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HOUSE BILL NO. 1359

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor
on April 11, 2022)

(Patron Prior to Substitute—Delegate Byron)

A BILL to amend and reenact § 32.1-127.1:03 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-2404.1, relating to health care; consent to disclosure of records.

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-127.1:03 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-2404.1 as follows:

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

B. As used in this section:

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

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

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

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

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

"Health care provider" means those entities listed in the definition of "health care provider" in § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the purposes of this section. Health care provider shall also include all persons who are licensed, certified,

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60 registered or permitted or who hold a multistate licensure privilege issued by any of the health
61 regulatory boards within the Department of Health Professions, except persons regulated by the Board of
62 Funeral Directors and Embalmers or the Board of Veterinary Medicine.

63 "Health plan" means an individual or group plan that provides, or pays the cost of, medical care.

64 "Health plan" includes any entity included in such definition as set out in 45 C.F.R. § 160.103.

65 "Health record" means any written, printed or electronically recorded material maintained by a health
66 care entity in the course of providing health services to an individual concerning the individual and the
67 services provided. "Health record" also includes the substance of any communication made by an
68 individual to a health care entity in confidence during or in connection with the provision of health
69 services or information otherwise acquired by the health care entity about an individual in confidence
70 and in connection with the provision of health services to the individual.

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

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

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

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

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

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

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

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

90 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to
91 § 16.1-248.3; or

92 4. The release of health records to a state correctional facility pursuant to § 53.1-40.10 or a local or
93 regional correctional facility pursuant to § 53.1-133.03.

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

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

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

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

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

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

117 6. As required or authorized by law relating to public health activities, health oversight activities,
118 serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,
119 public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,
120 those contained in §§ 16.1-248.3, 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5,
121 32.1-283, 32.1-283.1, 32.1-320, 37.2-710, 37.2-839, 53.1-40.10, 53.1-133.03, 54.1-2400.6, 54.1-2400.7,

122 54.1-2400.9, 54.1-2403.3, 54.1-2506, 54.1-2966, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and
123 63.2-1606;

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

125 8. In connection with the health care entity's own health care operations or the health care operations
126 of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in
127 accordance with accepted standards of practice within the health services setting; however, the
128 maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a
129 pharmacy registered or permitted in Virginia shall only be accomplished in compliance with
130 §§ 54.1-3410, 54.1-3411, and 54.1-3412;

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

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

134 11. To the guardian ad litem and any attorney representing the respondent in the course of a
135 guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 20
136 (§ 64.2-2000 et seq.) of Title 64.2;

137 12. To the guardian ad litem and any attorney appointed by the court to represent an individual who
138 is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5
139 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title
140 16.1, or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of
141 Title 37.2;

142 13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et
143 seq.) of Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health
144 authority or a designee of a community services board or behavioral health authority, or a
145 law-enforcement officer participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter
146 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
147 the proceeding, and to any health care provider evaluating or providing services to the person who is the
148 subject of the proceeding or monitoring the person's adherence to a treatment plan ordered under those
149 provisions. Health records disclosed to a law-enforcement officer shall be limited to information
150 necessary to protect the officer, the person, or the public from physical injury or to address the health
151 care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any
152 other purpose, disclosed to others, or retained;

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

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

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

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

164 18. As is necessary to support an application for receipt of health care benefits from a governmental
165 agency or as required by an authorized governmental agency reviewing such application or reviewing
166 benefits already provided or as necessary to the coordination of prevention and control of disease,
167 injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

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

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

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

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

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

179 24. If the health records are those of a deceased or mentally incapacitated individual to the personal
180 representative or executor of the deceased individual or the legal guardian or committee of the
181 incompetent or incapacitated individual or if there is no personal representative, executor, legal guardian
182 or committee appointed, to the following persons in the following order of priority: a spouse, an adult

183 son or daughter, either parent, an adult brother or sister, or any other relative of the deceased individual
184 in order of blood relationship;

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

191 26. To the Office of the State Inspector General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title
192 2.2;

