

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 390

An Act to amend and reenact §§ 8.01-413 and 42.1-77 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 32.1-127.1:01 and 54.1-2403.2, relating to medical records.

[H 601]

Approved April 6, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-413 and 42.1-77 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 32.1-127.1:01 and 54.1-2403.2 as follows:

§ 8.01-413. Certain copies of health care provider's records or papers of patient admissible; right of patient or his attorney to copies of such records or papers; subpoena; damages, costs and attorney's fees.

A. In any case where the hospital, *nursing facility*, physician's, or other health care provider's original records or papers of any patient in a hospital or institution for the treatment of physical or mental illness are admissible or would be admissible as evidence, any typewritten copy, photograph, photostatic copy, or microphotograph or *printout or other hard copy generated from computerized or other electronic storage, microfilm, or other photographic, mechanical, electronic or chemical storage process* thereof shall be admissible as evidence in any court of this Commonwealth in like manner as the original, ~~provided if the typewritten copy, photograph, photostatic printout or hard copy or microphotograph or photograph~~ is properly authenticated by the ~~hospital~~ employees having authority to release or produce ~~in court~~ the original records.

Any hospital, *nursing facility*, physician, or other health care provider whose records or papers relating to any such patient are subpoenaed for production under this section or the Rules of the Supreme Court of Virginia may comply with the subpoena by a timely mailing to the clerk issuing the subpoena properly authenticated copies, photographs or microphotographs in lieu of the originals. The court whose clerk issued the subpoena may, after notice to such hospital, *nursing facility*, physician, or other health care provider, enter an order requiring production of the originals, if available, of any *stored* records or papers whose copies, photographs or microphotographs are not sufficiently legible. The party requesting the subpoena shall be liable for the reasonable charges of the hospital, *nursing facility*, physician, or other health care provider for copying and mailing the items produced, not to exceed fifty cents for each page for up to fifty pages and twenty-five cents a page for the remainder.

B. Copies of hospital, *nursing facility*, physician's, or other health care provider's records or papers shall be furnished within fifteen days of such request to the patient or his attorney upon such patient's or attorney's written request. However, copies of a patient's records shall not be furnished to such patient where the patient's treating physician has made a part of the patient's records a written statement that in his opinion the furnishing to or review by the patient of such records would be injurious to the patient's health or well-being, but in any such case such records shall be furnished to the patient's attorney within fifteen days of the date of such request. A reasonable charge, not to exceed fifty cents a page for up to fifty pages and twenty-five cents a page for the remainder, and a fee for searching, handling and mailing not to exceed ten dollars, may be made for such copies. Any hospital, *nursing facility*, physician, or other health care provider receiving such a request from a patient's attorney may require a writing signed by the patient confirming the attorney's authority to make the request. Records or papers relating to a deceased patient, or a patient whose treating physician determines to be mentally incompetent to consent, or physically incapable of consenting, shall be provided to any of the following persons, in order of priority stated, upon the written request of such person, ~~provided that unless~~ the hospital, *nursing facility*, physician, or other health care provider is not aware of any available person in a higher class: (i) the personal representative of a deceased patient; (ii) the legal guardian or committee of an incompetent or incapacitated patient; (iii) the spouse; (iv) an adult son or daughter; (v) either parent; (vi) an adult brother or sister; or (vii) any of the other relatives of the patient in the descending order of blood relationship.

C. Upon the failure of any hospital, *nursing facility*, physician, or other health care provider to comply with any written request made in accordance with subsection B within the period of time specified in that subsection, the patient or his attorney may by affidavit filed with the clerk of the circuit court wherein any eventual suit, if any, would be required to be filed, upon payment of the fees required by subdivision (23) of § 14.1-112, and fees for service, request that the clerk subpoena such records or papers. The clerk shall thereupon issue a subpoena, returnable within twenty days of proper service, directing the hospital, *nursing facility*, physician, or other health care provider to produce and furnish copies of the reports and papers to him, whereupon, the clerk shall make the same available to the patient or his attorney. If the court finds that a hospital, *nursing facility*, physician, or other health care provider willfully refused to comply with a written request made in accordance with subsection B, either

by willfully or arbitrarily refusing or by imposing a charge in excess of the reasonable expense of making the copies and processing the request for records, the court may award damages for all expenses incurred by the patient to obtain such copies, including court costs and reasonable attorney's fees.

