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SENATE BILL NO. 207**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on General Laws and Technology
on February 10, 2010)

(Patron Prior to Substitute—Senator Edwards)

*A BILL to amend and reenact §§ 19.2-389, 19.2-389.1, 23-9.2:10 and 32.1-127.1:03 of the Code of Virginia, relating to threat assessment teams; criminal and health records.***Be it enacted by the General Assembly of Virginia:****1. That §§ 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:**

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

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

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

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

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

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

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

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

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

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

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

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

11. A person requesting a copy of his own criminal history record information as defined in § 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

60 America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency
61 Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of
62 Compeer; or (vi) any board member or any individual who has been offered membership on the board
63 of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

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

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

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

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

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

87 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in
88 § 4.1-103.1;

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

92 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who
93 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-176,
94 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,
95 and treatment planning;

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

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

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

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

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

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

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

119 2627. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of
120 determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

121 2728. The Commissioner of the Department of Social Services for the purpose of locating persons

who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

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

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

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

3432. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures;

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

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

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

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

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

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

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

3940. Other entities as otherwise provided by law.

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

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the 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;

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

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

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

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

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

204 F. Criminal history information provided to licensed assisted living facilities, licensed district homes
205 for adults, and licensed adult day-care centers pursuant to subdivision A 16 of ~~subsection A~~ shall be
206 limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or
207 63.2-1720.

208 G. Criminal history information provided to public agencies pursuant to subdivision 35 of ~~subsection~~
209 A 36 shall be limited to the convictions on file with the Exchange for any offense specified in
210 § 63.2-1719.

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

220 § 19.2-389.1. Dissemination of juvenile record information.

221 Record information maintained in the Central Criminal Records Exchange pursuant to the provisions
222 of § 16.1-299 shall be disseminated only (i) to make the determination as provided in §§ 18.2-308.2 and
223 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) to aid in the preparation of a pretrial
224 investigation report prepared by a local pretrial services agency established pursuant to Article 5
225 (§ 19.2-152.2 et seq.) of Chapter 9 of ~~this title~~, a presentence or post-sentence investigation report
226 pursuant to § 19.2-264.5 or 19.2-299 or in the preparation of the discretionary sentencing guidelines
227 worksheets pursuant to subsection C of § 19.2-298.01; (iii) to aid local community-based probation
228 services agencies established pursuant to the Comprehensive Community Corrections Act for
229 Local-Responsible Offenders (§ 9.1-173 et seq.) with investigating or serving adult local-responsible
230 offenders and all court service units serving juvenile delinquent offenders; (iv) for fingerprint
231 comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System
232 (AFIS) computer; (v) to attorneys for the Commonwealth to secure information incidental to sentencing
233 and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing
234 guidelines worksheets pursuant to subsection C of § 19.2-298.01; (vi) to any full-time or part-time
235 employee of the State Police, a police department or sheriff's office that is a part of or administered by
236 the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and
237 detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, for
238 purposes of the administration of criminal justice as defined in § 9.1-101; (vii) to the Department of
239 Forensic Science to verify its authority to maintain the juvenile's sample in the DNA data bank pursuant
240 to § 16.1-299.1; (viii) to the Office of the Attorney General, for all criminal justice activities otherwise
241 permitted and for purposes of performing duties required by the Civil Commitment of Sexually Violent
242 Predators Act (§ 37.2-900 et seq.); ~~and~~ (ix) to the Virginia Criminal Sentencing Commission for research
243 purposes; *and (x) to members of a threat assessment team established by a public institution of higher*
244 *education pursuant to § 23-9.2:10, to aid in the assessment or intervention with individuals whose*

behavior may present a threat to safety.

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

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

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

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

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

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

§ 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.).

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

309 "Guardian" means a court-appointed guardian of the person.

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

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

319 "Health care provider" means those entities listed in the definition of "health care provider" in
320 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the
321 purposes of this section. Health care provider shall also include all persons who are licensed, certified,
322 registered or permitted or who hold a multistate licensure privilege issued by any of the health
323 regulatory boards within the Department of Health Professions, except persons regulated by the Board of
324 Funeral Directors and Embalmers or the Board of Veterinary Medicine.

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

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

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

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

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

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

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

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

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

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

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

352 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to
353 § 16.1-248.3.

