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SENATE BILL NO. 1029

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact §§ 32.1-127.1:03 and 54.1-2525 of the Code of Virginia, relating to disclosure of information related to dispensing of controlled substances.

Patron—Puckett

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-127.1:03 and 54.1-2525 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-127.1:03. Health records privacy.

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

Pursuant to this subsection:

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

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

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

B. As used in this section:

"Agent" means a person who has been appointed as an individual's agent under a power of attorney for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

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

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

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

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

"Health care provider" means those entities listed in the definition of "health care provider" in § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the purposes of this section. Health care provider shall also include all persons who are licensed, certified, registered or permitted or who hold a multistate licensure privilege issued by any of the health

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59 regulatory boards within the Department of Health Professions, except persons regulated by the Board of
60 Funeral Directors and Embalmers or the Board of Veterinary Medicine.

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

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

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

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

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

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

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

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

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

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

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

88 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to
89 § 16.1-248.3.

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

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

99 2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant
100 or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a
101 subpoena issued pursuant to subsection C of § 8.01-413. Regardless of the manner by which health
102 records relating to an individual are compelled to be disclosed pursuant to this subdivision, nothing in
103 this subdivision shall be construed to prohibit any staff or employee of a health care entity from
104 providing information about such individual to a law-enforcement officer in connection with such
105 subpoena, search warrant, or court order;

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

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

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

113 6. As required or authorized by law relating to public health activities, health oversight activities,
114 serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,
115 public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,
116 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,
117 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,
118 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and 63.2-1606;

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

120 8. In connection with the health care entity's own health care operations or the health care operations

121 of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in
122 accordance with accepted standards of practice within the health services setting; however, the
123 maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a
124 pharmacy registered or permitted in Virginia shall only be accomplished in compliance with
125 §§ 54.1-3410, 54.1-3411, and 54.1-3412;

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

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

129 11. To the guardian ad litem and any attorney representing the respondent in the course of a
130 guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 10
131 (§ 37.2-1000 et seq.) of Title 37.2;

132 12. To the guardian ad litem and any attorney appointed by the court to represent an individual who
133 is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5
134 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title
135 16.1, or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of
136 Title 37.2;

137 13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et
138 seq.) of Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health
139 authority or a designee of a community services board or behavioral health authority, or a
140 law-enforcement officer participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter
141 11 of Title 16.1, § 19.2-169.6, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of
142 the proceeding, and to any health care provider evaluating or providing services to the person who is the
143 subject of the proceeding or monitoring the person's adherence to a treatment plan ordered under those
144 provisions. Health records disclosed to a law-enforcement officer shall be limited to information
145 necessary to protect the officer, the person, or the public from physical injury or to address the health
146 care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any
147 other purpose, disclosed to others, or retained;

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

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

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

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

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

163 19. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership
164 or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

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

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

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

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

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

180 25. For the purpose of conducting record reviews of inpatient hospital deaths to promote
181 identification of all potential organ, eye, and tissue donors in conformance with the requirements of

182 applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's
183 designated organ procurement organization certified by the United States Health Care Financing
184 Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association
185 of America or the American Association of Tissue Banks;

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

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

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

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

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

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

207 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a
208 person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article
209 3.02 (§ 32.1-48.05 et seq.) of Chapter 2;

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

214 34. To notify a family member or personal representative of an individual who is the subject of a
215 proceeding pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or Chapter 8
216 (§ 37.2-800 et seq.) of Title 37.2 of information that is directly relevant to such person's involvement
217 with the individual's health care, which may include the individual's location and general condition,
218 when the individual has the capacity to make health care decisions and (i) the individual has agreed to
219 the notification, (ii) the individual has been provided an opportunity to object to the notification and
220 does not express an objection, or (iii) the health care provider can, on the basis of his professional
221 judgment, reasonably infer from the circumstances that the individual does not object to the notification.
222 If the opportunity to agree or object to the notification cannot practicably be provided because of the
223 individual's incapacity or an emergency circumstance, the health care provider may notify a family
224 member or personal representative of the individual of information that is directly relevant to such
225 person's involvement with the individual's health care, which may include the individual's location and
226 general condition if the health care provider, in the exercise of his professional judgment, determines
227 that the notification is in the best interests of the individual. Such notification shall not be made if the
228 provider has actual knowledge the family member or personal representative is currently prohibited by
229 court order from contacting the individual; and

