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HOUSE BILL NO. 1152

Offered January 16, 2012

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

Patron—Massie

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-389, 19.2-389.1, 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, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for 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;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 15.2-4500 et seq.) and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment 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;

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HB1152

59 9. To the extent permitted by federal law or regulation, public service companies as defined in
60 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
61 personal contact with the public or when past criminal conduct of an applicant would be incompatible
62 with the nature of the employment under consideration;

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

65 11. A person requesting a copy of his own criminal history record information as defined in
66 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
67 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
68 America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency
69 Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of
70 Compeer; or (vi) any board member or any individual who has been offered membership on the board
71 of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

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

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

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

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

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

95 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in
96 § 4.1-103.1;

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

100 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who
101 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
102 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

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

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

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

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

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

120 25. Members of a threat assessment team established by a public institution of higher education

121 pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education, for the purpose of
122 assessing or intervening with an individual whose behavior may present a threat to safety; however, no
123 member of a threat assessment team shall redisclose any criminal history record information obtained
124 pursuant to this section or otherwise use any record of an individual beyond the purpose that such
125 disclosure was made to the threat assessment team;

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

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

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

135 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of
136 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the
137 purpose of determining if any applicant who accepts employment in any direct consumer care position
138 has been convicted of a crime that affects their fitness to have responsibility for the safety and
139 well-being of persons with mental illness, mental retardation and substance abuse pursuant to
140 §§ 37.2-416, 37.2-506, and 37.2-607;

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

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

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

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

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

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

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

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

173 38. The State Corporation Commission for the purpose of investigating individuals who are members,
174 senior officers, directors, and principals of an applicant for licensure as a mortgage lender or mortgage
175 broker, or a licensed mortgage lender or mortgage broker for the purpose of investigating individuals
176 applying for a position of employment in which the individual may have access to or process personal
177 identifying or financial information from a member of the public, pursuant to Chapter 16 (§ 6.2-1600 et
178 seq.) of Title 6.2. Notwithstanding any other provision of law, if an application for a mortgage lender or
179 mortgage broker license is denied based in whole or in part on information obtained from the Central
180 Criminal Records Exchange pursuant to § 6.2-1605, the Commissioner of Financial Institutions or his
181 designee may disclose such information to the applicant or its designee;

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

184 40. The Department of Rehabilitative Services and the Department for the Blind and Vision Impaired
185 for the purpose of evaluating an individual's fitness for various types of employment and for the purpose
186 of delivering comprehensive vocational rehabilitation services pursuant to Chapter 5 (§ 51.5-15 et seq.)
187 of Title 51.5 that will assist the individual in obtaining employment;

188 41. Bail bondsmen, in accordance with the provisions of § 19.2-120; and

189 42. Other entities as otherwise provided by law.

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

194 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to
195 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the
196 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a
197 copy of conviction data covering the person named in the request to the person making the request;
198 however, such person on whom the data is being obtained shall consent in writing, under oath, to the
199 making of such request. A person receiving a copy of his own conviction data may utilize or further
200 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data
201 subject, the person making the request shall be furnished at his cost a certification to that effect.

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

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

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

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

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

222 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be
223 limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

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

233 § 19.2-389.1. Dissemination of juvenile record information.

234 Record information maintained in the Central Criminal Records Exchange pursuant to the provisions
235 of § 16.1-299 shall be disseminated only (i) to make the determination as provided in §§ 18.2-308.2 and
236 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) to aid in the preparation of a pretrial
237 investigation report prepared by a local pretrial services agency established pursuant to Article 5
238 (§ 19.2-152.2 et seq.) of Chapter 9, a presentence or post-sentence investigation report pursuant to
239 § 19.2-264.5 or 19.2-299 or in the preparation of the discretionary sentencing guidelines worksheets
240 pursuant to subsection C of § 19.2-298.01; (iii) to aid local community-based probation services agencies
241 established pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders
242 (§ 9.1-173 et seq.) with investigating or serving adult local-responsible offenders and all court service
243 units serving juvenile delinquent offenders; (iv) for fingerprint comparison utilizing the fingerprints

