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HOUSE BILL NO. 1130

Offered January 13, 2016

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A *BILL to amend and reenact §§ 8.01-413, 32.1-127.1:03, and 54.1-111 of the Code of Virginia, relating to requests for medical records; fee limits and penalty for failure to provide.*

Patron—Habeeb

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-413, 32.1-127.1:03, and 54.1-111 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-413. Certain copies of health care provider's records or papers of patient admissible; right of patient, his attorney, and authorized insurer to copies of such records or papers; subpoena; damages, costs, and attorney 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, photostatted 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~~ *the* 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 as provided by law may comply with the subpoena by a timely mailing to the clerk issuing the subpoena or in whose court the action is pending properly authenticated copies, photographs, or microphotographs in lieu of the originals. The court whose clerk issued the subpoena or, in the case of an attorney-issued subpoena, in which the action is pending, 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.

~~Except as provided in subsection G, the~~ *The* party requesting the subpoena duces tecum or on whose behalf an attorney-issued subpoena duces tecum was issued 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~~ *transmitting* the items produced. ~~The health care provider shall produce the items in either hard copy or electronic format, as requested by the party. If such party does not specify the format by which the items are to be produced, such items shall be produced in electronic format. If the health care provider does not maintain medical records in an electronic format, then the health care provider shall supply hard copies of the requested records, and the charges for production of electronic medical records shall apply.~~ Except for copies of X-ray photographs or pathology specimens, however, such charges shall not exceed (i) \$0.50 for each page up to 50 pages and \$0.25 a page thereafter for hard copies from paper or other hard copy generated from computerized or other electronic storage, or other photographic, mechanical, electronic, imaging, or chemical storage process and \$1 per page for hard copies from microfilm or other micrographic process, plus all postage and shipping costs and a search and handling fee not to exceed \$10 and (ii) \$200 total, or \$0.05 per page, whichever is less, and no other charges, for copies produced in electronic format. ~~If the subpoenaed items are not produced as required by a properly issued subpoena, the court may award to the subpoenaing party damages in an amount not to exceed \$100 for each day that such health care provider fails to comply, in addition to reasonable attorney fees and costs.~~

Upon request, a patient's account balance or itemized listing of charges maintained by a health care provider shall be supplied ~~in hard copy or electronic format, whichever is requested,~~ at no cost up to three times every ~~twelve~~ 12 months to either the patient or the patient's attorney.

B. Copies of hospital, nursing facility, physician's, or other health care provider's records, X-ray photographs, pathology specimens, or papers shall be furnished within 15 days of receipt of such request to the patient, his attorney, his executor or administrator, ~~his guardian or committee, his parent if he is~~ a minor, or an authorized insurer upon such patient's, attorney's, executor's, administrator's, guardian's, committee's, parent's, or authorized insurer's written request, which request shall comply with the requirements of subsection E of § 32.1-127.1:03, ~~or as required by a subpoena from such a party. The~~

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59 *health care provider shall produce the items in either hard copy or electronic format, as requested by*
60 *the party. If the request does not specify the format by which the items are to be produced, such items*
61 *shall be produced in electronic format. If the health care provider does not maintain medical records in*
62 *an electronic format, then the health care provider shall supply hard copies of the requested records,*
63 *and the charges for production of electronic medical records shall apply. If a health care provider fails*
64 *to comply with a request within 15 days of receipt or timely comply with a properly issued subpoena,*
65 *the court may award to the requesting or subpoenaing party damages in an amount not to exceed \$100*
66 *for each day that such health care provider fails to comply, in addition to reasonable attorney fees and*
67 *costs. Where such a request is made by the patient, his attorney, his executor or administrator, his*
68 *guardian or committee, his parent if he is a minor, or an authorized insurer, no other charges shall be*
69 *assessed except those provided by this subsection.*

70 However, copies of a patient's records shall not be furnished to such patient when the patient's
71 treating physician or clinical psychologist, in the exercise of professional judgment, has made a part of
72 the patient's records a written statement that in his opinion the furnishing to or review by the patient of
73 such records would be reasonably likely to endanger the life or physical safety of the patient or another
74 person, or that such health records make reference to a person, other than a health care provider, and the
75 access requested would be reasonably likely to cause substantial harm to such referenced person. In any
76 such case, if requested by the patient or his attorney or authorized insurer, such records shall be
77 furnished within 15 days of the date of such request to the patient's attorney or authorized insurer, rather
78 than to the patient.

