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HOUSE BILL NO. 903

Offered January 13, 2010

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A BILL to amend and reenact §§ 2.2-3705.4, 19.2-389, 19.2-389.1, 23-9.2:10 and 32.1-127.1:03 of the Code of Virginia, relating to records of threat assessment teams.

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Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.4, 19.2-389, 19.2-389.1, 23-9.2:10 and 32.1-127.1:03 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.

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. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, that are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of 18 years. For scholastic records of students under the age of 18 years, the right of access may be asserted only by his legal guardian or 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. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

2. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

3. Records of the Brown v. Board of Education Scholarship Awards Committee relating to personally identifiable information, including scholarship applications, personal financial information, and confidential correspondence and letters of recommendation.

4. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.

5. All records of the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

6. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

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59 7. Records maintained in connection with fundraising activities by or for a public institution of
60 higher education to the extent that such records reveal (i) personal fundraising strategies relating to
61 identifiable donors or prospective donors or (ii) wealth assessments; estate, financial, or tax planning
62 information; health-related information; employment, familial, or marital status information; electronic
63 mail addresses, facsimile or telephone numbers; birth dates or social security numbers of identifiable
64 donors or prospective donors. Nothing in this subdivision, however, shall be construed to authorize the
65 withholding of records relating to the amount, date, purpose, and terms of the pledge or donation, or the
66 identity of the donor unless the donor has requested anonymity in connection with or as a condition of
67 making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from
68 disclosure (i) the identities of sponsors providing grants to or contracting with the institution for the
69 performance of research services or other work or (ii) the terms and conditions of such grants or
70 contracts.

71 8. *All records of a threat assessment team established by a public institution of higher education*
72 *pursuant to § 23-9.2:10, relating to the assessment or intervention with specific individuals.*

73 § 19.2-389. Dissemination of criminal history record information.

74 A. Criminal history record information shall be disseminated, whether directly or through an
75 intermediary, only to:

76 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for
77 purposes of the administration of criminal justice and the screening of an employment application or
78 review of employment by a criminal justice agency with respect to its own employees or applicants, and
79 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all
80 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,
81 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

82 2. Such other individuals and agencies that require criminal history record information to implement
83 a state or federal statute or executive order of the President of the United States or Governor that
84 expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such
85 conduct, except that information concerning the arrest of an individual may not be disseminated to a
86 noncriminal justice agency or individual if an interval of one year has elapsed from the date of the
87 arrest and no disposition of the charge has been recorded and no active prosecution of the charge is
88 pending;

89 3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide
90 services required for the administration of criminal justice pursuant to that agreement which shall
91 specifically authorize access to data, limit the use of data to purposes for which given, and ensure the
92 security and confidentiality of the data;

93 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities
94 pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data,
95 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and
96 security of the data;

97 5. Agencies of state or federal government that are authorized by state or federal statute or executive
98 order of the President of the United States or Governor to conduct investigations determining
99 employment suitability or eligibility for security clearances allowing access to classified information;

100 6. Individuals and agencies where authorized by court order or court rule;

101 7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of
102 applicants for public employment, permit, or license whenever, in the interest of public welfare or
103 safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a
104 person with a conviction record would be compatible with the nature of the employment, permit, or
105 license under consideration;

106 8. Public or private agencies when authorized or required by federal or state law or interstate
107 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the
108 adult members of that individual's household, with whom the agency is considering placing a child or
109 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,
110 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that
111 the data shall not be further disseminated to any party other than a federal or state authority or court as
112 may be required to comply with an express requirement of law;

113 9. To the extent permitted by federal law or regulation, public service companies as defined in
114 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
115 personal contact with the public or when past criminal conduct of an applicant would be incompatible
116 with the nature of the employment under consideration;

117 10. The appropriate authority for purposes of granting citizenship and for purposes of international
118 travel, including but not limited to, issuing visas and passports;

119 11. A person requesting a copy of his own criminal history record information as defined in
120 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a

person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes approved by family day-care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719 through 63.2-1721, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery Law (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults pursuant to § 63.2-1720, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed adult day-care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof in the course of conducting necessary investigations with respect to registered voters, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;

25. *Members of a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety;*

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

2627. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of

182 determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

183 2728. The Commissioner of the Department of Social Services for the purpose of locating persons
184 who owe child support or who are alleged in a pending paternity proceeding to be a putative father,
185 provided that only the name, address, demographics and social security number of the data subject shall
186 be released;