244 maintained in the Automated Fingerprint Information System (AFIS) computer; (v) to attorneys for the
 245 Commonwealth to secure information incidental to sentencing and to attorneys for the Commonwealth
 246 and probation officers to prepare the discretionary sentencing guidelines worksheets pursuant to
 247 subsection C of § 19.2-298.01; (vi) to any full-time or part-time employee of the State Police, a police
 248 department or sheriff's office that is a part of or administered by the Commonwealth or any political
 249 subdivision thereof, and who is responsible for the prevention and detection of crime and the
 250 enforcement of the penal, traffic or highway laws of the Commonwealth, for purposes of the
 251 administration of criminal justice as defined in § 9.1-101; (vii) to the Department of Forensic Science to
 252 verify its authority to maintain the juvenile's sample in the DNA data bank pursuant to § 16.1-299.1;
 253 (viii) to the Office of the Attorney General, for all criminal justice activities otherwise permitted and for
 254 purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act
 255 (§ 37.2-900 et seq.); (ix) to the Virginia Criminal Sentencing Commission for research purposes; (x) to
 256 members of a threat assessment team established by a public institution of higher education pursuant to
 257 § 23-9.2:10 *or by a private nonprofit institution of higher education*, to aid in the assessment or
 258 intervention with individuals whose behavior may present a threat to safety; *however, no member of a*
 259 *threat assessment team shall redisclose any juvenile record information obtained pursuant to this section*
 260 *or otherwise use any record of an individual beyond the purpose that such disclosure was made to the*
 261 *threat assessment team*; and (xi) to any full-time or part-time employee of the State Police or a police
 262 department or sheriff's office that is a part of or administered by the Commonwealth or any political
 263 subdivision thereof for the purpose of screening any person for full-time or part-time employment with
 264 the State Police or a police department or sheriff's office that is a part of or administered by the
 265 Commonwealth or any political subdivision thereof.

266 § 32.1-127.1:03. Health records privacy.

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

271 Pursuant to this subsection:

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

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

279 3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health
 280 records of an individual, beyond the purpose for which such disclosure was made, without first
 281 obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall
 282 not, however, prevent (i) any health care entity that receives health records from another health care
 283 entity from making subsequent disclosures as permitted under this section and the federal Department of
 284 Health and Human Services regulations relating to privacy of the electronic transmission of data and
 285 protected health information promulgated by the United States Department of Health and Human
 286 Services as required by the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C.
 287 § 1320d et seq.) or (ii) any health care entity from furnishing health records and aggregate or other data,
 288 from which individually identifying prescription information has been removed, encoded or encrypted, to
 289 qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or
 290 contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health
 291 services research.

292 4. Health care entities shall, upon the request of the individual who is the subject of the health
 293 record, disclose health records to other health care entities, in any available format of the requestor's
 294 choosing, as provided in subsection E.

295 B. As used in this section:

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

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

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

302 "Health care clearinghouse" means, consistent with the definition set out in 45 C.F.R. § 160.103, a
 303 public or private entity, such as a billing service, repricing company, community health management
 304 information system or community health information system, and "value-added" networks and switches,

305 that performs either of the following functions: (i) processes or facilitates the processing of health
306 information received from another entity in a nonstandard format or containing nonstandard data content
307 into standard data elements or a standard transaction; or (ii) receives a standard transaction from another
308 entity and processes or facilitates the processing of health information into nonstandard format or
309 nonstandard data content for the receiving entity.

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

311 "Health care provider" means those entities listed in the definition of "health care provider" in
312 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the
313 purposes of this section. Health care provider shall also include all persons who are licensed, certified,
314 registered or permitted or who hold a multistate licensure privilege issued by any of the health
315 regulatory boards within the Department of Health Professions, except persons regulated by the Board of
316 Funeral Directors and Embalmers or the Board of Veterinary Medicine.

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

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

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

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

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

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

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

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

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

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

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

344 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to
345 § 16.1-248.3.