79 If the records are not provided to the patient in accordance with this section, then, if requested by the
80 patient, the hospital, nursing facility, physician, or other health care provider denying the request shall
81 comply with the patient's request to either (i) provide a copy of the records to a physician or clinical
82 psychologist of the patient's choice whose licensure, training, and experience, relative to the patient's
83 condition, are at least equivalent to that of the treating physician or clinical psychologist upon whose
84 opinion the denial is based, who shall, at the patient's expense, make a judgment as to whether to make
85 the records available to the patient or (ii) designate a physician or clinical psychologist, whose licensure,
86 training, and experience, relative to the patient's condition, are at least equivalent to that of the treating
87 physician or clinical psychologist upon whose opinion the denial is based and who did not participate in
88 the original decision to deny the patient's request for his records, who shall, at the expense of the
89 provider denying access to the patient, review the records and make a judgment as to whether to make
90 the records available to the patient. In either such event, the hospital, nursing facility, physician, or other
91 health care provider denying the request shall comply with the judgment of the reviewing physician or
92 clinical psychologist.

93 ~~Except as provided in subsection G,~~ a reasonable charge may be made by the hospital, nursing
94 facility, physician, or other health care provider maintaining the records, *X-ray photographs, or*
95 *pathology specimens* for the cost of the services relating to the maintenance, retrieval, review, and
96 preparation of the ~~copies of the records~~ *items produced*. Except for copies of X-ray photographs *and*
97 *pathology specimens*, however, such charges shall not exceed (a) \$0.50 per page for up to 50 pages and
98 \$0.25 a page thereafter for *hard* copies from paper or other hard copy generated from computerized or
99 other electronic storage, or other photographic, mechanical, electronic, imaging, or chemical storage
100 process and \$1 per page for *hard* copies from microfilm or other micrographic process, a fee for search
101 and handling, not to exceed \$10, and all postage and shipping costs *and (b) \$100 total, or \$0.02 per*
102 *page, whichever is less, and no other charges, for copies produced in electronic format. The charges*
103 *outlined in this subsection are the only charges that may be made in response to requests made or*
104 *subpoenas issued by the patient, his attorney, his executor or administrator, his guardian or committee,*
105 *his parent if he is a minor, or an authorized insurer. Any hospital, nursing facility, physician, or other*
106 *health care provider receiving such a request from a patient's attorney or authorized insurer shall require*
107 *a writing signed by the patient confirming the attorney's or authorized insurer's authority to make the*
108 *request and shall accept a photocopy, facsimile, or other copy of the original signed by the patient as if*
109 *it were an original.*

110 Upon request, a patient's account balance or itemized listing of charges maintained by a health care
111 provider shall be supplied *in hard copy or electronic format, whichever is requested*, at no cost up to
112 three times every ~~twelve~~ 12 months to either the patient or the patient's attorney.

113 C. Upon the failure of any hospital, nursing facility, physician, or other health care provider to
114 comply with any written request made in accordance with subsection B within the period of time
115 specified in that subsection and within the manner specified in subsections E and F of § 32.1-127.1:03,
116 the patient, his attorney, his executor or administrator, *his guardian or committee, his parent if the*
117 *patient is a minor,* or authorized insurer may cause a subpoena duces tecum to be issued. The subpoena
118 may be issued (i) upon filing a request therefor with the clerk of the circuit court wherein any eventual
119 suit would be required to be filed, and upon payment of the fees required by subdivision A 18 of
120 § 17.1-275, and fees for service or (ii) by the patient's attorney in a pending civil case in accordance

with § 8.01-407 without payment of the fees established in subdivision A 23 of § 17.1-275. A sheriff shall not be required to serve an attorney-issued subpoena that is not issued at least five business days prior to the date production of the record is desired. The subpoena shall be returnable within 20 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 the clerk who shall then make the same available to the patient, his attorney or authorized insurer. ~~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 or authorized insurer to obtain such copies, including court costs and reasonable attorney's fees. The charges provided in subsection B shall apply to items produced in response to such a subpoena. If the subpoenaed items are not produced as required by a properly issued subpoena, the court may award to the subpoenaing party damages in the amount not to exceed \$100 for each day that such health care provider fails to comply, in addition to reasonable attorney fees and costs.~~

D. The provisions of subsections A, B, and C ~~hereof~~ shall apply to any health care provider whose office is located within or ~~without~~ *outsidethe* 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, and shall apply only to requests made by the patient, his attorney, his executor or administrator, or any authorized insurer, in anticipation of litigation or in the course of litigation.

E. ~~Health care provider, as~~ *As* used in this section, ~~shall have~~ *"health care provider" has* the same meaning as provided in § 32.1-127.1:03 and ~~shall also include~~ *includes* an independent medical copy retrieval service contracted to provide the service of retrieving, reviewing, and preparing such copies for distribution.

F. Notwithstanding the authorization to admit as evidence patient records in the form of microphotographs, prescription dispensing records maintained in or on behalf of any pharmacy registered or permitted in ~~Virginia~~ *the Commonwealth* shall only be stored in compliance with §§ 54.1-3410, 54.1-3411, and 54.1-3412.