187 2829. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.)
188 of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the
189 purpose of determining if any applicant who accepts employment in any direct consumer care position
190 has been convicted of a crime that affects their fitness to have responsibility for the safety and
191 well-being of persons with mental illness, mental retardation and substance abuse pursuant to
192 §§ 37.2-416, 37.2-506, and 37.2-607;

193 2930. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating
194 applicants for a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000
195 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

196 3031. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates
197 for the purpose of determining if any person being considered for election to any judgeship has been
198 convicted of a crime;

199 3132. Heads of state agencies in which positions have been identified as sensitive for the purpose of
200 determining an individual's fitness for employment in positions designated as sensitive under Department
201 of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal
202 history record information to the agencies shall be limited to those positions generally described as
203 directly responsible for the health, safety and welfare of the general populace or protection of critical
204 infrastructures;

205 3233. The Office of the Attorney General, for all criminal justice activities otherwise permitted under
206 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually
207 Violent Predators Act (§ 37.2-900 et seq.);

208 3334. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,
209 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary
210 companies, for the conduct of investigations of applications for employment or for access to facilities,
211 by contractors, leased laborers, and other visitors;

212 3435. Any employer of individuals whose employment requires that they enter the homes of others,
213 for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

214 3536. Public agencies when and as required by federal or state law to investigate (i) applicants as
215 providers of adult foster care and home-based services or (ii) any individual with whom the agency is
216 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,
217 subject to the restriction that the data shall not be further disseminated by the agency to any party other
218 than a federal or state authority or court as may be required to comply with an express requirement of
219 law for such further dissemination, subject to limitations set out in subsection G;

220 3637. The Department of Medical Assistance Services, or its designee, for the purpose of screening
221 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,
222 or have accepted a position related to the provision of transportation services to enrollees in the
223 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other
224 program administered by the Department of Medical Assistance Services;

225 3738. The State Corporation Commission for the purpose of investigating individuals who are
226 members, senior officers, directors, and principals of an applicant for licensure as a mortgage lender or
227 mortgage broker, or a licensed mortgage lender or mortgage broker for the purpose of investigating
228 individuals applying for a position of employment in which the individual may have access to or process
229 personal identifying or financial information from a member of the public, pursuant to Chapter 16
230 (§ 6.1-408 et seq.) of Title 6.1. Notwithstanding any other provision of law, if an application for a
231 mortgage lender or mortgage broker license is denied based in whole or in part on information obtained
232 from the Central Criminal Records Exchange pursuant to § 6.1-414, the Commissioner of Financial
233 Institutions or his designee may disclose such information to the applicant or its designee;

234 3839. The Department of Professional and Occupational Regulation for the purpose of investigating
235 individuals for initial licensure pursuant to § 54.1-2106.1; and

236 3940. Other entities as otherwise provided by law.

237 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records
238 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal
239 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons
240 designated in the order on whom a report has been made under the provisions of this chapter.

241 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to
242 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the
243 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a

copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 of ~~subsection A~~ shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities, licensed district homes for adults, and licensed adult day-care centers pursuant to subdivision A 16 of ~~subsection A~~ shall be limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision 35 of ~~subsection A~~ shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request; provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

§ 19.2-389.1. Dissemination of juvenile record information.

Record information maintained in the Central Criminal Records Exchange pursuant to the provisions of § 16.1-299 shall be disseminated only (i) to make the determination as provided in §§ 18.2-308.2 and 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) to aid in the preparation of a pretrial investigation report prepared by a local pretrial services agency established pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of ~~this title~~, a presentence or post-sentence investigation report pursuant to § 19.2-264.5 or 19.2-299 or in the preparation of the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (iii) to aid local community-based probation services agencies established pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) with investigating or serving adult local-responsible offenders and all court service units serving juvenile delinquent offenders; (iv) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System (AFIS) computer; (v) to attorneys for the Commonwealth to secure information incidental to sentencing and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (vi) to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, for purposes of the administration of criminal justice as defined in § 9.1-101; (vii) to the Department of Forensic Science to verify its authority to maintain the juvenile's sample in the DNA data bank pursuant to § 16.1-299.1; (viii) to the Office of the Attorney General, for all criminal justice activities otherwise permitted and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.); ~~and~~ (ix) to the Virginia Criminal Sentencing Commission for research

305 purposes; and (x) to members of a threat assessment team established by a public institution of higher
306 education pursuant to § 23-9.2:10, to aid in the assessment or intervention with individuals whose
307 behavior may present a threat to safety.

