

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 628

An Act to amend and reenact §§ 2.2-3705.5, 32.1-372, 54.1-2523, and 54.1-2525 of the Code of Virginia, relating to Smartchart Network Program.

[H 2345]

Approved March 26, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.5, 32.1-372, 54.1-2523, and 54.1-2525 of the Code of Virginia are amended and reenacted 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; information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1; information held by the Health Practitioners' Monitoring Program Committee within the Department of Health Professions that identifies any practitioner who may be, or who is actually, impaired to the extent that disclosure is prohibited by § 54.1-2517; and information relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such information that are in the possession of the Prescription Monitoring Program (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.

3. Reports, documentary evidence, and other information as specified in §§ 51.5-122 and 51.5-184 and Chapter 1 (§ 63.2-100 et seq.) of Title 63.2 and information and statistical registries required to be kept confidential pursuant to Chapter 1 (§ 63.2-100 et seq.) of Title 63.2.

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 Education in connection with an active investigation of an applicant or licensee pursuant to Chapter 14.1 (§ 22.1-289.02 et seq.) of Title 22.1; 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. However, nothing in this subdivision shall prevent the 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 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. Information 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 that such information is 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 that such information is made confidential by § 32.1-283.3; (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 or by a local or regional adult fatality review team to the extent that such information is made confidential by § 32.1-283.6; (iv) by a local or regional overdose fatality review team to the extent that such information is made confidential by § 32.1-283.7; (v) during a review of any death conducted by the Maternal Mortality Review Team to the extent that such information is made confidential by § 32.1-283.8; or (vi) during a review of any death conducted by the Developmental Disabilities Mortality Review Committee to the extent that such information is made confidential by § 37.2-314.1.

8. 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.

9. Information relating to a grant application, or accompanying a grant application, submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title 51.5 that would (i) reveal (a) medical or mental health records or other data identifying individual patients or (b) 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, and (ii) be harmful to the competitive position of the applicant.

10. Any information 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.

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

12. Information held by the State Health Commissioner relating to the health of any person 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. However, nothing in this subdivision shall be construed to prevent the disclosure of statistical summaries, abstracts, or other information in aggregate form.

13. 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.

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

15. Data and information specified in § 37.2-308.01 relating to proceedings provided for in Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 and Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.

16. Records of and information held by the ~~Emergency Department Care Coordination Smartchart Network~~ Program required to be kept confidential pursuant to § 32.1-372.

CHAPTER 19.

~~EMERGENCY DEPARTMENT CARE COORDINATION~~SMARTCHART NETWORK PROGRAM.

§ 32.1-372. Smartchart Network Program established; purpose.

A. The ~~Emergency Department Care Coordination Smartchart Network~~ Program (the Program) is hereby created to provide a single, statewide technology solution that connects all ~~hospital emergency departments~~ *health care providers, insurance carriers, and other organizations with a treatment, payment, or operations relationship with a patient* in the Commonwealth to facilitate real-time communication and collaboration among ~~physicians, other health care providers, and clinical and care management personnel for patients receiving services in hospital emergency departments, for the purpose of improving and improve the quality of patient care services.~~

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

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

departments hospitals;

2. Requires that all participants in the Program *share patient information and* have fully executed health care data exchange contracts ~~that to ensure that~~ the secure and reliable exchange of patient information ~~fully complies in compliance with the~~ 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. *Enables health care providers, health care entities, and insurance carriers to access information necessary to evaluate and monitor the care and treatment of a patient in accordance with the 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.);*

4. Allows ~~hospital emergency departments~~ *health care providers* 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 *health care services in hospital emergency departments* in the Commonwealth, *including strategies and methods to continue to improve care coordination in hospital emergency departments and reduce the frequency of visits by high-volume emergency department utilizers;*

4. 5. 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 *health care services in a hospital emergency department* in the Commonwealth, including care plans, *lab results, images, and hospital admissions, transfers, and discharges;*

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

6. 7. 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~~ *continue and rename the Emergency Department Care Coordination Advisory Council established by Chapter 836 of the Acts of Assembly of 2017 as the Smartchart Network Program Advisory Council (the 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.