G. ~~The provisions of this section governing fees that may be charged by a health care provider whose records are subpoenaed or requested pursuant to this section shall not apply in the case of any request by a patient for his own records, which shall be governed by subsection J of § 32.1-127.1:03. This subsection shall not be construed to affect other provisions of state or federal statute, regulation or any case decision relating to charges by health care providers for copies of records requested by any person other than a patient when requesting his own records pursuant to subsection J of § 32.1-127.1:03.~~

§ 32.1-127.1:03. Health records privacy.

A. There is hereby recognized an individual's right of privacy in the content of his health records. Health records are the property of the health care entity maintaining them, and, except when permitted or required by this section or by other provisions of state law, no health care entity, or other person working in a health care setting, may disclose an individual's health records.

Pursuant to this subsection:

1. Health care entities shall disclose health records to the individual who is the subject of the health record, except as provided in subsections E and F and subsection B of § 8.01-413.

2. Health records shall not be removed from the premises where they are maintained without the approval of the health care entity that maintains such health records, except in accordance with a court order or subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with the regulations relating to change of ownership of health records promulgated by a health regulatory board established in Title 54.1.

3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health records of an individual, beyond the purpose for which such disclosure was made, without first obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall not, however, prevent (i) any health care entity that receives health records from another health care entity from making subsequent disclosures as permitted under this section and the federal Department of Health and Human Services regulations relating to privacy of the electronic transmission of data and protected health information promulgated by the United States Department of Health and Human Services as required by the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. § 1320d et seq.) or (ii) any health care entity from furnishing health records and aggregate or other data, from which individually identifying prescription information has been removed, encoded or encrypted, to qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health services research.

4. Health care entities shall, upon the request of the individual who is the subject of the health

182 record, disclose health records to other health care entities, in any available format of the requestor's
183 choosing, as provided in subsection E.

184 B. As used in this section:

185 "Agent" means a person who has been appointed as an individual's agent under a power of attorney
186 for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

187 "Certification" means a written representation that is delivered by hand, by first-class mail, by
188 overnight delivery service, or by facsimile if the sender obtains a facsimile-machine-generated
189 confirmation reflecting that all facsimile pages were successfully transmitted.

190 "Guardian" means a court-appointed guardian of the person.

191 "Health care clearinghouse" means, consistent with the definition set out in 45 C.F.R. § 160.103, a
192 public or private entity, such as a billing service, repricing company, community health management
193 information system or community health information system, and "value-added" networks and switches,
194 that performs either of the following functions: (i) processes or facilitates the processing of health
195 information received from another entity in a nonstandard format or containing nonstandard data content
196 into standard data elements or a standard transaction; or (ii) receives a standard transaction from another
197 entity and processes or facilitates the processing of health information into nonstandard format or
198 nonstandard data content for the receiving entity.

199 "Health care entity" means any health care provider, health plan or health care clearinghouse.

200 "Health care provider" means those entities listed in the definition of "health care provider" in
201 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the
202 purposes of this section. Health care provider shall also include all persons who are licensed, certified,
203 registered or permitted or who hold a multistate licensure privilege issued by any of the health
204 regulatory boards within the Department of Health Professions, except persons regulated by the Board of
205 Funeral Directors and Embalmers or the Board of Veterinary Medicine.

206 "Health plan" means an individual or group plan that provides, or pays the cost of, medical care.
207 "Health plan" shall include any entity included in such definition as set out in 45 C.F.R. § 160.103.

208 "Health record" means any written, printed or electronically recorded material maintained by a health
209 care entity in the course of providing health services to an individual concerning the individual and the
210 services provided. "Health record" also includes the substance of any communication made by an
211 individual to a health care entity in confidence during or in connection with the provision of health
212 services or information otherwise acquired by the health care entity about an individual in confidence
213 and in connection with the provision of health services to the individual.

214 "Health services" means, but shall not be limited to, examination, diagnosis, evaluation, treatment,
215 pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind, as well as
216 payment or reimbursement for any such services.

217 "Individual" means a patient who is receiving or has received health services from a health care
218 entity.

219 "Individually identifying prescription information" means all prescriptions, drug orders or any other
220 prescription information that specifically identifies an individual.

221 "Parent" means a biological, adoptive or foster parent.

222 "Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a
223 mental health professional, documenting or analyzing the contents of conversation during a private
224 counseling session with an individual or a group, joint, or family counseling session that are separated
225 from the rest of the individual's health record. "Psychotherapy notes" shall not include annotations
226 relating to medication and prescription monitoring, counseling session start and stop times, treatment
227 modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis,
228 functional status, treatment plan, or the individual's progress to date.