308 § 23-9.2:10. Violence prevention committee; threat assessment team.

309 A. Each public college or university shall have in place policies and procedures for the prevention of
310 violence on campus, including assessment and intervention with individuals whose behavior poses a
311 threat to the safety of the campus community.

312 B. The board of visitors or other governing body of each public institution of higher education shall
313 determine a committee structure on campus of individuals charged with education and prevention of
314 violence on campus. Each committee shall include representatives from student affairs, law enforcement,
315 human resources, counseling services, residence life, and other constituencies as needed. Such committee
316 shall also consult with legal counsel as needed. Once formed, each committee shall develop a clear
317 statement of: (i) mission, (ii) membership, and (iii) leadership. Such statement shall be published and
318 available to the campus community.

319 C. Each committee shall be charged with: (i) providing guidance to students, faculty, and staff
320 regarding recognition of threatening or aberrant behavior that may represent a threat to the community;
321 (ii) identification of members of the campus community to whom threatening behavior should be
322 reported; and (iii) policies and procedures for the assessment of individuals whose behavior may present
323 a threat, appropriate means of intervention with such individuals, and sufficient means of action,
324 including interim suspension or medical separation to resolve potential threats.

325 D. The board of visitors or other governing body of each public institution of higher education shall
326 establish a specific threat assessment team that shall include members from law enforcement, mental
327 health professionals, representatives of student affairs and human resources, and, if available, college or
328 university counsel. Such team shall implement the assessment, intervention and action policies set forth
329 by the committee pursuant to subsection C.

330 E. Each threat assessment team shall establish relationships or utilize existing relationships with local
331 and state ~~law enforcement~~ law-enforcement agencies as well as mental health agencies to expedite
332 assessment and intervention with individuals whose behavior may present a threat to safety. *Upon a
333 preliminary determination that an individual poses a threat of violence to self or others, or exhibits
334 significantly disruptive behavior or need for assistance, a threat assessment team may obtain criminal
335 history record information, as provided in §§ 19.2-389 and 19.2-389.1, and health records, as provided
336 in § 32.1-127.1:03. No member of a threat assessment team shall redisclose any criminal history record
337 information or health information obtained pursuant to this section or otherwise use any record of an
338 individual beyond the purpose for which such disclosure was made to the threat assessment team.*

339 § 32.1-127.1:03. Health records privacy.

340 A. There is hereby recognized an individual's right of privacy in the content of his health records.
341 Health records are the property of the health care entity maintaining them, and, except when permitted
342 or required by this section or by other provisions of state law, no health care entity, or other person
343 working in a health care setting, may disclose an individual's health records.

344 Pursuant to this subsection:

345 1. Health care entities shall disclose health records to the individual who is the subject of the health
346 record, except as provided in subsections E and F of this section and subsection B of § 8.01-413.

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

352 3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health
353 records of an individual, beyond the purpose for which such disclosure was made, without first
354 obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall
355 not, however, prevent (i) any health care entity that receives health records from another health care
356 entity from making subsequent disclosures as permitted under this section and the federal Department of
357 Health and Human Services regulations relating to privacy of the electronic transmission of data and
358 protected health information promulgated by the United States Department of Health and Human
359 Services as required by the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C.
360 § 1320d et seq.) or (ii) any health care entity from furnishing health records and aggregate or other data,
361 from which individually identifying prescription information has been removed, encoded or encrypted, to
362 qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or
363 contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health
364 services research.

365 B. As used in this section:

366 "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.

