412;

119 9. When the individual has waived his right to the privacy of the health records;

120 10. When examination and evaluation of an individual are undertaken pursuant to judicial or
121 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 who is the respondent in a proceeding under Chapter 10 (§ 37.2-1000 et seq.) of Title 37.2;

12. To the attorney appointed by the court to represent an individual who is or has been a patient who is the subject of a civil commitment proceeding under Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of Title 37.2;

13. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or administrative proceeding, 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 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 an individual's power of attorney or to an agent or decision maker designated in 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 subsection B of § 54.1-2400.1, to communicate an individual's specific and immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

20. Where necessary in connection with the implementation of a hospital's routine contact process for organ donation pursuant to subdivision B 4 of § 32.1-127;

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 individual to the personal representative or executor of the deceased individual or the legal guardian or committee of the incompetent or incapacitated 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 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 Article 3 (§ 37.2-423 et seq.) of Chapter 4 of Title 37.2;

26. 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 this title, pursuant to subdivision 1 of this subsection;

27. To law-enforcement officials by each licensed emergency medical services agency, (i) when the individual is the victim of a crime or (ii) when the 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;

28. To law-enforcement officials, in response to their request, for the purpose of identifying or locating a suspect, fugitive, person required to register pursuant to § 9.1-901 of the Sex Offender and Crimes Against Minors Registry Act, material witness, or missing person, provided that only the following information may be disclosed: (i) name and address of the person, (ii) date and place of birth of the person, (iii) social security number of the person, (iv) blood type of the person, (v) date and time of treatment received by the person, (vi) date and time of death of the person, where applicable, and (vii) description of distinguishing physical characteristics of the person.

183 29. *To law-enforcement officials regarding the death of an individual for the purpose of alerting law*
184 *enforcement of the death if the health care entity has a suspicion that such death may have resulted*
185 *from criminal conduct;*

186 30. *To law-enforcement officials if the health care entity believes in good faith that the information*
187 *disclosed constitutes evidence of a crime that occurred on its premises;*

188 31. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a
189 person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article
190 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title; and

191 2932. To the Commissioner of the Department of Labor and Industry or his designee by each
192 licensed emergency medical services agency when the records consist of the prehospital patient care
193 report required by § 32.1-116.1 and the patient has suffered an injury or death on a work site while
194 performing duties or tasks that are within the scope of his employment.

195 Notwithstanding the provisions of subdivisions 1 through 29 32 of this subsection, a health care
196 entity shall obtain an individual's written authorization for any disclosure of psychotherapy notes, except
197 when disclosure by the health care entity is (i) for its own training programs in which students, trainees,
198 or practitioners in mental health are being taught under supervision to practice or to improve their skills
199 in group, joint, family, or individual counseling; (ii) to defend itself or its employees or staff against any
200 accusation of wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of
201 § 54.1-2400.1, to take precautions to protect third parties from violent behavior or other serious harm;
202 (iv) required in the course of an investigation, audit, review, or proceeding regarding a health care
203 entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review
204 entity; or (v) otherwise required by law.

205 E. Requests for copies of health records shall (i) be in writing, dated and signed by the requester; (ii)
206 identify the nature of the information requested; and (iii) include evidence of the authority of the
207 requester to receive such copies and identification of the person to whom the information is to be
208 disclosed. The health care entity shall accept a photocopy, facsimile, or other copy of the original signed
209 by the requestor as if it were an original. Within 15 days of receipt of a request for copies of health
210 records, the health care entity shall do one of the following: (i) furnish such copies to any requester
211 authorized to receive them; (ii) inform the requester if the information does not exist or cannot be
212 found; (iii) if the health care entity does not maintain a record of the information, so inform the
213 requester and provide the name and address, if known, of the health care entity who maintains the
214 record; or (iv) deny the request (a) under subsection F, (b) on the grounds that the requester has not
215 established his authority to receive such health records or proof of his identity, or (c) as otherwise
216 provided by law. Procedures set forth in this section shall apply only to requests for health records not
217 specifically governed by other provisions of state law.

