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HOUSE BILL NO. 2199

Offered January 14, 2015

A BILL to amend and reenact §§ 16.1-337, 32.1-127.1:03, and 32.1-127.1:04 of the Code of Virginia, relating to health records privacy; disclosure of records.

Patron—Berg

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-337, 32.1-127.1:03 and 32.1-127.1:04 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-337. Inpatient treatment of minors; general applicability; disclosure of records.

A. A minor may be admitted to a mental health facility for inpatient treatment only pursuant to § 16.1-338, 16.1-339, or 16.1-340.1 or in accordance with an order of involuntary commitment entered pursuant to §§ 16.1-341 through 16.1-345. The provisions of Article 12 (§ 16.1-299 et seq.) of Chapter 11 of this title relating to the confidentiality of files, papers, and records shall apply to proceedings under this article.

B. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to a minor who is the subject of proceedings under this article, upon request, shall disclose to a magistrate, the juvenile intake officer, the court, the minor's attorney, the minor's guardian ad litem, the qualified evaluator performing the evaluation required under §§ 16.1-338, 16.1-339, and 16.1-342, the community services board or its designee performing the evaluation, preadmission screening, or monitoring duties under this article, or a law-enforcement officer any and all information that is necessary and appropriate to enable each of them to perform his duties under this article. These health care providers and other service providers shall disclose to one another health records and information where necessary to provide care and treatment to the person and to monitor that care and treatment. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the minor, or the public from physical injury or to address the health care needs of the minor. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

Any health care provider providing services to a minor who is the subject of proceedings under this article ~~may~~ shall notify the minor's parent of information which is directly relevant to such individual's involvement with the minor's health care, which may include the minor's location and general condition, in accordance with subdivision D 34 26 of § 32.1-127.1:03, unless the provider has actual knowledge that the parent is currently prohibited by court order from contacting the minor.

Any health care provider disclosing records pursuant to this section shall be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person or provider disclosing such records intended the harm or acted in bad faith.

C. Any order entered where a minor is the subject of proceedings under this article shall provide for the disclosure of health records pursuant to subsection B. This subsection shall not preclude any other disclosures as required or permitted by law.

§ 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~~ Except as required by this section or pursuant to federal law, no health care entity, or other person working in a health care setting, may disclose or redisclose an individual's health records, except that a health care entity may disclose or redisclose the health record of a minor to a parent of the minor.

Pursuant to this subsection:

1. Health care entities shall disclose health records necessary in connection with the care of the individual and for the purpose of medical treatment only.

2. 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 and subsection B of § 8.01-413.

3. 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

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59 board established in Title 54.1.

60 3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health
61 records of an individual, beyond the purpose for which such disclosure was made, without first
62 obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall
63 not, however, prevent (i) any health care entity that receives health records from another health care
64 entity from making subsequent disclosures as permitted under this section and the federal Department of
65 Health and Human Services regulations relating to privacy of the electronic transmission of data and
66 protected health information promulgated by the United States Department of Health and Human
67 Services as required by the Health Insurance Portability and Accountability Act (HIPAA)(42 U.S.C.
68 § 1320d et seq.) or (ii) any health care entity from furnishing health records and aggregate or other data,
69 from which individually identifying prescription information has been removed, encoded or encrypted, to
70 qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or
71 contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health
72 services research.

73 4. Health care entities shall, upon the *written* request of the individual who is the subject of the
74 health record *or of the parent of a minor who is the subject of the health record*, disclose health records
75 to other health care entities, in any available format of the requestor's choosing, as provided in
76 subsection E.

77 B. As used in this section:

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

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

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

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

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

93 "Health care provider" means those entities listed in the definition of "health care provider" in
94 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the
95 purposes of this section. Health care provider shall also include all persons who are licensed, certified,
96 registered or permitted or who hold a multistate licensure privilege issued by any of the health
97 regulatory boards within the Department of Health Professions, except persons regulated by the Board of
98 Funeral Directors and Embalmers or the Board of Veterinary Medicine.

99 "Health plan" means an individual or group plan that provides, or pays the cost of, medical care.
100 "Health plan" shall include any entity included in such definition as set out in 45 C.F.R. § 160.103.

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

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

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

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

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

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

functional status, treatment plan, or the individual's progress to date.

