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HOUSE BILL NO. 872

Offered January 22, 1996

A BILL to amend and reenact § 8.01-413 of the Code of Virginia, relating to copies of health care provider's records or papers.

Patron—Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 8.01-413 of the Code of Virginia is amended and reenacted 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, if the printout or hard copy or microphotograph or photograph is properly authenticated by the employees having authority to release or produce 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 the service of maintaining, retrieving, reviewing, preparing, copying and mailing the items produced. Except for copies of X-ray photographs, however, such charges shall not exceed fifty cents for each page up to fifty pages and twenty-five cents a page thereafter for copies from paper and one dollar per page for copies from microfilm or other micrographic process, plus all postage and shipping costs and a search and handling fee not to exceed ten dollars. *These fees shall also apply to other parties who are permitted to subpoena a health care provider's records for production.*

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 may be made for the service of maintaining, retrieving, reviewing and preparing such copies. Except for copies of X-ray photographs, however, such charges shall not exceed fifty cents per page for up to fifty pages and twenty-five cents a page thereafter for copies from paper and one dollar per page for copies from microfilm or other micrographic process, plus all postage and shipping costs and a search and handling fee not to exceed ten dollars. *These fees shall also apply to other parties who are permitted to request a health care provider's records.* 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, unless the hospital, nursing facility, physician, or other health care provider is 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

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60 comply with any written request made in accordance with subsection B within the period of time
61 specified in that subsection, the patient or his attorney may by affidavit filed with the clerk of the circuit
62 court wherein any eventual suit, if any, would be required to be filed, upon payment of the fees required
63 by subdivision (23) of § 14.1-112, and fees for service, request that the clerk subpoena such records or
64 papers. The clerk shall thereupon issue a subpoena, returnable within twenty days of proper service,
65 directing the hospital, nursing facility, physician, or other health care provider to produce and furnish
66 copies of the reports and papers to him, whereupon, the clerk shall make the same available to the
67 patient or his attorney. If the court finds that a hospital, nursing facility, physician, or other health care
68 provider willfully refused to comply with a written request made in accordance with subsection B, either
69 by willfully or arbitrarily refusing or by imposing a charge in excess of the reasonable expense of
70 making the copies and processing the request for records, the court may award damages for all expenses
71 incurred by the patient to obtain such copies, including court costs and reasonable attorney's fees.

72 D. The provisions of subsections A, B, and C hereof shall apply to any health care provider whose
73 office is located within or without the Commonwealth if the records pertain to any patient who is a
74 party to a cause of action in any court in the Commonwealth of Virginia, and shall apply only to
75 requests made by an attorney, or his client, in anticipation of litigation or in the course of litigation.

76 E. Health care provider, as used in this section, shall have the same meaning as provided in
77 § 8.01-581.1 and shall also include an independent medical copy retrieval service contracted to provide
78 the service of retrieving, reviewing, and preparing such copies for distribution.