229 C. The provisions of this section shall not apply to any of the following:

230 1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia
231 Workers' Compensation Act;

232 2. Except where specifically provided herein, the health records of minors; or

233 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to
234 § 16.1-248.3.

235 D. Health care entities may, and, when required by other provisions of state law, shall, disclose
236 health records:

237 1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the
238 case of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of
239 minors pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment
240 pursuant to § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an
241 individual's written authorization, pursuant to the individual's oral authorization for a health care
242 provider or health plan to discuss the individual's health records with a third party specified by the
243 individual;

2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C of § 8.01-413. Regardless of the manner by which health records relating to an individual are compelled to be disclosed pursuant to this subdivision, nothing in this subdivision shall be construed to prohibit any staff or employee of a health care entity from providing information about such individual to a law-enforcement officer in connection with such subpoena, search warrant, or court order;

3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure is reasonably necessary to establish or collect a fee or to defend a health care entity or the health care entity's employees or staff against any accusation of wrongful conduct; also as required in the course of an investigation, audit, review or proceedings regarding a health care entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity;

4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

5. In compliance with the provisions of § 8.01-413;

6. As required or authorized by law relating to public health activities, health oversight activities, serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease, public safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283, 32.1-283.1, 32.1-320, 37.2-710, 37.2-839, 53.1-40.10, 54.1-2400.6, 54.1-2400.7, 54.1-2403.3, 54.1-2506, 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and 63.2-1606;

7. Where necessary in connection with the care of the individual;

8. In connection with the health care entity's own health care operations or the health care operations of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in accordance with accepted standards of practice within the health services setting; however, the maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a pharmacy registered or permitted in Virginia shall only be accomplished in compliance with §§ 54.1-3410, 54.1-3411, and 54.1-3412;

9. When the individual has waived his right to the privacy of the health records;

10. When examination and evaluation of an individual are undertaken pursuant to judicial or administrative law order, but only to the extent as required by such order;

11. To the guardian ad litem and any attorney representing the respondent in the course of a guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2;

12. To the guardian ad litem and any attorney appointed by the court to represent an individual who is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of Title 37.2;

13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health authority or a designee of a community services board or behavioral health authority, or a law-enforcement officer participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, § 19.2-169.6, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of the proceeding, and to any health care provider evaluating or providing services to the person who is the subject of the proceeding or monitoring the person's adherence to a treatment plan ordered under those provisions. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the person, or the public from physical injury or to address the health care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained;

14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or administrative proceeding, if the court or administrative hearing officer has entered an order granting the attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the health care entity of such order;

15. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health records in accord with § 9.1-156;

16. To an agent appointed under an individual's power of attorney or to an agent or decision maker designated in an individual's advance directive for health care or for decisions on anatomical gifts and organ, tissue or eye donation or to any other person consistent with the provisions of the Health Care Decisions Act (§ 54.1-2981 et seq.);

17. To third-party payors and their agents for purposes of reimbursement;

18. As is necessary to support an application for receipt of health care benefits from a governmental

agency or as required by an authorized governmental agency reviewing such application or reviewing benefits already provided or as necessary to the coordination of prevention and control of disease, injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

19. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

20. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

21. Where necessary in connection with the implementation of a hospital's routine contact process for organ donation pursuant to subdivision B 4 of § 32.1-127;

22. In the case of substance abuse records, when permitted by and in conformity with requirements of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;

23. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the adequacy or quality of professional services or the competency and qualifications for professional staff privileges;

24. If the health records are those of a deceased or mentally incapacitated individual to the personal representative or executor of the deceased individual or the legal guardian or committee of the incompetent or incapacitated individual or if there is no personal representative, executor, legal guardian or committee appointed, to the following persons in the following order of priority: a spouse, an adult son or daughter, either parent, an adult brother or sister, or any other relative of the deceased individual in order of blood relationship;

25. For the purpose of conducting record reviews of inpatient hospital deaths to promote identification of all potential organ, eye, and tissue donors in conformance with the requirements of applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's designated organ procurement organization certified by the United States Health Care Financing Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks;

26. To the Office of the State Inspector General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title 2.2;

27. To an entity participating in the activities of a local health partnership authority established pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4, pursuant to subdivision 1;

28. To law-enforcement officials by each licensed emergency medical services agency, (i) when the individual is the victim of a crime or (ii) when the individual has been arrested and has received emergency medical services or has refused emergency medical services and the health records consist of the prehospital patient care report required by § 32.1-116.1;

29. To law-enforcement officials, in response to their request, for the purpose of identifying or locating a suspect, fugitive, person required to register pursuant to § 9.1-901 of the Sex Offender and Crimes Against Minors Registry Act, material witness, or missing person, provided that only the following information may be disclosed: (i) name and address of the person, (ii) date and place of birth of the person, (iii) social security number of the person, (iv) blood type of the person, (v) date and time of treatment received by the person, (vi) date and time of death of the person, where applicable, (vii) description of distinguishing physical characteristics of the person, and (viii) type of injury sustained by the person;