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

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

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

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

- 367 4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;
 368 5. In compliance with the provisions of § 8.01-413;
 369 6. As required or authorized by law relating to public health activities, health oversight activities,
 370 serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,
 371 public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,
 372 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,
 373 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,
 374 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and 63.2-1606;
 375 7. Where necessary in connection with the care of the individual;
 376 8. In connection with the health care entity's own health care operations or the health care operations
 377 of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in
 378 accordance with accepted standards of practice within the health services setting; however, the
 379 maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a
 380 pharmacy registered or permitted in Virginia shall only be accomplished in compliance with
 381 §§ 54.1-3410, 54.1-3411, and 54.1-3412;
 382 9. When the individual has waived his right to the privacy of the health records;
 383 10. When examination and evaluation of an individual are undertaken pursuant to judicial or
 384 administrative law order, but only to the extent as required by such order;
 385 11. To the guardian ad litem and any attorney representing the respondent in the course of a
 386 guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 10
 387 (§ 37.2-1000 et seq.) of Title 37.2;
 388 12. To the guardian ad litem and any attorney appointed by the court to represent an individual who
 389 is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5
 390 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title
 391 16.1, or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of
 392 Title 37.2;
 393 13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et
 394 seq.) of Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health
 395 authority or a designee of a community services board or behavioral health authority, or a
 396 law-enforcement officer participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter
 397 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
 398 the proceeding, and to any health care provider evaluating or providing services to the person who is the
 399 subject of the proceeding or monitoring the person's adherence to a treatment plan ordered under those
 400 provisions. Health records disclosed to a law-enforcement officer shall be limited to information
 401 necessary to protect the officer, the person, or the public from physical injury or to address the health
 402 care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any
 403 other purpose, disclosed to others, or retained;
 404 14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or
 405 administrative proceeding, if the court or administrative hearing officer has entered an order granting the
 406 attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the
 407 health care entity of such order;
 408 15. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health records
 409 in accord with § 9.1-156;
 410 16. To an agent appointed under an individual's power of attorney or to an agent or decision maker
 411 designated in an individual's advance directive for health care or for decisions on anatomical gifts and
 412 organ, tissue or eye donation or to any other person consistent with the provisions of the Health Care
 413 Decisions Act (§ 54.1-2981 et seq.);
 414 17. To third-party payors and their agents for purposes of reimbursement;
 415 18. As is necessary to support an application for receipt of health care benefits from a governmental
 416 agency or as required by an authorized governmental agency reviewing such application or reviewing
 417 benefits already provided or as necessary to the coordination of prevention and control of disease,
 418 injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;
 419 19. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership
 420 or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;
 421 20. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and
 422 immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;
 423 21. Where necessary in connection with the implementation of a hospital's routine contact process for
 424 organ donation pursuant to subdivision B 4 of § 32.1-127;
 425 22. In the case of substance abuse records, when permitted by and in conformity with requirements
 426 of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;
 427 23. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the

428 adequacy or quality of professional services or the competency and qualifications for professional staff
429 privileges;

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

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

442 26. (Effective until July 1, 2012) To the Office of the Inspector General for Behavioral Health and
443 Developmental Services pursuant to Article 3 (§ 37.2-423 et seq.) of Chapter 4 of Title 37.2;

444 26. (Effective July 1, 2012) To the Office of the State Inspector General pursuant to Chapter 3.2
445 (§ 2.2-307 et seq.) of Title 2.2;

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

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

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

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

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

465 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a
466 person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article
467 3.02 (§ 32.1-48.05 et seq.) of Chapter 2;