230 35. To a threat assessment team established by a public institution of higher education pursuant to
231 § 23-9.2:10 when such records concern a student at the public institution of higher education, including
232 a student who is a minor.

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

243 E. Requests for copies of health records shall (i) be in writing, dated and signed by the requester; (ii)

244 identify the nature of the information requested; and (iii) include evidence of the authority of the
 245 requester to receive such copies and identification of the person to whom the information is to be
 246 disclosed. The health care entity shall accept a photocopy, facsimile, or other copy of the original signed
 247 by the requestor as if it were an original. Within 15 days of receipt of a request for copies of health
 248 records, the health care entity shall do one of the following: (i) furnish such copies to any requester
 249 authorized to receive them; (ii) inform the requester if the information does not exist or cannot be
 250 found; (iii) if the health care entity does not maintain a record of the information, so inform the
 251 requester and provide the name and address, if known, of the health care entity who maintains the
 252 record; or (iv) deny the request (a) under subsection F, (b) on the grounds that the requester has not
 253 established his authority to receive such health records or proof of his identity, or (c) as otherwise
 254 provided by law. Procedures set forth in this section shall apply only to requests for health records not
 255 specifically governed by other provisions of state law.

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

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

280 Any health record copied for review by any such designated physician or clinical psychologist shall
 281 be accompanied by a statement from the custodian of the health record that the individual's treating
 282 physician or clinical psychologist determined that the individual's review of his health record would be
 283 reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely
 284 to cause substantial harm to a person referenced in the health record who is not a health care provider.

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

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

- 290 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS
- 291 Individual's Name
- 292 Health Care Entity's Name
- 293 Person, Agency, or Health Care Entity to whom disclosure is to
- 294 be made
- 295 Information or Health Records to be disclosed
- 296 Purpose of Disclosure or at the Request of the Individual
- 297 As the person signing this authorization, I understand that I am
- 298 giving my permission to the above-named health care entity for
- 299 disclosure of confidential health records. I understand that the
- 300 health care entity may not condition treatment or payment on my
- 301 willingness to sign this authorization unless the specific
- 302 circumstances under which such conditioning is permitted by law
- 303 are applicable and are set forth in this authorization. I also

304 understand that I have the right to revoke this authorization
 305 at any time, but that my revocation is not effective until
 306 delivered in writing to the person who is in possession of
 307 my health records and is not effective as to health records
 308 already disclosed under this authorization. A copy of this
 309 authorization and a notation concerning the persons or agencies
 310 to whom disclosure was made shall be included with my original
 311 health records. I understand that health information disclosed
 312 under this authorization might be redisclosed by a recipient
 313 and may, as a result of such disclosure, no longer be protected
 314 to the same extent as such health information was protected by
 315 law while solely in the possession of the health care entity.
 316 This authorization expires on (date) or (event)
 317 Signature of Individual or Individual's Legal Representative
 318 if Individual is Unable to Sign
 319 Relationship or Authority of Legal Representative
 320 Date of Signature

321 H. Pursuant to this subsection:

322 1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or
 323 administrative action or proceeding shall request the issuance of a subpoena duces tecum for another
 324 party's health records or cause a subpoena duces tecum to be issued by an attorney unless a copy of the
 325 request for the subpoena or a copy of the attorney-issued subpoena is provided to the other party's
 326 counsel or to the other party if pro se, simultaneously with filing the request or issuance of the
 327 subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces
 328 tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a
 329 copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the
 330 request or issuance of the attorney-issued subpoena.