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

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

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

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

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

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

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

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

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

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

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

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

2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C of § 8.01-413. Regardless of the manner by which health

428 records relating to an individual are compelled to be disclosed pursuant to this subdivision, nothing in
429 this subdivision shall be construed to prohibit any staff or employee of a health care entity from
430 providing information about such individual to a law-enforcement officer in connection with such
431 subpoena, search warrant, or court order;

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

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

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

439 6. As required or authorized by law relating to public health activities, health oversight activities,
440 serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,
441 public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,
442 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,
443 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,
444 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 63.2-1509, and 63.2-1606;

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

446 8. In connection with the health care entity's own health care operations or the health care operations
447 of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in
448 accordance with accepted standards of practice within the health services setting; however, the
449 maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a
450 pharmacy registered or permitted in Virginia shall only be accomplished in compliance with
451 §§ 54.1-3410, 54.1-3411, and 54.1-3412;

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

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

455 11. To the guardian ad litem and any attorney representing the respondent in the course of a
456 guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 10
457 (§ 37.2-1000 et seq.) of Title 37.2;

458 12. To the guardian ad litem and any attorney appointed by the court to represent an individual who
459 is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, 19.2-176, or
460 19.2-177.1, Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of
461 Chapter 11 of Title 16.1, or a judicial authorization for treatment proceeding pursuant to Chapter 11
462 (§ 37.2-1100 et seq.) of Title 37.2;

463 13. To a magistrate, the court, the evaluator or examiner required under § 16.1-338, 16.1-339,
464 16.1-342, or 37.2-815, a community services board or behavioral health authority or a designee of a
465 community services board or behavioral health authority, or a law-enforcement officer participating in
466 any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, § 19.2-169.6, 19.2-176,
467 or 19.2-177.1, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of the proceeding,
468 and to any health care provider evaluating or providing services to the person who is the subject of the
469 proceeding or monitoring the person's adherence to a treatment plan ordered under those provisions.
470 Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect
471 the officer, the person, or the public from physical injury or to address the health care needs of the
472 person. Information disclosed to a law-enforcement officer shall not be used for any other purpose,
473 disclosed to others, or retained;

474 14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or
475 administrative proceeding, if the court or administrative hearing officer has entered an order granting the
476 attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the
477 health care entity of such order;

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

480 16. To an agent appointed under an individual's power of attorney or to an agent or decision maker
481 designated in an individual's advance directive for health care or for decisions on anatomical gifts and
482 organ, tissue or eye donation or to any other person consistent with the provisions of the Health Care
483 Decisions Act (§ 54.1-2981 et seq.);

484 17. To third-party payors and their agents for purposes of reimbursement;

485 18. As is necessary to support an application for receipt of health care benefits from a governmental
486 agency or as required by an authorized governmental agency reviewing such application or reviewing
487 benefits already provided or as necessary to the coordination of prevention and control of disease,
488 injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

489 19. 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;

20. 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;

21. 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;

22. 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;

23. 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;

24. 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;

25. 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;

26. To the Office of the Inspector General for Behavioral Health and Developmental Services pursuant to Article 3 (§ 37.2-423 et seq.) of Chapter 4 of Title 37.2;

27. 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;

28. 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;

29. 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, (vii) description of distinguishing physical characteristics of the person, and (viii) type of injury sustained by the person;

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

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

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

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

34. To notify a family member or personal representative of an individual who is the subject of a proceeding pursuant to Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 of information that is directly relevant to such person's involvement with the individual's health care, which may include the individual's location and general condition, when the individual has the capacity to make health care decisions and (i) the individual has agreed to the notification, (ii) the individual has been provided an opportunity to object to the notification and does not express an objection, or (iii) the health care provider can, on the basis of his professional judgment, reasonably infer from the circumstances that the individual does not object to the notification. If the opportunity to agree or object to the notification cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the health care provider may notify a family member or personal representative of the individual of

information that is directly relevant to such person's involvement with the individual's health care, which may include the individual's location and general condition if the health care provider, in the exercise of his professional judgment, determines that the notification is in the best interests of the individual. Such notification shall not be made if the provider has actual knowledge the family member or personal representative is currently prohibited by court order from contacting the individual; and

35. To a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10 when such records concern a student at the public institution of higher education, including a student who is a minor.

Notwithstanding the provisions of subdivisions 1 through 34 of this subsection 35, a health care entity shall obtain an individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by the health care entity is (i) for its own training programs in which students, trainees, or practitioners in mental health are being taught under supervision to practice or to improve their skills in group, joint, family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1, to take precautions to protect third parties from violent behavior or other serious harm; (iv) required in the course of an investigation, audit, review, or proceeding regarding a health care entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise required by law.