30. To law-enforcement officials regarding the death of an individual for the purpose of alerting law enforcement of the death if the health care entity has a suspicion that such death may have resulted from criminal conduct;

31. To law-enforcement officials if the health care entity believes in good faith that the information disclosed constitutes evidence of a crime that occurred on its premises;

32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a person or persons who are 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;

33. To the Commissioner of the Department of Labor and Industry or his designee by each licensed emergency medical services agency when the records consist of the prehospital patient care report required by § 32.1-116.1 and the patient has suffered an injury or death on a work site while performing duties or tasks that are within the scope of his employment;

34. To notify a family member or personal representative of an individual who is the subject of a proceeding pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 of information that is directly relevant to such person's involvement with the individual's health care, which may include the individual's location and general condition, when the individual has the capacity to make health care decisions and (i) the individual has agreed to the notification, (ii) the individual has been provided an opportunity to object to the notification and does not express an objection, or (iii) the health care provider can, on the basis of his professional judgment, reasonably infer from the circumstances that the individual does not object to the notification.

If the opportunity to agree or object to the notification cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the health care provider may notify a family member or personal representative of the individual of information that is directly relevant to such person's involvement with the individual's health care, which may include the individual's location and general condition if the health care provider, in the exercise of his professional judgment, determines that the notification is in the best interests of the individual. Such notification shall not be made if the provider has actual knowledge the family member or personal representative is currently prohibited by court order from contacting the individual;

35. To a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education when such records concern a student at the institution of higher education, including a student who is a minor; and

36. To a regional emergency medical services council pursuant to § 32.1-116.1, for purposes limited to monitoring and improving the quality of emergency medical services pursuant to § 32.1-111.3.

Notwithstanding the provisions of subdivisions 1 through 35, a health care entity shall obtain an individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by the health care entity is (i) for its own training programs in which students, trainees, or practitioners in mental health are being taught under supervision to practice or to improve their skills in group, joint, family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1, to take precautions to protect third parties from violent behavior or other serious harm; (iv) required in the course of an investigation, audit, review, or proceeding regarding a health care entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise required by law.

E. Health care records required to be disclosed pursuant to this section shall be made available electronically only to the extent and in the manner authorized by the federal Health Information Technology for Economic and Clinical Health Act (P.L. 111-5) and implementing regulations and the Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and implementing regulations. Notwithstanding any other provision to the contrary, a health care entity shall not be required to provide records in an electronic format requested if (i) the electronic format is not reasonably available without additional cost to the health care entity, (ii) the records would be subject to modification in the format requested, or (iii) the health care entity determines that the integrity of the records could be compromised in the electronic format requested. Requests for copies of or electronic access to health records shall (a) be in writing, dated and signed by the requester; (b) identify the nature of the information requested; and (c) include evidence of the authority of the requester to receive such copies or access such records, and identification of the person to whom the information is to be disclosed; and (d) specify whether the requester would like the records in electronic format, if available, or in paper format. The health care entity shall accept a photocopy, facsimile, or other copy of the original signed by the requestor as if it were an original. Within 15 days of receipt of a request for copies of or electronic access to health records, the health care entity shall do one of the following: (A) furnish such copies of or allow electronic access to the requested health records to any requester authorized to receive them in electronic format if so requested; (B) inform the requester if the information does not exist or cannot be found; (C) if the health care entity does not maintain a record of the information, so inform the requester and provide the name and address, if known, of the health care entity who maintains the record; or (D) deny the request (1) under subsection F, (2) on the grounds that the requester has not established his authority to receive such health records or proof of his identity, or (3) as otherwise provided by law. Procedures set forth in this section shall apply only to requests for health records not specifically governed by other provisions of state law.

F. Except as provided in subsection B of § 8.01-413, copies of or electronic access to an individual's health records shall not be furnished to such individual or anyone authorized to act on the individual's behalf when the individual's treating physician or the individual's treating clinical psychologist has made a part of the individual's record a written statement that, in the exercise of his professional judgment, the furnishing to or review by the individual of such health records would be reasonably likely to endanger the life or physical safety of the individual or another person, or that such health record makes reference to a person other than a health care provider and the access requested would be reasonably likely to cause substantial harm to such referenced person. If any health care entity denies a request for copies of or electronic access to health records based on such statement, the health care entity shall inform the individual of the individual's right to designate, in writing, at his own expense, another reviewing physician or clinical psychologist, whose licensure, training and experience relative to the individual's condition are at least equivalent to that of the physician or clinical psychologist upon whose opinion the denial is based. The designated reviewing physician or clinical psychologist shall make a judgment as to whether to make the health record available to the individual.

