

VIRGINIA ACTS OF ASSEMBLY -- 2019 RECONVENED SESSION

CHAPTER 827

An Act to amend and reenact §§ 53.1-40.10, 53.1-68, and 53.1-133.03 of the Code of Virginia, relating to behavioral health services; exchange of medical and mental health information and records; correctional facilities.

[H 1942]

Approved April 3, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 53.1-40.10, 53.1-68, and 53.1-133.03 of the Code of Virginia are amended and reenacted as follows:

§ 53.1-40.10. Exchange of medical and mental health information and records.

A. Whenever a person is committed to a state correctional facility, the *following shall be entitled to obtain medical and mental health information and records concerning such person from a health care provider, even when such person does not provide consent or consent is not readily obtainable:*

1. The person in charge of the facility, or his designee shall be entitled to obtain medical records concerning such person from a health care provider. In addition, medical and mental health information and records of any person committed to the Department of Corrections may be exchanged among the following:

1. Administrative personnel for the facility in which the prisoner is imprisoned when there is reasonable cause to believe that such information is necessary to maintain the security and safety of the facility, its employees, or other prisoners. The information exchanged shall continue to be confidential and disclosure shall be limited to that necessary to ensure the safety and security of the facility, when such information and records are necessary (i) for the provision of health care to the person committed, (ii) to protect the health and safety of the person committed or other residents or staff of the facility, or (iii) to maintain the security and safety of the facility. Such information and records may be exchanged among administrative personnel for the facility in which the person is imprisoned as necessary to maintain the security and safety of the facility, its employees, or other prisoners. The information exchanged shall continue to be confidential and disclosure shall be limited to that necessary to ensure the security and safety of the facility.

2. Members of the Parole Board, as specified in § 53.1-138, in order to conduct the investigation required under § 53.1-155.

3. Probation and parole officers for use in parole and probation planning, release and supervision.

4. Officials within the Department for the purpose of formulating recommendations for treatment and rehabilitative programs; classification, security and work assignments; and determining the necessity for medical, dental and mental health care, treatment and programs.

5. Medical and mental health hospitals and facilities, both public and private, including community service services boards, for use in planning for and supervision of post-incarceration medical and mental health care, treatment, and programs.

6. The Department for Aging and Rehabilitative Services, the Department of Social Services, and any local department of social services in the Commonwealth for the purposes of reentry planning and post-incarceration placement and services.

B. Substance abuse records subject to federal regulations, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. § 2.11 et seq., shall not be subject to the provisions of this section. The disclosure of results of a test for human immunodeficiency virus shall not be permitted except as provided in § 32.1-36.1.

C. The release of medical and mental health information and records to any other agency or individual shall be subject to all regulations promulgated by the Department ~~which that~~ govern confidentiality of such records. Medical and mental health information concerning a prisoner ~~which that~~ has been exchanged pursuant to this section may be used only as provided herein and shall otherwise remain confidential and protected from disclosure.

§ 53.1-68. Minimum standards for local correctional facilities and lock-ups; health inspections, behavioral health services inspections, and personnel.

A. The Board shall establish minimum standards for the construction, equipment, administration, and operation of local correctional facilities, whether heretofore or hereafter established. However, no minimum standard shall be established that includes square footage requirements in excess of accepted national standards. The Board or its agents shall conduct at least one unannounced inspection of each local facility annually. However, in those years in which a certification audit of a facility is performed and the facility is in compliance with all the standards, the Board may elect to suspend the unannounced inspection based upon that certification audit and the history of compliance of the facility with the

standards promulgated in accordance with this section, except in any year in which there is a change in the administration of a local or regional jail. The Board shall also establish minimum standards for the construction, equipment, and operation of lock-ups, whether heretofore or hereafter established. However, no minimum standard shall be established that includes square footage requirements in excess of accepted national standards.

B. Standards concerning sanitation in local correctional facilities and procedures for enforcing these standards shall be promulgated by the Board with the advice and guidance of the State Health Commissioner. The Board, in conjunction with the Board of Health, shall establish a procedure for the conduct of at least one unannounced annual health inspection by the State Health Commissioner or his agents of each local correctional facility. The Board and the State Health Commissioner may authorize such other announced or unannounced inspections as they consider appropriate.

C. *The Board shall establish minimum standards for behavioral health services in local correctional facilities and procedures for enforcing such minimum standards, with the advice of and guidance from the Commissioner of Behavioral Health and Developmental Services and the State Inspector General.*

Such standards shall include:

1. Requirements for behavioral health services provided in jails, including requirements for behavioral health screening and assessment of individuals committed to local correctional facilities and the provision of behavioral health services in local correctional facilities, as well as regulations directing the sharing of medical and mental health information and records in accordance with § 53.1-133.03;

2. Requirements for discharge planning for individuals with serious mental illness assessed as requiring behavioral health services upon release from the local correctional facility, which shall include (i) creation of a discharge plan, as soon as practicable after completion of the assessment required pursuant to subdivision 1, and (ii) coordination of services and care with community providers, community supervision agencies, and, as appropriate, the individual's family in accordance with the discharge plan until such time as the individual has begun to receive services in accordance with the discharge plan or for a period of 30 days following release from the local correctional facility, whichever occurs sooner. Discharge plans shall ensure access to the full continuum of care for the individual upon release from the local correctional facility and shall include provisions for (a) linking the individual for whom the discharge plan has been prepared to the community services board in the jurisdiction in which he will reside following release and to other supports and services necessary to meet his service needs and (b) communication of information regarding the individual's treatment needs and exchange of treatment records among service providers;