The Advisory Council established pursuant to this subsection shall continue to ensure that information is shared among emergency departments throughout the Commonwealth and all hospitals operating emergency departments in the Commonwealth, all Medicaid managed care contracted health plans, the state employee health insurance plan, all Medicare plans operating in the Commonwealth, and all commercial plans operating in the Commonwealth, excluding ERISA plans, and shall participate in the emergency department information exchange program to continue to improve care coordination in hospital emergency departments and reduce the frequency of visits by high-volume emergency department utilizers.

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.).

§ 54.1-2523. Confidentiality of data; disclosure of information; discretionary authority of Director.

A. 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 this chapter and any material relating to the operation or security of the program shall be confidential and shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 2 of § 2.2-3705.5. Records in possession of the Prescription Monitoring Program shall not be available for civil subpoena, nor shall such records be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records be deemed admissible as evidence in any civil proceeding for any reason. Further, the Director shall only have discretion to disclose any such information as provided in subsections B and C.

B. Upon receiving a request for information in accordance with the Department's regulations and in compliance with applicable federal law and regulations, the Director shall disclose the following:

1. Information relevant to a specific investigation of a specific recipient or of a specific dispenser or prescriber to an agent who has completed the Virginia State Police Drug Diversion School designated by the superintendent of the Department of State Police or designated by the chief law-enforcement officer of any county, city, or town or campus police department to conduct drug diversion investigations pursuant to § 54.1-3405.

2. Information relevant to an investigation or inspection of or allegation of misconduct by a specific person licensed, certified, or registered by or an applicant for licensure, certification, or registration by a health regulatory board; information relevant to a disciplinary proceeding before a health regulatory board or in any subsequent trial or appeal of an action or board order to designated employees of the Department of Health Professions; or to designated persons operating the Health Practitioners' Monitoring Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.).

3. Information relevant to the proceedings of any investigatory grand jury or special grand jury that has been properly impaneled in accordance with the provisions of Chapter 13 (§ 19.2-191 et seq.) of Title 19.2.

4. Information relevant to a specific investigation of a specific recipient, dispenser, or prescriber to an agent of a federal law-enforcement agency with authority to conduct drug diversion investigations.

5. Information relevant to a specific investigation, supervision, or monitoring of a specific recipient for purposes of the administration of criminal justice pursuant to Chapter 1 (§ 9.1-100 et seq.) of Title 9.1 to a probation or parole officer as described in Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1 or a local community-based probation officer as described in § 9.1-176.1 who has completed the Virginia State Police Drug Diversion School designated by the Director of the Department of Corrections or his designee.

6. Information relevant to a specific investigation of a specific individual into a possible delivery of a controlled substance in violation of § 18.2-474.1 to an investigator for the Department of Corrections who has completed the Virginia State Police Drug Diversion School and who has been designated by the Director of the Department of Corrections or his designee.

7. Information about a specific recipient to the ~~Emergency Department Care Coordination~~ *Smartchart Network Program* in accordance with subdivision B 6 7 of § 32.1-372.

C. In accordance with the Department's regulations and applicable federal law and regulations, the Director may, in his discretion, disclose:

1. Information in the possession of the Prescription Monitoring Program concerning a recipient who is over the age of 18 to that recipient. The information shall be mailed to the street or mailing address indicated on the recipient request form.

2. Information on a specific recipient to a prescriber, as defined in this chapter, for the purpose of establishing the treatment history of the specific recipient when such recipient is either under care and treatment by the prescriber or the prescriber is consulting on or initiating treatment of such recipient. In a manner specified by the Director in regulation, notice shall be given to patients that information may be requested by the prescriber from the Prescription Monitoring Program.

3. Information on a specific recipient to a dispenser for the purpose of establishing a prescription history to assist the dispenser in (i) determining the validity of a prescription in accordance with § 54.1-3303 or (ii) providing clinical consultation on the care and treatment of the recipient. In a manner specified by the Director in regulation, notice shall be given to patients that information may be requested by the dispenser from the Prescription Monitoring Program.

4. Information relevant to an investigation or regulatory proceeding of a specific dispenser or prescriber to other regulatory authorities concerned with granting, limiting or denying licenses, certificates or registrations to practice a health profession when such regulatory authority licenses such dispenser or prescriber or such dispenser or prescriber is seeking licensure by such other regulatory authority.