428 The health care entity denying the request shall also inform the individual of the individual's right to
429 request in writing that such health care entity designate, at its own expense, a physician or clinical
430 psychologist, whose licensure, training, and experience relative to the individual's condition are at least
431 equivalent to that of the physician or clinical psychologist upon whose professional judgment the denial
432 is based and who did not participate in the original decision to deny the health records, who shall make
433 a judgment as to whether to make the health record available to the individual. The health care entity
434 shall comply with the judgment of the reviewing physician or clinical psychologist. The health care
435 entity shall permit copying and examination of the health record by such other physician or clinical
436 psychologist designated by either the individual at his own expense or by the health care entity at its
437 expense.

438 Any health record copied for review by any such designated physician or clinical psychologist shall
439 be accompanied by a statement from the custodian of the health record that the individual's treating
440 physician or clinical psychologist determined that the individual's review of his health record would be
441 reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely
442 to cause substantial harm to a person referenced in the health record who is not a health care provider.

443 Further, nothing herein shall be construed as giving, or interpreted to bestow the right to receive
444 copies of, or otherwise obtain access to, psychotherapy notes to any individual or any person authorized
445 to act on his behalf.

446 G. A written authorization to allow release of an individual's health records shall substantially include
447 the following information:

448 **AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS**

449 Individual's Name _____

450 Health Care Entity's Name _____

451 Person, Agency, or Health Care Entity to whom disclosure is to be made _____

452 _____
453 Information or Health Records to be disclosed

454 _____
455 Purpose of Disclosure or at the Request of the Individual

456 _____

457 As the person signing this authorization, I understand that I am giving my permission to the
458 above-named health care entity for disclosure of confidential health records. I understand that the health
459 care entity may not condition treatment or payment on my willingness to sign this authorization unless
460 the specific circumstances under which such conditioning is permitted by law are applicable and are set
461 forth in this authorization. I also understand that I have the right to revoke this authorization at any
462 time, but that my revocation is not effective until delivered in writing to the person who is in possession
463 of my health records and is not effective as to health records already disclosed under this authorization.
464 A copy of this authorization and a notation concerning the persons or agencies to whom disclosure was
465 made shall be included with my original health records. I understand that health information disclosed
466 under this authorization might be redisclosed by a recipient and may, as a result of such disclosure, no
467 longer be protected to the same extent as such health information was protected by law while solely in
468 the possession of the health care entity.

469 This authorization expires on (date) or (event) _____

470 Signature of Individual or Individual's Legal Representative if Individual is Unable to Sign _____

471 _____
472 Relationship or Authority of Legal Representative

473 _____
474 Date of Signature _____

475 H. Pursuant to this subsection:

476 1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or
477 administrative action or proceeding shall request the issuance of a subpoena duces tecum for another
478 party's health records or cause a subpoena duces tecum to be issued by an attorney unless a copy of the
479 request for the subpoena or a copy of the attorney-issued subpoena is provided to the other party's
480 counsel or to the other party if pro se, simultaneously with filing the request or issuance of the
481 subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces
482 tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a
483 copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the
484 request or issuance of the attorney-issued subpoena.

485 No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date
486 of the subpoena except by order of a court or administrative agency for good cause shown. When a
487 court or administrative agency directs that health records be disclosed pursuant to a subpoena duces
488 tecum earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the
489 subpoena.

Any party requesting a subpoena duces tecum for health records or on whose behalf the subpoena duces tecum is being issued shall have the duty to determine whether the individual whose health records are being sought is pro se or a nonparty.

In instances where health records being subpoenaed are those of a pro se party or nonparty witness, the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness together with the copy of the request for subpoena, or a copy of the subpoena in the case of an attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall include the following language and the heading shall be in boldface capital letters:

NOTICE TO INDIVIDUAL

The attached document means that (insert name of party requesting or causing issuance of the subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has been issued by the other party's attorney to your doctor, other health care providers (names of health care providers inserted here) or other health care entity (name of health care entity to be inserted here) requiring them to produce your health records. Your doctor, other health care provider or other health care entity is required to respond by providing a copy of your health records. If you believe your health records should not be disclosed and object to their disclosure, you have the right to file a motion with the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued subpoena. You may contact the clerk's office or the administrative agency to determine the requirements that must be satisfied when filing a motion to quash and you may elect to contact an attorney to represent your interest. If you elect to file a motion to quash, you must notify your doctor, other health care provider(s), or other health care entity, that you are filing the motion so that the health care provider or health care entity knows to send the health records to the clerk of court or administrative agency in a sealed envelope or package for safekeeping while your motion is decided.