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

472 34. To notify a family member or personal representative of an individual who is the subject of a
473 proceeding pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or Chapter 8
474 (§ 37.2-800 et seq.) of Title 37.2 of information that is directly relevant to such person's involvement
475 with the individual's health care, which may include the individual's location and general condition,
476 when the individual has the capacity to make health care decisions and (i) the individual has agreed to
477 the notification, (ii) the individual has been provided an opportunity to object to the notification and
478 does not express an objection, or (iii) the health care provider can, on the basis of his professional
479 judgment, reasonably infer from the circumstances that the individual does not object to the notification.
480 If the opportunity to agree or object to the notification cannot practicably be provided because of the
481 individual's incapacity or an emergency circumstance, the health care provider may notify a family
482 member or personal representative of the individual of information that is directly relevant to such
483 person's involvement with the individual's health care, which may include the individual's location and
484 general condition if the health care provider, in the exercise of his professional judgment, determines
485 that the notification is in the best interests of the individual. Such notification shall not be made if the
486 provider has actual knowledge the family member or personal representative is currently prohibited by
487 court order from contacting the individual; and

488 35. To a threat assessment team established by a public institution of higher education pursuant to
489 § 23-9.2:10 or by a private nonprofit institution of higher education when such records concern a

490 student at the public institution of higher education, including a student who is a minor.

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

501 E. Health care records required to be disclosed pursuant to this section shall be made available
 502 electronically only to the extent and in the manner authorized by the federal Health Information
 503 Technology for Economic and Clinical Health Act (P.L. 111-5) and implementing regulations and the
 504 Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and implementing
 505 regulations. Notwithstanding any other provision to the contrary, a health care entity shall not be
 506 required to provide records in an electronic format requested if (i) the electronic format is not
 507 reasonably available without additional cost to the health care entity, (ii) the records would be subject to
 508 modification in the format requested, or (iii) the health care entity determines that the integrity of the
 509 records could be compromised in the electronic format requested. Requests for copies of or electronic
 510 access to health records shall (a) be in writing, dated and signed by the requester; (b) identify the nature
 511 of the information requested; and (c) include evidence of the authority of the requester to receive such
 512 copies or access such records, and identification of the person to whom the information is to be
 513 disclosed; and (d) specify whether the requester would like the records in electronic format, if available,
 514 or in paper format. The health care entity shall accept a photocopy, facsimile, or other copy of the
 515 original signed by the requestor as if it were an original. Within 15 days of receipt of a request for
 516 copies of or electronic access to health records, the health care entity shall do one of the following: (A)
 517 furnish such copies of or allow electronic access to the requested health records to any requester
 518 authorized to receive them in electronic format if so requested; (B) inform the requester if the
 519 information does not exist or cannot be found; (C) if the health care entity does not maintain a record of
 520 the information, so inform the requester and provide the name and address, if known, of the health care
 521 entity who maintains the record; or (D) deny the request (1) under subsection F, (2) on the grounds that
 522 the requester has not established his authority to receive such health records or proof of his identity, or
 523 (3) as otherwise provided by law. Procedures set forth in this section shall apply only to requests for health
 524 records not specifically governed by other provisions of state law.

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

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

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

551 physician or clinical psychologist determined that the individual's review of his health record would be
552 reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely
553 to cause substantial harm to a person referenced in the health record who is not a health care provider.

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

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

559 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

560 Individual's Name

561 Health Care Entity's Name

562 Person, Agency, or Health Care Entity to whom disclosure is to
563 be made

564 Information or Health Records to be disclosed

565 Purpose of Disclosure or at the Request of the Individual

566 As the person signing this authorization, I understand that I am
567 giving my permission to the above-named health care entity for
568 disclosure of confidential health records. I understand that the
569 health care entity may not condition treatment or payment on my
570 willingness to sign this authorization unless the specific
571 circumstances under which such conditioning is permitted by law
572 are applicable and are set forth in this authorization. I also
573 understand that I have the right to revoke this authorization at
574 any time, but that my revocation is not effective until delivered
575 in writing to the person who is in possession of my health records
576 and is not effective as to health records already disclosed under
577 this authorization. A copy of this authorization and a notation
578 concerning the persons or agencies to whom disclosure was made
579 shall be included with my original health records. I understand
580 that health information disclosed under this authorization might
581 be redisclosed by a recipient and may, as a result of such
582 disclosure, no longer be protected to the same extent as such
583 health information was protected by law while solely in the
584 possession of the health care entity.

