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SENATE BILL NO. 1214

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on February 3, 2011)

(Patron Prior to Substitute—Senator Smith)

A *BILL to amend and reenact §§ 2.2-3705.5, 32.1-310, and 32.1-320 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 9 of Title 32.1 a section numbered 32.1-321.01, relating to Attorney General; investigation of complaints.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.5, 32.1-310, and 32.1-320 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 9 of Title 32.1 a section numbered 32.1-321.01 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 patient abuse as may be 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 patient-identifying information.

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 §§ 2.2-706 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; and 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 pursuant to 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 establishment of new or the expansion of existing clinical health services, acquisition of major medical

60 equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

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

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

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

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

75 12. Records submitted as a grant application, or accompanying a grant application, to the
76 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of
77 Title 51.5, to the extent such records contain (i) medical or mental records, or other data identifying
78 individual patients or (ii) proprietary business or research-related information produced or collected by
79 the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,
80 technical or scholarly issues, when such information has not been publicly released, published,
81 copyrighted or patented, if the disclosure of such information would be harmful to the competitive
82 position of the applicant.

83 13. Any record copied, recorded or received by the Commissioner of Health in the course of an
84 examination, investigation or review of a managed care health insurance plan licensee pursuant to
85 §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or
86 all computer or other recordings.

87 14. Records, information and statistical registries required to be kept confidential pursuant to
88 §§ 63.2-102 and 63.2-104.

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

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

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

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

103 § 32.1-310. Declaration of purpose; authority to audit records; authority to review complaints of
104 abuse or neglect.

105 The General Assembly finds and declares it to be in the public interest and for the protection of the
106 health and welfare of the residents of the Commonwealth that a proper regulatory and inspection
107 program be instituted in connection with the providing of medical, dental and other health services to
108 recipients of medical assistance. In order to effectively accomplish such purpose and to assure that the
109 recipient receives such services as are paid for by the Commonwealth, the acceptance by the recipient of
110 such services and the acceptance by practitioners of reimbursement for performing such services shall
111 authorize the Attorney General or his authorized representative to inspect and audit all records in
112 connection with the providing of such services.

113 *The General Assembly further finds and declares it to be in the public interest and for the protection*
114 *of the health and welfare of the residents of the Commonwealth that, in conducting such regulatory and*
115 *inspection program, the Attorney General or his authorized representatives shall review complaints*
116 *alleging abuse or neglect of persons in the care or custody of others who receive payments for*
117 *providing health care services under the state plan for medical assistance.*

118 § 32.1-320. Duties of Attorney General; medical services providers audit and investigation unit.

119 A. There shall be established within the Office of the Attorney General a unit to audit and
120 investigate providers of services furnished under the State Medical Assistance Plan. The Department of
121 Medical Assistance Services shall cooperate with the Office of the Attorney General in conducting such

audits and investigations and shall provide such information for these purposes as may be requested by the Attorney General or his authorized representative.

B. The Attorney General or his authorized representative shall have the authority to:

1. Conduct audits and investigations of providers of medical and other services furnished under medical assistance. *Such investigations shall include investigation of complaints alleging abuse or neglect of persons in the care or custody of others who receive payments for providing health care services under the state plan for medical assistance, regardless of whether the patient who is the subject of the complaint is a recipient of medical assistance.* The relevant board within the Department of Health Professions shall serve in an advisory capacity to the Attorney General in the conduct of audits or investigations of health care providers licensed by the respective regulatory boards. In the conduct of such audits or investigations, the Attorney General may examine ~~only~~(i) those records or portions thereof, including patient records, for which services were rendered by a health care provider and reimbursed by the Department of Medical Assistance Services under the Plan for Medical Assistance, and (ii) in cases involving a complaint alleging abuse or neglect of a person in the care or custody of others who receive payments for medical assistance, those records or portions thereof, including patient records, that are relevant to the investigation of the complaint, notwithstanding the provisions of Chapter 38 (§ 2.2-3800 et seq.) of Title 2.2 or of any other statute which may make or purport to make such records privileged or confidential. No original patient records shall be removed from the premises of the health care provider, except in accordance with Rule 4:9 of the Rules of the Supreme Court of Virginia. The disclosure of any records or information by the Attorney General is prohibited, unless such disclosure is directly connected to the official purpose for which the records or information was obtained. The disclosure of patient information as required under this section shall not subject any physician or other health services provider to any liability for breach of any confidential relationship between the provider and the patient, but no evidence resulting from such disclosure may be used in any civil, administrative or criminal proceeding against the patient unless a waiver of the applicable evidentiary privilege is obtained. The Attorney General shall cause all copies of patient medical records in his possession or that of his designee to be destroyed upon completion of the audit, investigation or proceedings, including appeals;

2. Issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within and without the Commonwealth as now provided by law, and compel the production of pertinent books, payrolls, accounts, papers, records, documents and testimony relevant to such investigation. If a person in attendance before the Attorney General or his authorized representative refuses, without reasonable cause, to be examined or to answer a legal and pertinent question, or to produce a book or paper or other evidence when ordered to do so by the Attorney General or his authorized representative, the Attorney General or his authorized representative may apply to the judge of the circuit court of the jurisdiction where such person is in attendance, upon affidavit, for an order returnable in not less than two nor more than five days, directing such person to show cause why he should not produce such records. Upon the hearing of such order, if the court shall determine that such person, without reasonable cause, has refused to be examined or to answer a legal or pertinent question, or to produce a book or paper which he was ordered to bring or produce, he may forthwith assess all costs and reasonable attorney's fees against such person. If the motion for an order is granted and the person thereafter fails to comply with the order, the court may make such orders as are provided for in the Rules of the Supreme Court of Virginia. Subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the circuit courts of this Commonwealth.

§ 32.1-321.01. *Exemptions from disclosure.*

Records or information provided to the Office of the Attorney General pursuant to this article shall be exempt from disclosure pursuant to § 2.2-3705.5.