2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued for an individual's health records shall include a Notice in the same part of the request in which the recipient of the subpoena duces tecum is directed where and when to return the health records. Such notice shall be in boldface capital letters and shall include the following language:

NOTICE TO HEALTH CARE ENTITIES

A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.

YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:

NO MOTION TO QUASH WAS FILED; OR

ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH SUCH RESOLUTION.

IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE BEING REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE FOLLOWING PROCEDURE:

PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA. THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE AGENCY.

3. Upon receiving a valid subpoena duces tecum for health records, health care entities shall have the duty to respond to the subpoena in accordance with the provisions of subdivisions 4, 5, 6, 7, and 8.

4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a sealed envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such health records until they have received a certification as set forth in subdivision 5 or 8 from the party on whose behalf the subpoena duces tecum was issued.

If the health care entity has actual receipt of notice that a motion to quash the subpoena has been

551 filed or if the health care entity files a motion to quash the subpoena for health records, then the health
552 care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or
553 administrative agency issuing the subpoena or in whose court or administrative agency the action is
554 pending. The court or administrative agency shall place the health records under seal until a
555 determination is made regarding the motion to quash. The securely sealed envelope shall only be opened
556 on order of the judge or administrative agency. In the event the court or administrative agency grants
557 the motion to quash, the health records shall be returned to the health care entity in the same sealed
558 envelope in which they were delivered to the court or administrative agency. In the event that a judge or
559 administrative agency orders the sealed envelope to be opened to review the health records in camera, a
560 copy of the order shall accompany any health records returned to the health care entity. The health
561 records returned to the health care entity shall be in a securely sealed envelope.

562 5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued
563 subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the
564 subpoenaed health care entity that the time for filing a motion to quash has elapsed and that no motion
565 to quash was filed. Any health care entity receiving such certification shall have the duty to comply
566 with the subpoena duces tecum by returning the specified health records by either the return date on the
567 subpoena or five days after receipt of the certification, whichever is later.

568 6. In the event that the individual whose health records are being sought files a motion to quash the
569 subpoena, the court or administrative agency shall decide whether good cause has been shown by the
570 discovering party to compel disclosure of the individual's health records over the individual's objections.
571 In determining whether good cause has been shown, the court or administrative agency shall consider (i)
572 the particular purpose for which the information was collected; (ii) the degree to which the disclosure of
573 the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the
574 disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or
575 proceeding; and (v) any other relevant factor.

576 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if
577 subpoenaed health records have been submitted by a health care entity to the court or administrative
578 agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no
579 submitted health records should be disclosed, return all submitted health records to the health care entity
580 in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide
581 all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon
582 determining that only a portion of the submitted health records should be disclosed, provide such portion
583 to the party on whose behalf the subpoena was issued and return the remaining health records to the
584 health care entity in a sealed envelope.

585 8. Following the court or administrative agency's resolution of a motion to quash, the party on whose
586 behalf the subpoena duces tecum was issued shall have the duty to certify in writing to the subpoenaed
587 health care entity a statement of one of the following:

588 a. All filed motions to quash have been resolved by the court or administrative agency and the
589 disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the
590 health records previously delivered in a sealed envelope to the clerk of the court or administrative
591 agency will not be returned to the health care entity;

592 b. All filed motions to quash have been resolved by the court or administrative agency and the
593 disclosures sought in the subpoena duces tecum are consistent with such resolution and that, since no
594 health records have previously been delivered to the court or administrative agency by the health care
595 entity, the health care entity shall comply with the subpoena duces tecum by returning the health records
596 designated in the subpoena by the return date on the subpoena or five days after receipt of certification,
597 whichever is later;

598 c. All filed motions to quash have been resolved by the court or administrative agency and the
599 disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no
600 health records shall be disclosed and all health records previously delivered in a sealed envelope to the
601 clerk of the court or administrative agency will be returned to the health care entity;

602 d. All filed motions to quash have been resolved by the court or administrative agency and the
603 disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only
604 limited disclosure has been authorized. The certification shall state that only the portion of the health
605 records as set forth in the certification, consistent with the court or administrative agency's ruling, shall
606 be disclosed. The certification shall also state that health records that were previously delivered to the
607 court or administrative agency for which disclosure has been authorized will not be returned to the
608 health care entity; however, all health records for which disclosure has not been authorized will be
609 returned to the health care entity; or

610 e. All filed motions to quash have been resolved by the court or administrative agency and the
611 disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no
612 health records have previously been delivered to the court or administrative agency by the health care

entity, the health care entity shall return only those health records specified in the certification, consistent with the court or administrative agency's ruling, by the return date on the subpoena or five days after receipt of the certification, whichever is later.