218 F. Except as provided in subsection B of § 8.01-413, copies of an individual's health records shall
219 not be furnished to such individual or anyone authorized to act on the individual's behalf when the
220 individual's treating physician or the individual's treating clinical psychologist has made a part of the
221 individual's record a written statement that, in the exercise of his professional judgment, the furnishing
222 to or review by the individual of such health records would be reasonably likely to endanger the life or
223 physical safety of the individual or another person, or that such health record makes reference to a
224 person other than a health care provider and the access requested would be reasonably likely to cause
225 substantial harm to such referenced person. If any health care entity denies a request for copies of health
226 records based on such statement, the health care entity shall inform the individual of the individual's
227 right to designate, in writing, at his own expense, another reviewing physician or clinical psychologist,
228 whose licensure, training and experience relative to the individual's condition are at least equivalent to
229 that of the physician or clinical psychologist upon whose opinion the denial is based. The designated
230 reviewing physician or clinical psychologist shall make a judgment as to whether to make the health
231 record available to the individual.

232 The health care entity denying the request shall also inform the individual of the individual's right to
233 request in writing that such health care entity designate, at its own expense, a physician or clinical
234 psychologist, whose licensure, training, and experience relative to the individual's condition are at least
235 equivalent to that of the physician or clinical psychologist upon whose professional judgment the denial
236 is based and who did not participate in the original decision to deny the health records, who shall make
237 a judgment as to whether to make the health record available to the individual. The health care entity
238 shall comply with the judgment of the reviewing physician or clinical psychologist. The health care
239 entity shall permit copying and examination of the health record by such other physician or clinical
240 psychologist designated by either the individual at his own expense or by the health care entity at its
241 expense.

242 Any health record copied for review by any such designated physician or clinical psychologist shall
243 be accompanied by a statement from the custodian of the health record that the individual's treating
244 physician or clinical psychologist determined that the individual's review of his health record would be

reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely to cause substantial harm to a person referenced in the health record who is not a health care provider.

Further, nothing herein shall be construed as giving, or interpreted to bestow the right to receive copies of, or otherwise obtain access to, psychotherapy notes to any individual or any person authorized to act on his behalf.

G. A written authorization to allow release of an individual's health records shall substantially include the following information:

AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

Individual's Name

..

Health Care Entity's Name

..

Person, Agency, or Health Care Entity to whom disclosure is to

be made

..

Information or Health Records to be disclosed

..

Purpose of Disclosure or at the Request of the Individual

..

As the person signing this authorization, I understand that I am giving my permission to the above-named health care entity for disclosure of confidential health 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 authorization at any time, b-

ut that my revocation is not effective until delivered in writing to the person who is in possession of my health records and is not effective as to health records already disclosed under this authorization. A copy of this authorization and a notation concerning the persons or agencies to whom disclosure was made shall be included with my original health records. I understand that health information disclosed under this authorization might -

be rediscovered by a recipient 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 authorization expires on (date) or (event)

..

Signature of 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 of this subsection, no party to a civil, criminal or administrative action or proceeding shall request the issuance of a subpoena duces tecum for another party's 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

na 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 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 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 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 health records or on whose behalf the subpoena duces tecum is being issued shall have the duty to determine whether the individual whose health records are being sought is pro se or a nonparty.

In instances where 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 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, 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 health records. Your doctor, other health care provider or other health care entity is required to respond by providing a copy of your 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, 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 court or administrative agency in a sealed envelope or package for safekeeping while your motion is decided.