3. A requirement for at least one unannounced annual inspection of each local correctional facility by the Board or its agents to determine compliance with the standards for behavioral health services established pursuant to this subsection and such other announced or unannounced inspections as the Board may deem necessary to ensure compliance with the standards for behavioral health services established pursuant to this subsection; and

4. Provisions for the billing of the sheriff in charge of a local correctional facility or superintendent of a regional correctional facility by and payment by such sheriff or superintendent to a community services board that provides behavioral health services in the local correctional facility, in accordance with § 53.1-126.

D. The Department of Criminal Justice Services, in accordance with § 9.1-102, shall establish minimum training standards for persons designated to provide courthouse and courtroom security pursuant to the provisions of § 53.1-120 and for persons employed as jail officers or custodial officers under the provisions of this title. The sheriff shall establish minimum performance standards and management practices to govern the employees for whom the sheriff is responsible.

~~D.~~ E. The superintendent of a regional jail or jail farm shall establish minimum performance standards and management practices to govern the employees for whom the superintendent is responsible.

§ 53.1-133.03. Exchange of medical and mental health information and records.

~~Notwithstanding any other provision of law relating to disclosure and confidentiality of patient records maintained by a health care provider, whenever~~ A. *Whenever a person is committed to a local or regional correctional facility, the following shall be entitled to obtain medical and mental health information and records concerning such person from a health care provider, even when such person does not provide consent or consent is not readily obtainable:*

1. The person in charge of the facility, or his designee shall be entitled to obtain medical records concerning such person from a health care provider. In addition, medical and mental health information and records of any person committed to jail, and transferred to another correctional facility, may be exchanged among the following:

1. Administrative personnel of the correctional facilities involved and of the administrative personnel within the holding facility when there is reasonable cause to believe that such information is necessary to maintain the security and safety of the holding facility, its employees, or prisoners. The information exchanged shall continue to be confidential and disclosure shall be limited to that necessary to ensure

the safety and security of the facility, when such information and records are necessary (i) for the provision of health care to the person committed, (ii) to protect the health and safety of the person committed or other residents or staff of the facility, or (iii) to maintain the security and safety of the facility. Such information and records of any person committed to jail and transferred to another correctional facility may be exchanged among administrative personnel of the correctional facilities involved and of the administrative personnel within the holding facility when there is reasonable cause to believe that such information is necessary to maintain the security and safety of the holding facility, its employees, or prisoners. The information exchanged shall continue to be confidential and disclosure shall be limited to that necessary to ensure the security and safety of the facility.

2. Members of the Parole Board or its designees, as specified in § 53.1-138, in order to conduct the investigation required under § 53.1-155.

3. Probation and parole officers for use in parole and probation planning, release and supervision.

4. Officials of the facilities involved and officials within the holding facility for the purpose of formulating recommendations for treatment and rehabilitative programs; classification, security and work assignments; and determining the necessity for medical, dental and mental health care, treatment and other such programs.

5. Medical and mental health hospitals and facilities, both public and private, including community service services boards and health departments, for use in treatment while committed to jail or a correctional facility while under supervision of a probation or parole officer.

B. Substance abuse records subject to federal regulations, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. § 2.11 et seq., shall not be subject to the provisions of this section. The disclosure of results of a test for human immunodeficiency virus shall not be permitted except as provided in §§ 32.1-36.1 and 32.1-116.3.

C. The release of medical and mental health information and records to any other agency or individual shall be subject to all regulations promulgated by the Board of Corrections ~~which~~ *that* govern confidentiality of such records. Medical and mental health information concerning a prisoner ~~which~~ *that* has been exchanged pursuant to this section may be used only as provided herein and shall otherwise remain confidential and protected from disclosure.

D. Nothing contained in this section shall prohibit the release of records to the Department of Health Professions or health regulatory boards consistent with Subtitle III (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia.

2. That the provisions of subdivision C 2 of § 53.1-68 of the Code of Virginia, as amended by this act, relating to requirements for discharge planning for individuals committed to local correctional facilities shall become effective on July 1, 2020.

3. That the Chairman of the Board of Corrections shall convene a work group to include representatives of sheriffs, superintendents of regional correctional facilities, community services boards, the Department of Behavioral Health and Developmental Services, the Department of Medical Assistance Services, the Virginia Association of Counties, the Virginia Municipal League, and such other stakeholders as the Director shall deem appropriate to determine the cost of implementing provisions of this act. The work group shall report its findings and conclusions to the Governor and the Chairmen of the House Committee on Appropriations, the House Committee for Courts of Justice, the House Committee on Health, Welfare and Institutions, the Senate Committee on Finance, the Senate Committee for Courts of Justice, the Senate Committee on Education and Health, and the Senate Committee on Rehabilitation and Social Services by November 1, 2019.