A copy of the court or administrative agency's ruling shall accompany any certification made pursuant to this subdivision.

9. The provisions of this subsection have no application to subpoenas for health records requested under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation, audit, review or proceedings regarding a health care entity's conduct.

The provisions of this subsection shall apply to subpoenas for the health records of both minors and adults.

Nothing in this subsection shall have any effect on the existing authority of a court or administrative agency to issue a protective order regarding health records, including, but not limited to, ordering the return of health records to a health care entity, after the period for filing a motion to quash has passed.

A subpoena for substance abuse records must conform to the requirements of federal law found in 42 C.F.R. Part 2, Subpart E.

I. Health care entities may testify about the health records of an individual in compliance with §§ 8.01-399 and 8.01-400.2.

J. ~~If an individual requests a copy of his health record from a health care entity, the health care entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and labor of copying the requested information, postage when the individual requests that such information be mailed, and preparation of an explanation or summary of such information as agreed to by the individual. For the purposes of this section, "individual" shall subsume a person with authority to act on behalf of the individual who is the subject of the health record in making decisions related to his health care.~~

~~K.~~ Nothing in this section shall prohibit a health care provider who prescribes or dispenses a controlled substance required to be reported to the Prescription Monitoring Program established pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 to a patient from disclosing information obtained from the Prescription Monitoring Program and contained in a patient's health care record to another health care provider when such disclosure is related to the care or treatment of the patient who is the subject of the record.

§ 54.1-111. Unlawful acts; prosecution; proceedings in equity; civil penalty.

A. It shall be unlawful for any person, partnership, corporation or other entity to engage in any of the following acts:

1. Practicing a profession or occupation without holding a valid license as required by statute or regulation.

2. Making use of any designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.

3. Making use of any titles, words, letters or abbreviations which may reasonably be confused with a designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.

4. Performing any act or function which is restricted by statute or regulation to persons holding a professional or occupational license or certification, without being duly certified or licensed.

5. Failing to register as a practitioner of a profession or occupation as required by statute or regulation.

6. Materially misrepresenting facts in an application for licensure, certification or registration.

7. Willfully refusing to furnish a regulatory board information or records required or requested pursuant to statute or regulation.

8. Violating any statute or regulation governing the practice of any profession or occupation regulated pursuant to this title.

9. Refusing to process a request, tendered in accordance with the regulations of the relevant health regulatory board or applicable statutory law, for patient records or prescription dispensing records after the closing of a business or professional practice or the transfer of ownership of a business or professional practice.

Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a Class 1 misdemeanor. The third or any subsequent conviction for violating this section during a 36-month period shall constitute a Class 6 felony. In addition, any person convicted of any unlawful act enumerated in subdivision 1 through 8 of this subsection, for conduct that is within the purview of any regulatory board within the Department of Professional and Occupational Regulation, may be ordered by the court to pay restitution in accordance with §§ 19.2-305 through 19.2-305.4.

B. In addition to the criminal penalties provided for in subsection A, the Department of Professional and Occupational Regulation or the Department of Health Professions, without compliance with the

674 Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of
675 subsection A and may institute proceedings in equity to enjoin any person, partnership, corporation or
676 any other entity from engaging in any unlawful act enumerated in this section and to recover a civil
677 penalty of at least \$200 but not more than \$5,000 per violation, with each unlawful act constituting a
678 separate violation; but in no event shall the civil penalties against any one person, partnership,
679 corporation or other entity exceed \$25,000 per year. Such proceedings shall be brought in the name of
680 the Commonwealth by the appropriate Department in the circuit court or general district court of the city
681 or county in which the unlawful act occurred or in which the defendant resides.

682 C. This section shall not be construed to prohibit or prevent the owner of patient records from (i)
683 retaining copies of his patient records or prescription dispensing records after the closing of a business
684 or professional practice or the transfer of ownership of a business or professional practice or (ii)
685 charging a reasonable fee, in accordance with subsections A and B of § 8.01-413 ~~or subsection J of §~~
686 ~~32.1-127.1:03~~, for copies of patient records, as applicable under the circumstances.

687 D. Nothing in this section, nor §§ 13.1-543, 13.1-1102, 54.1-2902, and 54.1-2929, shall be construed
688 to prohibit or prevent any entity of a type listed in § 13.1-542.1 or 13.1-1101.1, which employs or
689 contracts with an individual licensed by a health regulatory board, from (i) practicing or engaging in the
690 practice of a profession or occupation for which such individual is licensed, (ii) providing or rendering
691 professional services related thereto through the licensed individual, or (iii) having a legitimate interest
692 in enforcing the terms of employment or its contract with the licensed individual.

693 E. This section shall apply, mutatis mutandis, to all persons holding a multistate licensure privilege
694 to practice nursing in the Commonwealth of Virginia.