2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued for an individual's health records shall include a Notice in the same part of the request in which the recipient of the subpoena duces tecum is directed where and when to return the health records. Such notice shall be in boldface capital letters and shall include the following language:

NOTICE TO HEALTH CARE ENTITIES

A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED SUBPOENA. IF YOU

359 ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION WITHIN 15 DAYS OF
360 THE DATE OF THIS SUBPOENA.
361 YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN
362 CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED THAT THE
363 TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:
364 NO MOTION TO QUASH WAS FILED; OR
365 ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE ADMINISTRATIVE
366 AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH SUCH RESOLUTION.
367 IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE BEING
368 REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A MOTION
369 TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO THE CLERK OF
370 THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA OR IN WHICH THE
371 ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE FOLLOWING PROCEDURE:
372 PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED
373 ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY WHICH
374 STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE HELD UNDER
375 SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA. THE SEALED ENVELO-

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377 AND THE COVER LETTER SHALL BE PLACED IN AN OUTER ENVELOPE OR PACKAGE FOR
378 TRANSMITTAL TO THE COURT OR ADMINISTRATIVE AGENCY.

379 3. Upon receiving a valid subpoena duces tecum for health records, health care entities shall have the
380 duty to respond to the subpoena in accordance with the provisions of subdivisions 4, 5, 6, 7, and 8 of
381 this subsection.

382 4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a
383 sealed envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such
384 health records until they have received a certification as set forth in subdivision 5 or 8 of this subsection
385 from the party on whose behalf the subpoena duces tecum was issued.

386 If the health care entity has actual receipt of notice that a motion to quash the subpoena has been
387 filed or if the health care entity files a motion to quash the subpoena for health records, then the health
388 care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or
389 administrative agency issuing the subpoena or in whose court or administrative agency the action is
390 pending. The court or administrative agency shall place the health records under seal until a
391 determination is made regarding the motion to quash. The securely sealed envelope shall only be opened
392 on order of the judge or administrative agency. In the event the court or administrative agency grants
393 the motion to quash, the health records shall be returned to the health care entity in the same sealed
394 envelope in which they were delivered to the court or administrative agency. In the event that a judge or
395 administrative agency orders the sealed envelope to be opened to review the health records in camera, a
396 copy of the order shall accompany any health records returned to the health care entity. The health
397 records returned to the health care entity shall be in a securely sealed envelope.

398 5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued
399 subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the
400 subpoenaed health care entity that the time for filing a motion to quash has elapsed and that no motion
401 to quash was filed. Any health care entity receiving such certification shall have the duty to comply
402 with the subpoena duces tecum by returning the specified health records by either the return date on the
403 subpoena or five days after receipt of the certification, whichever is later.

404 6. In the event that the individual whose health records are being sought files a motion to quash the
405 subpoena, the court or administrative agency shall decide whether good cause has been shown by the
406 discovering party to compel disclosure of the individual's health records over the individual's objections.
407 In determining whether good cause has been shown, the court or administrative agency shall consider (i)
408 the particular purpose for which the information was collected; (ii) the degree to which the disclosure of
409 the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the
410 disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or
411 proceeding; and (v) any other relevant factor.

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

419 to the party on whose behalf the subpoena was issued and return the remaining health records to the
420 health care entity in a sealed envelope.

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

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

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

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

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

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

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

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

457 The provisions of this subsection shall apply to subpoenas for the health records of both minors and
458 adults.

459 Nothing in this subsection shall have any effect on the existing authority of a court or administrative
460 agency to issue a protective order regarding health records, including, but not limited to, ordering the
461 return of health records to a health care entity, after the period for filing a motion to quash has passed.

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

464 I. Health care entities may testify about the health records of an individual in compliance with
465 §§ 8.01-399 and 8.01-400.2.

466 J. If an individual requests a copy of his health record from a health care entity, the health care
467 entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and
468 labor of copying the requested information, postage when the individual requests that such information
469 be mailed, and preparation of an explanation or summary of such information as agreed to by the
470 individual. For the purposes of this section, "individual" shall subsume a person with authority to act on
471 behalf of the individual who is the subject of the health record in making decisions related to his health
472 care.