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SENATE BILL NO. 1561

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health)
(Patron Prior to Substitute—Senator Dunnavant)
Senate Amendments in [] — February 6, 2017

A BILL to amend and reenact § 2.2-3705.5 of the Code of Virginia and to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 19, consisting of a section numbered 32.1-372, relating to Emergency Department Care Coordination Program.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3705.5 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 19, consisting of a section numbered 32.1-372, as follows:

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

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 disclosed. 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 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. Information from the records of completed investigations shall be disclosed in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

5. Information 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

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60 pursuant to § 37.2-818.

61 7. Data formerly required to be submitted to the Commissioner of Health relating to the
62 establishment of new or the expansion of existing clinical health services, acquisition of major medical
63 equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

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

66 9. Information acquired (i) during a review of any child death conducted by the State Child Fatality
67 Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to
68 the extent that such information is made confidential by § 32.1-283.2; (ii) during a review of any death
69 conducted by a family violence fatality review team to the extent that such information is made
70 confidential by § 32.1-283.3; or (iii) during a review of any adult death conducted by the Adult Fatality
71 Review Team to the extent made confidential by § 32.1-283.5 or by a local or regional adult fatality
72 review team to the extent that such information is made confidential by § 32.1-283.6.

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

76 11. Information held by the Health Practitioners' Monitoring Program Committee within the
77 Department of Health Professions that may identify any practitioner who may be, or who is actually,
78 impaired and disclosure of such information is prohibited by § 54.1-2517.

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

86 13. Any information copied, recorded, or received by the Commissioner of Health in the course of an
87 examination, investigation, or review of a managed care health insurance plan licensee pursuant to
88 §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or
89 all computer or other recordings.

90 14. Information and statistical registries required to be kept confidential pursuant to §§ 63.2-102 and
91 63.2-104.

92 15. Information relating to the prescribing and dispensing of covered substances to recipients and any
93 abstracts from such information that are in the possession of the Prescription Monitoring Program
94 pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or
95 security of the Program.

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

98 17. Information held by the State Health Commissioner relating to the health of any person subject to
99 an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter
100 2 of Title 32.1. However, nothing in this subdivision shall be construed to authorize the withholding of
101 statistical summaries, abstracts, or other information in aggregate form.

102 18. The names and addresses or other contact information of persons receiving transportation services
103 from a state or local public body or its designee under Title II of the Americans with Disabilities Act,
104 (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created
105 under § 63.2-600.

106 19. Information held by certain health care committees and entities that may be withheld from
107 discovery as privileged communications pursuant to § 8.01-581.17.

108 20. *Records of and information held by the Emergency Department Care Coordination Program*
109 *required to be kept confidential pursuant to § 32.1-372.*

110 CHAPTER 19.

111 EMERGENCY DEPARTMENT CARE COORDINATION PROGRAM.

112 § 32.1-372. *Emergency Department Care Coordination Program; purpose.*

113 A. *The Emergency Department Care Coordination Program (the Program) is hereby created to*
114 *provide a single, statewide technology solution that connects all hospital emergency departments in the*
115 *Commonwealth to facilitate real-time communication and collaboration among physicians, other health*
116 *care providers, and clinical and care management personnel for patients receiving services in hospital*
117 *emergency departments, for the purpose of improving the quality of patient care services.*

118 B. *In developing and implementing the Program, the Commissioner shall ensure that the Program:*

119 1. *Receives real-time patient visit information from, and shares such information with, every hospital*
120 *emergency department in the Commonwealth through integrations that enable receiving information*
121 *from and delivering information into electronic health records systems utilized by such hospital*

emergency departments;

2. Requires that all participants in the Program have fully executed health care data exchange contracts that ensure that the secure and reliable exchange of patient information fully complies with patient privacy and security requirements of applicable state and federal laws and regulations, including the Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.);

3. Allows hospital emergency departments in the Commonwealth to receive real-time alerts triggered by analytics to identify patient-specific risks, to create and share care coordination plans and other care recommendations, and to access other clinically beneficial information related to patients receiving services in hospital emergency departments in the Commonwealth;

4. Provides a patient's designated primary care physician and supporting clinical and care management personnel with treatment and care coordination information about a patient receiving services in a hospital emergency department in the Commonwealth, including care plans and hospital admissions, transfers, and discharges;

5. Provides a patient's designated managed care organization and supporting clinical and care management personnel with care coordination plans and discharge and other treatment and care coordination information about a member receiving services in a hospital emergency department in the Commonwealth; and

6. Is integrated with the Prescription Monitoring Program established pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and the Advance Health Care Directive Registry established pursuant to Article 9 (§ 54.1-2994 et seq.) of Chapter 29 of Title 54.1 to enable automated query and automatic delivery of relevant information from such sources into the existing work flow of health care providers in the emergency department.

C. The Commissioner shall enter into a contract with a third party to create, operate, maintain, or administer the Program in accordance with this section, which shall include provisions for the protection of patient privacy and data security pursuant to state and federal law and regulations, including the Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.). The third-party contractor shall establish an advisory council, which shall consist of representatives of the Department, the Department of Medical Assistance Services, the Department of Health Professions, the Virginia Hospital and Healthcare Association, the Virginia Association of Health Plans, the Medical Society of Virginia, the Virginia College of Emergency Physicians, the Virginia Chapter of the American Academy of Pediatricians, and the Virginia Academy of Family Physicians, to advise the Commissioner and the third-party contractor regarding the establishment and operation of the Program, changes to the Program, and outcome measures for the Program.

D. Information submitted to the Program shall be confidential and shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

2. That the provisions of this act shall not become effective unless and until the Commonwealth receives federal Health Information Technology for Economic and Clinical Health (HITECH) Act funds to implement its provisions.

[3. That the provisions of this act shall not become effective unless an appropriation effectuating the purposes of this act is included in a general appropriation act passed in 2017 by the General Assembly that becomes law.]