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

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

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

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

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

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

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

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

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

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

6. As required or authorized by law relating to public health activities, health oversight activities, serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease, public safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283, 32.1-283.1, 32.1-320, 37.2-710, 37.2-839, 53.1-40.10, 54.1-2400.6, 54.1-2400.7, 54.1-2403.3, 54.1-2506, 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and 63.2-1606;

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

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

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

~~10.~~ 7. When examination and evaluation of an individual are undertaken pursuant to judicial or administrative law order, but only to the extent as required by such order;

~~11.~~ 8. To the guardian ad litem and any attorney representing the respondent in the course of a guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2;

~~12.~~ 9. To the guardian ad litem and any attorney appointed by the court to represent an individual who is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of Title 37.2;

~~13.~~ 10. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health authority or a designee of a community services board or behavioral health authority, or a law-enforcement officer participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, § 19.2-169.6, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of the proceeding, and to any health care provider evaluating or providing services to the person who is the subject of the proceeding or monitoring the person's adherence to a treatment plan ordered under those

provisions. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the person, or the public from physical injury or to address the health care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained;

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

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

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

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

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

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

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

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

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

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

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

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

26. 19. To the Office of the State Inspector General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title 2.2;

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

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

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

30. 22. To law-enforcement officials regarding the death of an individual for the purpose of alerting law enforcement of the death if the health care entity has a suspicion that such death may have resulted from criminal conduct, *provided such information is limited to the information that resulted in the health*

care entity believing that the death resulted from criminal conduct;

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

32. 24. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2, *provided such records are limited only to those related to the identification and treatment of the communicable disease or public health threat giving rise to the need for quarantine or isolation*;

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

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

35. 27. To a *mental health professional serving on a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education when such records concern a student at the institution of higher education, including a student who is a minor; and, when the mental health professional determines and states in writing that the student may have a mental illness that is a contributing factor in the behavior.*

36. To a regional emergency medical services council pursuant to § 32.1-116.1, for purposes limited to monitoring and improving the quality of emergency medical services pursuant to § 32.1-111.3.

Notwithstanding the provisions of subdivisions 1 through 35 27, a health care entity shall obtain an individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by the health care entity is (i) for its own training programs in which students, trainees, or practitioners in mental health are being taught under supervision to practice or to improve their skills in group, joint, family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of wrongful conduct; and (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1, to take precautions to protect third parties from violent behavior or other serious harm; ~~-(iv) required in the course of an investigation, audit, review, or proceeding regarding a health care entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise required by law.~~

E. Health care records ~~required to be~~ disclosed pursuant to this section shall be made available electronically only to the extent and in the manner authorized by the federal Health Information Technology for Economic and Clinical Health Act (P.L. 111-5) and implementing regulations and the Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and implementing regulations. Notwithstanding any other provision to the contrary, a health care entity shall not be required to provide records in an electronic format requested if (i) the electronic format is not reasonably available without additional cost to the health care entity, (ii) the records would be subject to modification in the format requested, or (iii) the health care entity determines that the integrity of the records could be compromised in the electronic format requested. Requests for copies of or electronic access to health records shall (a) be in writing, dated and signed by the requester; (b) identify the nature of the information requested; and (c) include evidence of the authority of the requester to receive such copies or access such records, and identification of the person to whom the information is to be disclosed; and (d) specify whether the requester would like the records in electronic format, if available, or in paper format. The health care entity shall accept a photocopy, facsimile, or other copy of the original signed by the requestor as if it were an original. Within 15 days of receipt of a request for copies of or electronic access to health records, the health care entity shall do one of the following: (A)

305 furnish such copies of or allow electronic access to the requested health records to any requester
306 authorized to receive them in electronic format if so requested; (B) inform the requester if the
307 information does not exist or cannot be found; (C) if the health care entity does not maintain a record of
308 the information, so inform the requester and provide the name and address, if known, of the health care
309 entity who maintains the record; or (D) deny the request (1) under subsection F, (2) on the grounds that
310 the requester has not established his authority to receive such health records or proof of his identity, or
311 (3) as otherwise provided by law. Procedures set forth in this section shall apply only to requests for health
312 records not specifically governed by other provisions of state law.