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

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

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

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

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

212 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a
213 person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article
214 3.02 (§ 32.1-48.05 et seq.) of Chapter 2;

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

219 34. To notify a family member or personal representative of an individual who is the subject of a
220 proceeding pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or Chapter 8
221 (§ 37.2-800 et seq.) of Title 37.2 of information that is directly relevant to such person's involvement
222 with the individual's health care, which may include the individual's location and general condition,
223 when the individual has the capacity to make health care decisions and (i) the individual has agreed to
224 the notification, (ii) the individual has been provided an opportunity to object to the notification and
225 does not express an objection, or (iii) the health care provider can, on the basis of his professional
226 judgment, reasonably infer from the circumstances that the individual does not object to the notification.
227 If the opportunity to agree or object to the notification cannot practicably be provided because of the
228 individual's incapacity or an emergency circumstance, the health care provider may notify a family
229 member or personal representative of the individual of information that is directly relevant to such
230 person's involvement with the individual's health care, which may include the individual's location and
231 general condition if the health care provider, in the exercise of his professional judgment, determines
232 that the notification is in the best interests of the individual. Such notification shall not be made if the
233 provider has actual knowledge the family member or personal representative is currently prohibited by
234 court order from contacting the individual;

235 35. To a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a
236 public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of
237 higher education; and

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

240 Notwithstanding the provisions of subdivisions 1 through 35, a health care entity shall obtain an
241 individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by
242 the health care entity is (i) for its own training programs in which students, trainees, or practitioners in
243 mental health are being taught under supervision to practice or to improve their skills in group, joint,
244 family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of

245 wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1,
246 to take precautions to protect third parties from violent behavior or other serious harm; (iv) required in
247 the course of an investigation, audit, review, or proceeding regarding a health care entity's conduct by a
248 duly authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise
249 required by law.

250 E. Health care records required to be disclosed pursuant to this section shall be made available
251 electronically only to the extent and in the manner authorized by the federal Health Information
252 Technology for Economic and Clinical Health Act (P.L. 111-5) and implementing regulations and the
253 Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and implementing
254 regulations. Notwithstanding any other provision to the contrary, a health care entity shall not be
255 required to provide records in an electronic format requested if (i) the electronic format is not
256 reasonably available without additional cost to the health care entity, (ii) the records would be subject to
257 modification in the format requested, or (iii) the health care entity determines that the integrity of the
258 records could be compromised in the electronic format requested. Requests for copies of or electronic
259 access to health records shall (a) be in writing, dated and signed by the requester; (b) identify the nature
260 of the information requested; and (c) include evidence of the authority of the requester to receive such
261 copies or access such records, and identification of the person to whom the information is to be
262 disclosed; and (d) specify whether the requester would like the records in electronic format, if available,
263 or in paper format. The health care entity shall accept a photocopy, facsimile, or other copy of the
264 original signed by the requester as if it were an original. Within 30 days of receipt of a request for
265 copies of or electronic access to health records, the health care entity shall do one of the following: (1)
266 furnish such copies of or allow electronic access to the requested health records to any requester
267 authorized to receive them in electronic format if so requested; (2) inform the requester if the
268 information does not exist or cannot be found; (3) if the health care entity does not maintain a record of
269 the information, so inform the requester and provide the name and address, if known, of the health care
270 entity who maintains the record; or (4) deny the request (A) under subsection F, (B) on the grounds that
271 the requester has not established his authority to receive such health records or proof of his identity, or
272 (C) as otherwise provided by law. Procedures set forth in this section shall apply only to requests for
273 health records not specifically governed by other provisions of state law.

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

289 The health care entity denying the request shall also inform the individual of the individual's right to
290 request in writing that such health care entity designate, at its own expense, a physician, clinical
291 psychologist, or clinical social worker, whose licensure, training, and experience relative to the
292 individual's condition are at least equivalent to that of the physician, clinical psychologist, or clinical
293 social worker upon whose professional judgment the denial is based and who did not participate in the
294 original decision to deny the health records, who shall make a judgment as to whether to make the
295 health record available to the individual. The health care entity shall comply with the judgment of the
296 reviewing physician, clinical psychologist, or clinical social worker. The health care entity shall permit
297 copying and examination of the health record by such other physician, clinical psychologist, or clinical
298 social worker designated by either the individual at his own expense or by the health care entity at its
299 expense.