585 This authorization expires on (date) or (event)

586 Signature of Individual or Individual's Legal Representative if
587 Individual is Unable to Sign

588 Relationship or Authority of Legal Representative

589 Date of Signature

590 H. Pursuant to this subsection:

591 1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or
592 administrative action or proceeding shall request the issuance of a subpoena duces tecum for another
593 party's health records or cause a subpoena duces tecum to be issued by an attorney unless a copy of the
594 request for the subpoena or a copy of the attorney-issued subpoena is provided to the other party's
595 counsel or to the other party if pro se, simultaneously with filing the request or issuance of the
596 subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces
597 tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a
598 copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the
599 request or issuance of the attorney-issued subpoena.

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

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

608 In instances where health records being subpoenaed are those of a pro se party or nonparty witness,
609 the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness

610 together with the copy of the request for subpoena, or a copy of the subpoena in the case of an
611 attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall
612 include the following language and the heading shall be in boldface capital letters:

613 **NOTICE TO INDIVIDUAL**

614 The attached document means that (insert name of party requesting or causing issuance of the
615 subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has
616 been issued by the other party's attorney to your doctor, other health care providers (names of health
617 care providers inserted here) or other health care entity (name of health care entity to be inserted here)
618 requiring them to produce your health records. Your doctor, other health care provider or other health
619 care entity is required to respond by providing a copy of your health records. If you believe your health
620 records should not be disclosed and object to their disclosure, you have the right to file a motion with
621 the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion
622 to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued
623 subpoena. You may contact the clerk's office or the administrative agency to determine the requirements
624 that must be satisfied when filing a motion to quash and you may elect to contact an attorney to
625 represent your interest. If you elect to file a motion to quash, you must notify your doctor, other health
626 care provider(s), or other health care entity, that you are filing the motion so that the health care
627 provider or health care entity knows to send the health records to the clerk of court or administrative
628 agency in a sealed envelope or package for safekeeping while your motion is decided.

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

633 **NOTICE TO HEALTH CARE ENTITIES**

634 **A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL
635 WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT
636 INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED
637 SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION
638 WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.**

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

642 **NO MOTION TO QUASH WAS FILED; OR**

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

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

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

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

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

665 If the health care entity has actual receipt of notice that a motion to quash the subpoena has been
666 filed or if the health care entity files a motion to quash the subpoena for health records, then the health
667 care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or
668 administrative agency issuing the subpoena or in whose court or administrative agency the action is
669 pending. The court or administrative agency shall place the health records under seal until a
670 determination is made regarding the motion to quash. The securely sealed envelope shall only be opened

671 on order of the judge or administrative agency. In the event the court or administrative agency grants
672 the motion to quash, the health records shall be returned to the health care entity in the same sealed
673 envelope in which they were delivered to the court or administrative agency. In the event that a judge or
674 administrative agency orders the sealed envelope to be opened to review the health records in camera, a
675 copy of the order shall accompany any health records returned to the health care entity. The health
676 records returned to the health care entity shall be in a securely sealed envelope.

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

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

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

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

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

707 b. 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 consistent with such resolution and that, since no
709 health records have previously been delivered to the court or administrative agency by the health care
710 entity, the health care entity shall comply with the subpoena duces tecum by returning the health records
711 designated in the subpoena by the return date on the subpoena or five days after receipt of certification,
712 whichever is later;

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

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

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

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

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

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

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

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

743 I. Health care entities may testify about the health records of an individual in compliance with
744 §§ 8.01-399 and 8.01-400.2.

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

752 K. Nothing in this section shall prohibit a health care provider who prescribes or dispenses a
753 controlled substance required to be reported to the Prescription Monitoring Program established pursuant
754 to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 to a patient from disclosing information obtained
755 from the Prescription Monitoring Program and contained in a patient's health care record to another
756 health care provider when such disclosure is related to the care or treatment of the patient who is the
757 subject of the record.