5. Information relevant to an investigation relating to a specific dispenser or prescriber who is a participating provider in the Virginia Medicaid program or information relevant to an investigation relating to a specific recipient who is currently eligible for and receiving or who has been eligible for and has received medical assistance services to the Medicaid Fraud Control Unit of the Office of the Attorney General or to designated employees of the Department of Medical Assistance Services, as appropriate.

6. Information relevant to determination of the cause of death of a specific recipient to the designated employees of the Office of the Chief Medical Examiner.

7. Information for the purpose of bona fide research or education to qualified personnel; however, data elements that would reasonably identify a specific recipient, prescriber, or dispenser shall be deleted or redacted from such information prior to disclosure. Further, release of the information shall only be made pursuant to a written agreement between such qualified personnel and the Director in order to ensure compliance with this subdivision.

8. Information relating to prescriptions for covered substances issued by a specific prescriber, which

have been dispensed and reported to the Prescription Monitoring Program, to that prescriber.

9. Information about a specific recipient who is a member of a Virginia Medicaid managed care program to a physician or pharmacist licensed in the Commonwealth and employed by the Virginia Medicaid managed care program or to his clinical designee who holds a multistate licensure privilege to practice nursing or a license issued by a health regulatory board within the Department of Health Professions and is employed by the Virginia Medicaid managed care program. Such information shall only be used to determine eligibility for and to manage the care of the specific recipient in a Patient Utilization Management Safety or similar program. Notice shall be given to recipients that information may be requested by a licensed physician or pharmacist employed by the Virginia Medicaid managed care program from the Prescription Monitoring Program.

10. [Expired.]

11. Information about a specific recipient who is currently eligible for and receiving medical assistance from the Department of Medical Assistance Services to a physician or pharmacist licensed in the Commonwealth or to his clinical designee who holds a multistate licensure privilege to practice nursing or a license issued by a health regulatory board within the Department of Health Professions and is employed by the Department of Medical Assistance Services.

Such information shall be used only to determine eligibility for and to manage the care of the specific recipient in a Patient Utilization Management Safety or similar program. Notice shall be given to recipients that information may be requested by a licensed physician or pharmacist employed by the Department of Medical Assistance Services from the Prescription Monitoring Program.

D. The Director may enter into agreements for mutual exchange of information among prescription monitoring programs in other jurisdictions, which shall only use the information for purposes allowed by this chapter.

E. This section shall not be construed to supersede the provisions of § 54.1-3406 concerning the divulging of confidential records relating to investigative information.

F. Confidential information that has been received, maintained or developed by any board or disclosed by the board pursuant to subsection A shall not, under any circumstances, be available for discovery or court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision of or failure to provide services. However, this subsection shall not be construed to inhibit any investigation or prosecution conducted pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

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

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

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

C. Nothing in this section shall prohibit (i) a person who prescribes or dispenses a covered substance to a recipient required to be reported to the program from redisclosing information obtained from the Prescription Monitoring Program to another prescriber or dispenser who has responsibility for treating the recipient or (ii) a person who prescribes a covered substance from placing information obtained from the Prescription Monitoring Program in the recipient's medical record.

D. Information obtained from the Prescription Monitoring Program pursuant to subdivision B 6 7 of § 32.1-372 shall become part of the patient's medical record.

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

2. That the provisions of the first enactment of this act shall become effective on January 1, 2024.

3. That the State Health Commissioner (the Commissioner) and the Director of the Department of Health Professions (the Director) shall convene a work group to study and establish a plan to develop and implement a system to share information regarding a patient's prescription history and medication reconciliation. The work group shall include the Department of Medical Assistance Services and relevant stakeholders, including representatives of the Virginia Hospital and Healthcare Association, the Medical Society of Virginia, the Virginia Association of Health Plans, the Virginia Pharmacists Association, Virginia Health Information, and a private sector technology expert with experience in prescription data sharing and controlled substance monitoring. The Commissioner and the Director shall report their findings and recommendations to the Chairmen of the Joint Commission on Health Care, Senate Committee on Education and Health, and House Committee on Health, Welfare and Institutions by October 1, 2023.