300 Any health record copied for review by any such designated physician, clinical psychologist, or
301 clinical social worker shall be accompanied by a statement from the custodian of the health record that
302 the individual's treating physician, clinical psychologist, or clinical social worker determined that the
303 individual's review of his health record would be reasonably likely to endanger the life or physical
304 safety of the individual or would be reasonably likely to cause substantial harm to a person referenced
305 in the health record who is not a health care provider.

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

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

311 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

312 Individual's Name _____

313 Health Care Entity's Name _____

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

315 _____

316 Information or Health Records to be disclosed

317 _____

318 Purpose of Disclosure or at the Request of the Individual

319 _____

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

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

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

334 _____

335 Relationship or Authority of Legal Representative

336 _____

337 Date of Signature _____

338 H. Pursuant to this subsection:

339 1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or
 340 administrative action or proceeding shall request the issuance of a subpoena duces tecum for another
 341 party's health records or cause a subpoena duces tecum to be issued by an attorney unless a copy of the
 342 request for the subpoena or a copy of the attorney-issued subpoena is provided to the other party's
 343 counsel or to the other party if pro se, simultaneously with filing the request or issuance of the
 344 subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces
 345 tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a
 346 copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the
 347 request or issuance of the attorney-issued subpoena.

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

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

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

361 NOTICE TO INDIVIDUAL

362 The attached document means that (insert name of party requesting or causing issuance of the
 363 subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has
 364 been issued by the other party's attorney to your doctor, other health care providers (names of health
 365 care providers inserted here) or other health care entity (name of health care entity to be inserted here)
 366 requiring them to produce your health records. Your doctor, other health care provider or other health
 367 care entity is required to respond by providing a copy of your health records. If you believe your health

368 records should not be disclosed and object to their disclosure, you have the right to file a motion with
 369 the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion
 370 to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued
 371 subpoena. You may contact the clerk's office or the administrative agency to determine the requirements
 372 that must be satisfied when filing a motion to quash and you may elect to contact an attorney to
 373 represent your interest. If you elect to file a motion to quash, you must notify your doctor, other health
 374 care provider(s), or other health care entity, that you are filing the motion so that the health care
 375 provider or health care entity knows to send the health records to the clerk of court or administrative
 376 agency in a sealed envelope or package for safekeeping while your motion is decided.

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

381 NOTICE TO HEALTH CARE ENTITIES

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

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

390 NO MOTION TO QUASH WAS FILED; OR

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

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

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

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

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

413 If the health care entity has actual receipt of notice that a motion to quash the subpoena has been
 414 filed or if the health care entity files a motion to quash the subpoena for health records, then the health
 415 care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or
 416 administrative agency issuing the subpoena or in whose court or administrative agency the action is
 417 pending. The court or administrative agency shall place the health records under seal until a
 418 determination is made regarding the motion to quash. The securely sealed envelope shall only be opened
 419 on order of the judge or administrative agency. In the event the court or administrative agency grants
 420 the motion to quash, the health records shall be returned to the health care entity in the same sealed
 421 envelope in which they were delivered to the court or administrative agency. In the event that a judge or
 422 administrative agency orders the sealed envelope to be opened to review the health records in camera, a
 423 copy of the order shall accompany any health records returned to the health care entity. The health
 424 records returned to the health care entity shall be in a securely sealed envelope.

425 5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued
 426 subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the
 427 subpoenaed health care entity that the time for filing a motion to quash has elapsed and that no motion
 428 to quash was filed. Any health care entity receiving such certification shall have the duty to comply

429 with the subpoena duces tecum by returning the specified health records by either the return date on the
430 subpoena or five days after receipt of the certification, whichever is later.

