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SENATE BILL NO. 968

Offered January 14, 2015

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A BILL to amend and reenact § 2.2-3705.5 of the Code of Virginia, relating to the Virginia Freedom of Information Act; record exemption for certain health records.

 Patron—Ruff

 Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-3705.5 of the Code of Virginia is amended and reenacted as follows:****§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.**

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and Developmental Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any information that identifies specific individuals receiving services.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

3. Reports, documentary evidence and other information as specified in §§ 51.5-122, 51.5-141, and 63.2-104.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and records and information furnished to the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (§ 8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

5. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.

7. Data formerly required to be submitted to the Commissioner of Health relating to the

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SB968

establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

8. Information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1.

9. Information and records acquired (i) during a review of any child death conducted by the State Child Fatality Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to the extent made confidential by § 32.1-283.2; (ii) during a review of any death conducted by a family violence fatality review team to the extent made confidential by § 32.1-283.3; or (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § 32.1-283.5.

10. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.

11. Records of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions, to the extent such records may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § 54.1-2517.

12. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title 51.5, to the extent such records contain (i) medical or mental health records, or other data identifying individual patients or (ii) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

13. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

14. Records, information and statistical registries required to be kept confidential pursuant to §§ 63.2-102 and 63.2-104.

15. All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § 38.2-5002.2.

17. Records of the State Health Commissioner relating to the health of any person or persons subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of statistical summaries, abstracts or other information in aggregate form.

18. Records containing the names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § 63.2-600.

19. *Records of certain health care committees and entities, to the extent that they reveal information that may be withheld from discovery as privileged communications pursuant to § 8.01-581.17.*