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HOUSE BILL NO. 2091

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact §§ 20-124.6 and 54.1-2969 of the Code of Virginia, relating to parental access to minor's medical records; consent by certain minors to treatment of mental or emotional disorders.

Patrons—Mundon King, Bourne, Clark, Gooditis, Guzman, Hayes, Hope, Jenkins, Kory, Maldonado, McQuinn, Price, Rasoul, Shin, Simon, Simonds and Williams Graves

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-124.6 and 54.1-2969 of the Code of Virginia are amended and reenacted as follows:

§ 20-124.6. Access to minor's records.

A. Notwithstanding any other provision of law, neither parent, regardless of whether such parent has custody, shall be denied access to the academic or health records or records of a child day center or family day home of that parent's minor child unless otherwise ordered by the court for good cause shown or pursuant to subsection B.

B. In the case of health records, access may also be denied if the minor's treating physician, clinical psychologist, clinical social worker, or licensed professional counselor has made a part of the minor's record a written statement that, in the exercise of his professional judgment, the furnishing to or review by the requesting parent of such health records would be reasonably likely to cause substantial harm to the minor or another person *or deter the minor from seeking care*. If a health care entity denies a parental request for access to, or copies of, a minor's health record, the health care entity denying the request shall comply with the provisions of subsection F of § 32.1-127.1:03. The minor or his parent, either or both, shall have the right to have the denial reviewed as specified in subsection F of § 32.1-127.1:03 to determine whether to make the minor's health record available to the requesting parent.

C. For the purposes of this section, the terms "health record" or the plural thereof and "health care entity" mean the same as those terms are defined in subsection B of § 32.1-127.1:03. The terms "child day center" and "family day home" mean the same as those terms are defined in § 63.2-100.

§ 54.1-2969. Authority to consent to surgical and medical treatment of certain minors.

A. Whenever any minor who has been separated from the custody of his parent or guardian is in need of surgical or medical treatment, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, as follows:

1. Upon judges with respect to minors whose custody is within the control of their respective courts.

2. Upon local directors of social services or their designees with respect to (i) minors who are committed to the care and custody of the local board by courts of competent jurisdiction, (ii) minors who are taken into custody pursuant to § 63.2-1517, and (iii) minors who are entrusted to the local board by the parent, parents or guardian, when the consent of the parent or guardian cannot be obtained immediately and, in the absence of such consent, a court order for such treatment cannot be obtained immediately.

3. Upon the Director of the Department of Corrections or the Director of the Department of Juvenile Justice or his designees with respect to any minor who is sentenced or committed to his custody.

4. Upon the principal executive officers of state institutions with respect to the wards of such institutions.

5. Upon the principal executive officer of any other institution or agency legally qualified to receive minors for care and maintenance separated from their parents or guardians, with respect to any minor whose custody is within the control of such institution or agency.

6. Upon any person standing in loco parentis, or upon a conservator or custodian for his ward or other charge under disability.

B. Whenever the consent of the parent or guardian of any minor who is in need of surgical or medical treatment is unobtainable because such parent or guardian is not a resident of the Commonwealth or his whereabouts is unknown or he cannot be consulted with promptness reasonable under the circumstances, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, upon judges of juvenile and domestic relations district courts.

C. Whenever delay in providing medical or surgical treatment to a minor may adversely affect such

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58 minor's recovery and no person authorized in this section to consent to such treatment for such minor is
59 available within a reasonable time under the circumstances, no liability shall be imposed upon qualified
60 emergency medical services personnel as defined in § 32.1-111.1 at the scene of an accident, fire or
61 other emergency, a licensed health professional, or a licensed hospital by reason of lack of consent to
62 such medical or surgical treatment. However, in the case of a minor 14 years of age or older who is
63 physically capable of giving consent, such consent shall be obtained first.

64 D. Whenever delay in providing transportation to a minor from the scene of an accident, fire or other
65 emergency prior to hospital admission may adversely affect such minor's recovery and no person
66 authorized in this section to consent to such transportation for such minor is available within a
67 reasonable time under the circumstances, no liability shall be imposed upon emergency medical services
68 personnel as defined in § 32.1-111.1, by reason of lack of consent to such transportation. However, in
69 the case of a minor 14 years of age or older who is physically capable of giving consent, such consent
70 shall be obtained first.

71 E. A minor shall be deemed an adult for the purpose of consenting to:

72 1. Medical or health services needed to determine the presence of or to treat venereal disease or any
73 infectious or contagious disease that the State Board of Health requires to be reported;

74 2. Medical or health services required in case of birth control, pregnancy or family planning except
75 for the purposes of sexual sterilization; *or*

76 3. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for
77 substance abuse as defined in § 37.2-100; *or*

78 4. ~~Medical or health services needed in the case of outpatient care, treatment or rehabilitation for~~
79 ~~mental illness or emotional disturbance.~~

80 A minor shall also be deemed an adult for the purpose of accessing or authorizing the disclosure of
81 medical records related to subdivisions 1 ~~through 4, 2, and 3.~~

82 F. Except for the purposes of sexual sterilization, any minor who is or has been married shall be
83 deemed an adult for the purpose of giving consent to surgical and medical treatment.

84 G. A pregnant minor shall be deemed an adult for the sole purpose of giving consent for herself and
85 her child to surgical and medical treatment relating to the delivery of her child when such surgical or
86 medical treatment is provided during the delivery of the child or the duration of the hospital admission
87 for such delivery; thereafter, the minor mother of such child shall also be deemed an adult for the
88 purpose of giving consent to surgical and medical treatment for her child.

89 H. Any minor 16 years of age or older may, with the consent of a parent or legal guardian, consent
90 to donate blood and may donate blood if such minor meets donor eligibility requirements. However,
91 parental consent to donate blood by any minor 17 years of age shall not be required if such minor
92 receives no consideration for his blood donation and the procurer of the blood is a nonprofit, voluntary
93 organization.

94 I. Any judge, local director of social services, Director of the Department of Corrections, Director of
95 the Department of Juvenile Justice, or principal executive officer of any state or other institution or
96 agency who consents to surgical or medical treatment of a minor in accordance with this section shall
97 make a reasonable effort to notify the minor's parent or guardian of such action as soon as practicable.

98 J. Nothing in subsection G shall be construed to permit a minor to consent to an abortion without
99 complying with § 16.1-241.

100 K. Nothing in subsection E shall prevent a parent, legal guardian or person standing in loco parentis
101 from obtaining (i) the results of a minor's nondiagnostic drug test when the minor is not receiving care,
102 treatment or rehabilitation for substance abuse as defined in § 37.2-100 or (ii) a minor's other health
103 records, except when the minor's treating physician, clinical psychologist, clinical social worker, or
104 licensed professional counselor has determined, in the exercise of his professional judgment, that the
105 disclosure of health records to the parent, legal guardian, or person standing in loco parentis would be
106 reasonably likely to cause substantial harm to the minor or another person pursuant to subsection B of
107 § 20-124.6.

108 L. *Any minor 16 years of age or older who is determined by a health care provider to be mature*
109 *and capable of giving informed consent shall be deemed an adult for the purpose of giving consent to*
110 *consultation, diagnosis, and treatment of a mental or emotional disorder by a health care provider or*
111 *clinic. The capacity of a minor to consent to consultation, diagnosis, and treatment of a mental or*
112 *emotional disorder by a health care provider or clinic does not include the capacity to refuse*
113 *consultation, diagnosis, or treatment for a mental or emotional disorder for which a parent, guardian,*
114 *or custodian of the minor has given consent.*