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

439 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if
440 subpoenaed health records have been submitted by a health care entity to the court or administrative
441 agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no
442 submitted health records should be disclosed, return all submitted health records to the health care entity
443 in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide
444 all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon
445 determining that only a portion of the submitted health records should be disclosed, provide such portion
446 to the party on whose behalf the subpoena was issued and return the remaining health records to the
447 health care entity in a sealed envelope.

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

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

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

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

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

473 e. All filed motions to quash have been resolved by the court or administrative agency and the
474 disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no
475 health records have previously been delivered to the court or administrative agency by the health care
476 entity, the health care entity shall return only those health records specified in the certification,
477 consistent with the court or administrative agency's ruling, by the return date on the subpoena or five
478 days after receipt of the certification, whichever is later.

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

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

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

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

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

491 I. Health care entities may testify about the health records of an individual in compliance with
492 §§ 8.01-399 and 8.01-400.2.

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

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

506 *L. An authorization for the disclosure of health records executed pursuant to this section shall*
507 *remain in effect until (i) the authorization is revoked in writing and delivered to the health care entity*
508 *maintaining the record that is subject to the authorization by the person who executed the authorization,*
509 *(ii) any expiration date set forth in the authorization, or (iii) the health care entity maintaining the*
510 *record becomes aware of any expiration event described in the authorization, whichever occurs first.*
511 *However, any revocation of an authorization for the disclosure of health records executed pursuant to*
512 *this section shall not be effective to the extent that the health care entity maintaining the record has*
513 *disclosed health records prior to delivery of such revocation in reliance upon the authorization or as*
514 *otherwise provided pursuant to 45 C.F.R. § 164.508. A statement in an authorization for the disclosure*
515 *of health records pursuant to this section that the information to be used or disclosed is "all health*
516 *records" is a sufficient description for the disclosure of all health records of the person maintained by*
517 *the health care provider to whom the authorization was granted. If a health care provider receives a*
518 *written revocation of an authorization for the disclosure of health records in accordance with this*
519 *subsection, a copy of such written revocation shall be included in the person's original health record*
520 *maintained by the health care provider.*

521 *An authorization for the disclosure of health records executed pursuant to this section shall, unless*
522 *otherwise expressly limited in the authorization, be deemed to include authorization for the person*
523 *named in the authorization to assist the person who is the subject of the health record in accessing*
524 *health care services, including scheduling appointments for the person who is the subject of the health*
525 *record and attending appointments together with the person who is the subject of the health record.*

526 **§ 54.1-2404.1. Health care providers; disclosure of records; actions for which an authorization is**
527 **not required.**

528 *A. Subject to any limitations set forth in an authorization for the disclosure of health records*
529 *executed pursuant to § 32.1-127.1:03 and the provisions of subsection F of § 32.1-127.1:03, every health*
530 *care provider shall make health records, as defined in § 32.1-127.1:03, of a patient available to any*
531 *person designated by a patient in an authorization to disclose health records pursuant to*
532 *§ 32.1-127.1:03 to the same extent that such health records are required to be made available to the*
533 *patient had the patient requested such health records.*

534 *B. Every health care provider shall allow a spouse, parent, adult child, adult sibling, or other person*
535 *identified by a patient to make an appointment for medical services on behalf of such patient, regardless*
536 *of whether such patient has executed an authorization to disclose health records to such person*
537 *pursuant to § 32.1-127.1:03; however, such health care provider shall not disclose protected health*
538 *information to the person making the appointment for medical services on behalf of the patient unless*
539 *the patient has executed an authorization to disclose health records pursuant to § 32.1-127.1:03 or*
540 *unless otherwise permitted or required to do so by federal or state law or regulations. Nothing in this*
541 *subsection shall prevent a health care provider from sharing relevant protected health information*
542 *related to the patient's health care or payment with a spouse, parent, adult child, adult sibling, or other*
543 *person involved in the patient's health care or payment in accordance with 45 C.F.R. § 164.510.*