E. Requests for copies of 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 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 health records, the health care entity shall do one of the following: (i) furnish such copies to any requester authorized to receive them; (ii) inform the requester if the information does not exist or cannot be found; (iii) if the health care entity does not maintain a record of the information, so inform the requester and provide the name and address, if known, of the health care entity who maintains the record; or (iv) deny the request (a) under subsection F, (b) on the grounds that the requester has not established his authority to receive such health records or proof of his identity, or (c) as otherwise provided by law. Procedures set forth in this section shall apply only to requests for health records not specifically governed by other provisions of state law.

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

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

Any health record copied for review by any such designated physician or clinical psychologist shall be accompanied by a statement from the custodian of the health record that the individual's treating 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, but 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 redisclosed 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 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)

672 requiring them to produce your health records. Your doctor, other health care provider or other health
673 care entity is required to respond by providing a copy of your health records. If you believe your health
674 records should not be disclosed and object to their disclosure, you have the right to file a motion with
675 the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion
676 to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued
677 subpoena. You may contact the clerk's office or the administrative agency to determine the requirements
678 that must be satisfied when filing a motion to quash and you may elect to contact an attorney to
679 represent your interest. If you elect to file a motion to quash, you must notify your doctor, other health
680 care provider(s), or other health care entity, that you are filing the motion so that the health care
681 provider or health care entity knows to send the health records to the clerk of court or administrative
682 agency in a sealed envelope or package for safekeeping while your motion is decided.

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

687 NOTICE TO HEALTH CARE ENTITIES

688 A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL
689 WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT
690 INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED
691 SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION
692 WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.

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

696 NO MOTION TO QUASH WAS FILED; OR

697 ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE
698 ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH
699 SUCH RESOLUTION.

700 IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE
701 BEING REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A
702 MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO
703 THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA
704 OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE
705 FOLLOWING PROCEDURE:

706 PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED
707 ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY
708 WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE
709 HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA.
710 THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER
711 ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE
712 AGENCY.

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

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

720 If the health care entity has actual receipt of notice that a motion to quash the subpoena has been
721 filed or if the health care entity files a motion to quash the subpoena for health records, then the health
722 care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or
723 administrative agency issuing the subpoena or in whose court or administrative agency the action is
724 pending. The court or administrative agency shall place the health records under seal until a
725 determination is made regarding the motion to quash. The securely sealed envelope shall only be opened
726 on order of the judge or administrative agency. In the event the court or administrative agency grants
727 the motion to quash, the health records shall be returned to the health care entity in the same sealed
728 envelope in which they were delivered to the court or administrative agency. In the event that a judge or
729 administrative agency orders the sealed envelope to be opened to review the health records in camera, a
730 copy of the order shall accompany any health records returned to the health care entity. The health
731 records returned to the health care entity shall be in a securely sealed envelope.

732 5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued
733 subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the

subpoenaed health care entity that the time for filing a motion to quash has elapsed and that no motion to quash was filed. Any health care entity receiving such certification shall have the duty to comply with the subpoena duces tecum by returning the specified health records by either the return date on the subpoena or five days after receipt of the certification, whichever is later.

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 individual's health records over the 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 health records have been submitted by a health care entity to the court or administrative agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no submitted health records should be disclosed, return all submitted health records to the health care entity in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon determining that only a portion of the submitted health records should be disclosed, provide such portion to the party on whose behalf the subpoena was issued and return the remaining health records to the 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 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 health records previously delivered in a sealed envelope to the clerk of the court or administrative agency will not be returned to the 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 health records have previously been delivered to the court or administrative agency by the health care entity, the health care entity shall comply with the subpoena duces tecum by returning the 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 health records shall be disclosed and all health records previously delivered in a sealed envelope to the clerk of the court or administrative agency will be returned to the 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 health records that were previously delivered to the court or administrative agency for which disclosure has been authorized will not be returned to the health care entity; however, all health records for which disclosure has not been authorized will be returned to the 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 health records have previously been delivered to the court or administrative agency by the health care entity, the 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 health records requested under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation, audit, review or proceedings regarding a health care entity's conduct.

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

Nothing in this subsection shall have any effect on the existing authority of a court or administrative agency to issue a protective order regarding health records, including, but not limited to, ordering the

795 return of health records to a health care entity, after the period for filing a motion to quash has passed.

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

798 I. Health care entities may testify about the health records of an individual in compliance with
799 §§ 8.01-399 and 8.01-400.2.

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