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

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

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

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

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

347 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

348 Individual's Name

349 Health Care Entity's Name

350 Person, Agency, or Health Care Entity to whom disclosure is to
351 be made

352 Information or Health Records to be disclosed

353 Purpose of Disclosure or at the Request of the Individual

354 As the person signing this authorization, I understand that I am giving my
355 permission to the above-named health care entity for disclosure of
356 confidential health records. I understand that the health care entity may not
357 condition treatment or payment on my willingness to sign this authorization
358 unless the specific circumstances under which such conditioning is permitted
359 by law are applicable and are set forth in this authorization. I also
360 understand that I have the right to revoke this authorization at any time, b-

361 ut

362 that my revocation is not effective until delivered in writing to the person
363 who is in possession of my health records and is not effective as to health
364 records already disclosed under this authorization. A copy of this

authorization and a notation concerning the persons or agencies to whom disclosure was made shall be included with my original health records. I understand that health information disclosed under this authorization might be redisclosed by a recipient and may, as a result of such disclosure, no longer be protected to the same extent as such health information was protected by law while solely in the possession of the health care entity. This authorization expires on (date) or (event) Signature of Individual or Individual's Legal Representative if Individual is Unable to Sign Relationship or Authority of Legal Representative Date of Signature

H. Pursuant to this subsection:

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

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

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

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

NOTICE TO INDIVIDUAL

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

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

NOTICE TO HEALTH CARE ENTITIES

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

425 SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION
426 WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.

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

430 NO MOTION TO QUASH WAS FILED; OR

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

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

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

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

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

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

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

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

479 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if
480 subpoenaed health records have been submitted by a health care entity to the court or administrative
481 agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no
482 submitted health records should be disclosed, return all submitted health records to the health care entity
483 in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide
484 all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon
485 determining that only a portion of the submitted health records should be disclosed, provide such portion
486 to the party on whose behalf the subpoena was issued and return the remaining health records to the

health care entity in a sealed envelope.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 32.1-127.1:04. Use or disclosure of certain protected health information required.

A. The coordination of prevention and control of disease, injury, or disability and the delivery of

548 health care benefits are hereby declared to be (i) necessary public health activities; (ii) necessary health
549 oversight activities for the integrity of the health care system; and (iii) necessary to prevent serious harm
550 and serious threats to the health and safety of individuals and the public.

551 B. A. The Departments *State Department of Health, Medical Assistance Services, Department of*
552 *Behavioral Health and Developmental Services, and Department of Social Services, and the Departments*
553 *for Aging and Rehabilitative Services, the Blind and Vision Impaired, and the Deaf and*
554 *Hard-of-Hearing, or any successors in interest thereof, shall establish a secure system for sharing*
555 *protected health information that may be necessary for the coordination of prevention and control of*
556 *disease, injury, or disability and for the delivery of health care benefits when such protected information*
557 *concerns individuals who (i) have contracted a reportable disease, including exposure to a toxic*
558 *substance, as required by the Board of Health pursuant to § 32.1-35 or other disease or disability*
559 *required to be reported by law; (ii) are the subjects of public health surveillance, or public health*
560 *investigations, or public health interventions or are applicants for or recipients of medical assistance*
561 *services; (iii) have been or are the victims of child abuse or neglect or domestic violence; or (iv) may*
562 *present a serious threat to health or safety of a person or the public or may be subject to a serious threat*
563 *to their health or safety. For the purposes of this section, "public health interventions" shall include the*
564 *services provided through the Departments for Aging and Rehabilitative Services, the Blind and Vision*
565 *Impaired, and the Deaf and Hard-of-Hearing, or any successors in interest thereof.*

566 Pursuant to the regulations concerning patient privacy promulgated by the federal Department of
567 Health and Human Services, covered entities may disclose protected health information to the secure
568 system without obtaining consent or authorization for such disclosure. Such protected health information
569 shall be used exclusively for the purposes established in this section.

570 C. B. The Office of the Attorney General shall advise the Departments *State Department of Health,*
571 *Medical Assistance Services, Department of Behavioral Health and Developmental Services, and*
572 *Department of Social Services and the Departments for Aging and Rehabilitative Services, the Blind and*
573 *Vision Impaired, and the Deaf and Hard-of-Hearing, or any successors in interest thereof, in the*
574 *implementation of this section.*