

LD7195188

HOUSE BILL NO. 2147

Offered January 23, 1995

A BILL to amend the Code of Virginia by adding sections numbered 32.1-127.1:02 and 54.1-2403.3, relating to medical records.

Patrons—Cunningham, Brickley, Crouch, Darner, DeBoer, Fisher, Jones, D.C., Melvin and Nixon;
Senators: Holland, C.A., Saslaw, Schewel and Woods

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 32.1-127.1:02 and 54.1-2403.3 as follows:

§ 32.1-127.1:02. Medical records; ownership; provision of copies.

A. As used in this section, "health care provider" shall have the same meaning as set forth in § 8.01-581.1 and "medical record" shall have the same meaning as set forth in § 42.1-77.

B. Medical records are the property of the health care provider maintaining them and shall be removed from the premises where they are maintained without approval of the owner only in accordance with court order or subpoena consistent with § 8.01-413, or in accordance with other provisions of state or federal law.

C. Health care providers shall keep medical records confidential and only authorized personnel shall have access to such records. Health care providers shall release copies of a patient's medical record only (i) with the written consent of the patient; the patient's legal representative; a minor patient's parent, guardian, or legal representative; or other person authorized to consent to treatment of minors pursuant to § 54.1-2969; (ii) to duly authorized state or federal health authorities or others as specifically authorized by the provisions of this Code or of federal law; or (iii) 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. Records relating to a deceased patient or a patient determined by his attending physician to be incapable of making an informed decision as that condition is defined in § 54.1-2982 shall be provided to any of the following persons, in order of priority stated, upon the written request of such person, provided that the health care provider maintaining the records is not aware of any available person in a higher class: (1) the personal representative of a deceased patient; (2) a legal guardian or committee of the patient; (3) the patient's legal spouse; (4) an adult child of the patient; (5) either parent of the patient; (6) an adult brother or sister of the patient; or (7) any other relative of the patient in the descending order of blood relationship. Copies of medical records requested for purposes of litigation shall be requested and provided in accordance with the provisions of § 8.01-413.

D. Requests for copies of medical records shall (i) be in writing, dated, and signed by the requester; (ii) identify the nature of the information requested; and (iii) include evidence of the authority of the requester to receive such copies and identification of the person to whom the information is to be disclosed. Within fifteen days of receipt of a request for copies of medical records, the health care provider shall do one of the following: (i) furnish such copies to any requester authorized to receive them; (ii) inform the requester if the information does not exist or cannot be found; (iii) if the health care provider does not maintain a record of the information, so inform the requester and provide the name and address, if known, of the health care provider who maintains the record; or (iv) deny the request (a) under subsection E of this section, (b) on the grounds that the requester has not established his authority to receive such records or proof of his identity, or (c) as otherwise provided by law.

E. Copies of a patient's medical records shall not be furnished to such patient or anyone authorized to act on the patient's behalf where the patient's attending physician or the patient's clinical psychologist has made a part of the patient's record a written statement that, in his opinion, the furnishing to or review by the patient of such records would be injurious to the patient's health or well-being. If any custodian of medical records denies a request for copies of records based on such statement, the custodian shall permit examination and copying of the medical record by another such physician or clinical psychologist selected by the patient, whose licensure, training and experience relative to the patient's condition is at least equivalent to that of the physician or clinical psychologist upon whose opinion the denial is based. The person or entity denying the request shall inform the patient of the patient's right to select another reviewing physician or psychologist under this subsection who shall make a judgment as to whether to make the record available to the patient. Any record copied for review by the physician or clinical psychologist selected by the patient shall be accompanied by a

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60 *statement from the custodian of the record that the patient's attending physician or clinical psychologist*
61 *determined that the patient's review of his record would be injurious to the patient's health or*
62 *well-being.*

63 *§ 54.1-2403.3. Medical records; ownership; provision of copies.*

64 *Medical records maintained by any health care provider as defined in § 8.01-581.1 shall be the*
65 *property of such health care provider. Such health care provider shall release copies of any such*
66 *medical records in compliance with §§ 32.1-127.1:02 and 8.01-413 if the request is made for purposes*
67 *of litigation, or as otherwise provided by state or federal law.*