D. The provisions of subsections A, B, and C hereof shall apply to any health care provider whose office is located within or without the Commonwealth if the records pertain to any patient who is a party to a cause of action in any court in the Commonwealth of Virginia.

E. Health care provider, as used in this section, shall have the same meaning as provided in § 8.01-581.1.

§ 32.1-127.1:01. *Record storage.*

Medical records, as defined in § 42.1-77, may be stored by computerized or other electronic process or microfilm, or other photographic, mechanical, or chemical process; however, the stored record shall identify the location of any documents or information that could not be so technologically stored. If the technological storage process creates an unalterable record, the nursing facility, hospital or other licensed health care provider shall not be required to maintain paper copies of medical records that have been stored by computerized or other electronic process, microfilm, or other photographic, mechanical, or chemical process. Upon completing such technological storage, paper copies of medical records may be destroyed in a manner that preserves the patient's confidentiality. However, any documents or information that could not be so technologically stored shall be preserved.

§ 42.1-77. Definitions.

As used in this chapter:

"Agency" means all boards, commissions, departments, divisions, institutions, authorities, or parts thereof, of the Commonwealth or its political subdivisions and includes the offices of constitutional officers.

"Archival quality" means a quality of reproduction consistent with established standards specified by state and national agencies and organizations responsible for establishing such standards, such as the Association for Information and Image Management, the American Standards Association, and the National Bureau of Standards.

"Board" means the State Library Board.

"Council" means the State Public Records Advisory Council.

"Custodian" means the public official in charge of an office having public records.

"State Librarian" means the State Librarian or his designated representative.

"Public official" means all persons holding any office created by the Constitution of Virginia or by any act of the General Assembly, the Governor and all other officers of the executive branch of the state government, and all other officers, heads, presidents or chairmen of boards, commissions, departments, and agencies of the state government or its political subdivisions.

"Public records" means, but is not limited to, all written books, papers, letters, documents, photographs, tapes, microfiche, microfilm, photostats, sound recordings, maps, other documentary materials or information in any recording medium regardless of physical form or characteristics, including electronically recorded data, made or received in pursuance of law or in connection with the transaction of public business by any agency or employee of state government or its political subdivisions.

Nonrecord materials, meaning reference books and exhibit materials made or acquired and preserved solely for reference use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications, shall not be included within the definition of public records as used in this chapter.

"Archival records" means all noncurrent records of continuing and enduring value useful to the citizens of the Commonwealth and necessary to the administrative functions of public agencies in the conduct of services and activities mandated by law. In appraisal of public records deemed archival, the terms "administrative," "legal," "fiscal," and "historical" shall be defined as:

1. "Administrative value": Records shall be deemed of administrative value if they have continuing utility in the operation of an agency.

2. "Legal value": Records shall be deemed of legal value when they document actions taken in the protection and proving of legal or civil rights and obligations of individuals and agencies.

3. "Fiscal value": Records shall be deemed of fiscal value so long as they are needed to document and verify financial authorizations, obligations and transactions.

4. "Historical value": Records shall be deemed of historical value when they contain unique information, regardless of age, which provides understanding of some aspect of the government and promotes the development of an informed and enlightened citizenry.

"Medical records" means the documentation of health care services, whether physical or mental, rendered by direct or indirect patient-provider interaction which is used as a mechanism for tracking the patient's health care status. *Medical records may be technologically stored by computerized or other electronic process, or through microfilm or other similar photographic form or chemical process.*

"Persons under a disability" means persons so defined under subsection A of § 8.01-229.

§ 54.1-2403.2. *Record storage.*

Medical records, as defined in § 42.1-77, may be stored by computerized or other electronic process or microfilm, or other photographic, mechanical, or chemical process; however, the stored record shall identify the location of any documents or information that could not be so technologically stored. If the technological storage process creates an unalterable record, a health care provider licensed, certified or registered by a health regulatory board within the Department shall not be required to maintain paper copies of medical records that have been stored by computerized or other electronic process, microfilm, or other photographic, mechanical, or chemical process. Upon completing such technological storage, paper copies of medical records may be destroyed in a manner that preserves the patient's confidentiality. However, any documents or information that could not be so technologically stored shall be preserved.