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

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

363 2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant
364 or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a
365 subpoena issued pursuant to subsection C of § 8.01-413. Regardless of the manner by which health
366 records relating to an individual are compelled to be disclosed pursuant to this subdivision, nothing in
367 this subdivision shall be construed to prohibit any staff or employee of a health care entity from

providing information about such individual to a law-enforcement officer in connection with such subpoena, search warrant, or court order;

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

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

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

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

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

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

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

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

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

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

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

14. 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;

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

16. 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.);

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

18. 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;

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;

429 20. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and
430 immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

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

433 22. In the case of substance abuse records, when permitted by and in conformity with requirements
434 of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;

435 23. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the
436 adequacy or quality of professional services or the competency and qualifications for professional staff
437 privileges;

438 24. If the health records are those of a deceased or mentally incapacitated individual to the personal
439 representative or executor of the deceased individual or the legal guardian or committee of the
440 incompetent or incapacitated individual or if there is no personal representative, executor, legal guardian
441 or committee appointed, to the following persons in the following order of priority: a spouse, an adult
442 son or daughter, either parent, an adult brother or sister, or any other relative of the deceased individual
443 in order of blood relationship;

444 25. For the purpose of conducting record reviews of inpatient hospital deaths to promote
445 identification of all potential organ, eye, and tissue donors in conformance with the requirements of
446 applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's
447 designated organ procurement organization certified by the United States Health Care Financing
448 Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association
449 of America or the American Association of Tissue Banks;

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

452 27. To an entity participating in the activities of a local health partnership authority established
453 pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4 of this title, pursuant to subdivision 1 of
454 this subsection;

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

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

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

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

472 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a
473 person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article
474 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title;

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

479 34. To notify a family member or personal representative of an individual who is the subject of a
480 proceeding pursuant to Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 of information that is directly
481 relevant to such person's involvement with the individual's health care, which may include the
482 individual's location and general condition, when the individual has the capacity to make health care
483 decisions and (i) the individual has agreed to the notification, (ii) the individual has been provided an
484 opportunity to object to the notification and does not express an objection, or (iii) the health care
485 provider can, on the basis of his professional judgment, reasonably infer from the circumstances that the
486 individual does not object to the notification. If the opportunity to agree or object to the notification
487 cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the
488 health care provider may notify a family member or personal representative of the individual of
489 information that is directly relevant to such person's involvement with the individual's health care, which
490 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.

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

554 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

555 Individual's Name
556 Health Care Entity's Name
557 Person, Agency, or Health Care Entity to whom disclosure is to
558 be made
559 Information or Health Records to be disclosed
560 Purpose of Disclosure or at the Request of the Individual
561 As the person signing this authorization, I understand that I am giving my
562 permission to the above-named health care entity for disclosure of
563 confidential health records. I understand that the health care entity may
564 not condition treatment or payment on my willingness to sign this
565 authorization unless the specific circumstances under which such
566 conditioning is permitted by law are applicable and are set forth in this
567 authorization. I also understand that I have the right to revoke this
568 authorization at any time, but that my revocation is not effective until
569 delivered in writing to the person who is in possession of my health
570 records and is not effective as to health records already disclosed under
571 this authorization. A copy of this authorization and a notation concerning
572 the persons or agencies to whom disclosure was made shall be included with
573 my original health records. I understand that health information
574 disclosed under this authorization might be redisclosed by a recipient and
575 may, as a result of such disclosure, no longer be protected to the same
576 extent as such health information was protected by law while solely in the
577 possession of the health care entity.
578 This authorization expires on (date) or (event)
579 Signature of Individual or Individual's Legal Representative if Individual
580 is Unable to Sign
581 Relationship or Authority of Legal Representative
582 Date of Signature

583 H. Pursuant to this subsection:

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

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

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

601 In instances where health records being subpoenaed are those of a pro se party or nonparty witness,
602 the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness
603 together with the copy of the request for subpoena, or a copy of the subpoena in the case of an
604 attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall
605 include the following language and the heading shall be in boldface capital letters:

606 NOTICE TO INDIVIDUAL

607 The attached document means that (insert name of party requesting or causing issuance of the
608 subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has
609 been issued by the other party's attorney to your doctor, other health care providers (names of health
610 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 ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.

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

NO MOTION TO QUASH WAS FILED; OR

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

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

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

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

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

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

5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued

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

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

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

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

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

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

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

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

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

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

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

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

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

return of health records to a health care entity, after the period for filing a motion to quash has passed.
A subpoena for substance abuse records must conform to the requirements of federal law found in 42 C.F.R. Part 2, Subpart E.

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

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