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

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

339 In instances where health records being subpoenaed are those of a pro se party or nonparty witness,
 340 the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness
 341 together with the copy of the request for subpoena, or a copy of the subpoena in the case of an
 342 attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall
 343 include the following language and the heading shall be in boldface capital letters:
 344 **NOTICE TO INDIVIDUAL**

345 The attached document means that (insert name of party requesting or causing issuance of the
 346 subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has
 347 been issued by the other party's attorney to your doctor, other health care providers (names of health
 348 care providers inserted here) or other health care entity (name of health care entity to be inserted here)
 349 requiring them to produce your health records. Your doctor, other health care provider or other health
 350 care entity is required to respond by providing a copy of your health records. If you believe your health
 351 records should not be disclosed and object to their disclosure, you have the right to file a motion with
 352 the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion
 353 to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued
 354 subpoena. You may contact the clerk's office or the administrative agency to determine the requirements
 355 that must be satisfied when filing a motion to quash and you may elect to contact an attorney to
 356 represent your interest. If you elect to file a motion to quash, you must notify your doctor, other health
 357 care provider(s), or other health care entity, that you are filing the motion so that the health care
 358 provider or health care entity knows to send the health records to the clerk of court or administrative
 359 agency in a sealed envelope or package for safekeeping while your motion is decided.

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

364 NOTICE TO HEALTH CARE ENTITIES

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

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

373 NO MOTION TO QUASH WAS FILED; OR

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

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

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

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

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

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

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

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

422 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if
 423 subpoenaed health records have been submitted by a health care entity to the court or administrative
 424 agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no

425 submitted health records should be disclosed, return all submitted health records to the health care entity
426 in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide
427 all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon
428 determining that only a portion of the submitted health records should be disclosed, provide such portion
429 to the party on whose behalf the subpoena was issued and return the remaining health records to the
430 health care entity in a sealed envelope.

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

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

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

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

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

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

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

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

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

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

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

474 I. Health care entities may testify about the health records of an individual in compliance with
475 §§ 8.01-399 and 8.01-400.2.

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

483 *K. Nothing in this section shall prohibit a health care provider who dispenses a controlled substance*
484 *required to be reported to the Prescription Monitoring Program established pursuant to Chapter 25.2*
485 *(§ 54.1-2519 et seq.) of Title 54.1 to a patient from disclosing information obtained from the*
486 *Prescription Monitoring Program and contained in a patient's health care record to another health care*

487 *provider when such disclosure is related to the care or treatment of the patient who is the subject of the*
488 *record.*

489 § 54.1-2525. Unlawful disclosure of information; disciplinary action authorized; penalties.

490 A. It shall be unlawful for any person having access to the confidential information in the possession
491 of the ~~Program~~*program* or any data or reports produced by the program to disclose such confidential
492 information except as provided in this chapter. Any person having access to the confidential information
493 in the possession of the program or any data or reports produced by the program who discloses such
494 confidential information in violation of this chapter shall be guilty of a Class 1 misdemeanor upon
495 conviction.

496 B. It shall be unlawful for any person who lawfully receives confidential information from the
497 Prescription Monitoring Program to redisclose or use such confidential information in any way other
498 than the authorized purpose for which the request was made. Any person who lawfully receives
499 information from the Prescription Monitoring Program and discloses such confidential information in
500 violation of this chapter shall be guilty of a Class 1 misdemeanor upon conviction.

501 C. *Nothing in this section shall prohibit a person who prescribes or dispenses a covered substance*
502 *required to be reported to the program from redisclosing information obtained from the Program to*
503 *another prescriber or dispenser who has prescribed or dispensed a covered substance to a recipient.*

504 D. Unauthorized use or disclosure of confidential information received from the Prescription
505 Monitoring Program shall also be grounds for disciplinary action by the relevant health regulatory board.