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HOUSE BILL NO. 1732

Offered January 13, 2025

Prefiled January 4, 2025

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 32.1-127.1:06, relating to health records; disclosure of laboratory test results.

Patron—Price

Referred to Committee on Health and Human Services

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 32.1-127.1:06 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, including an audit trail of any additions, deletions, or revisions to the health record, if specifically requested, 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 §

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59 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the purposes
60 of this section. Health care provider shall also include all persons who are licensed, certified, registered or
61 permitted or who hold a multistate licensure privilege issued by any of the health regulatory boards within the
62 Department of Health Professions, except persons regulated by the Board of Funeral Directors and
63 Embalmers or the Board of Veterinary Medicine.

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

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

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

75 "Individual" means a patient who is receiving or has received health services from a health care 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 from
82 the rest of the individual's health record. "Psychotherapy notes" does not include annotations relating to
83 medication and prescription monitoring, counseling session start and stop times, treatment modalities and
84 frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis, functional status,
85 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 *or federal* 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 case
97 of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of minors
98 pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment pursuant to §
99 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an individual's written
100 authorization, pursuant to the individual's oral authorization for a health care provider or health plan to
101 discuss the individual's health records with a third party specified by the individual;

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

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

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

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

115 6. As required or authorized by law relating to public health activities, health oversight activities, serious
116 threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease, public
117 safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those
118 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, 32.1-283,
119 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, 54.1-2400.9,

- 120 54.1-2403.3, 54.1-2506, 54.1-2966, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and 63.2-1606;
- 121 7. Where necessary in connection with the care of the individual;
- 122 8. In connection with the health care entity's own health care operations or the health care operations of
- 123 another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in
- 124 accordance with accepted standards of practice within the health services setting; however, the maintenance,
- 125 storage, and disclosure of the mass of prescription dispensing records maintained in a pharmacy registered or
- 126 permitted in Virginia shall only be accomplished in compliance with §§ 54.1-3410, 54.1-3411, and 54.1-3412
- 127 ;
- 128 9. When the individual has waived his right to the privacy of the health records;
- 129 10. When examination and evaluation of an individual are undertaken pursuant to judicial or
- 130 administrative law order, but only to the extent as required by such order;
- 131 11. To the guardian ad litem and any attorney representing the respondent in the course of a guardianship
- 132 proceeding of an adult patient who is the respondent in a proceeding under Chapter 20 (§ 64.2-2000 et seq.)
- 133 of Title 64.2;
- 134 12. To the guardian ad litem and any attorney appointed by the court to represent an individual who is or
- 135 has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5 (§ 37.2-814
- 136 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
- 137 authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of Title 37.2;
- 138 13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et seq.) of
- 139 Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health authority or a
- 140 designee of a community services board or behavioral health authority, or a law-enforcement officer
- 141 participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, § 19.2-169.6
- 142 , or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of the proceeding, and to any health care
- 143 provider evaluating or providing services to the person who is the subject of the proceeding or monitoring the
- 144 person's adherence to a treatment plan ordered under those provisions. Health records disclosed to a
- 145 law-enforcement officer shall be limited to information necessary to protect the officer, the person, or the
- 146 public from physical injury or to address the health care needs of the person. Information disclosed to a
- 147 law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained;
- 148 14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or
- 149 administrative proceeding, if the court or administrative hearing officer has entered an order granting the
- 150 attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the health
- 151 care entity of such order;
- 152 15. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health records in
- 153 accord with § 9.1-156;
- 154 16. To an agent appointed under an individual's power of attorney or to an agent or decision maker
- 155 designated in an individual's advance directive for health care or for decisions on anatomical gifts and organ,
- 156 tissue or eye donation or to any other person consistent with the provisions of the Health Care Decisions Act
- 157 (§ 54.1-2981 et seq.);
- 158 17. To third-party payors and their agents for purposes of reimbursement;
- 159 18. As is necessary to support an application for receipt of health care benefits from a governmental
- 160 agency or as required by an authorized governmental agency reviewing such application or reviewing
- 161 benefits already provided or as necessary to the coordination of prevention and control of disease, injury, or
- 162 disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;
- 163 19. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership or
- 164 closing of a pharmacy pursuant to regulations of the Board of Pharmacy;
- 165 20. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and immediate
- 166 threat to cause serious bodily injury or death of an identified or readily identifiable person;
- 167 21. Where necessary in connection with the implementation of a hospital's routine contact process for
- 168 organ donation pursuant to subdivision B 4 of § 32.1-127;
- 169 22. In the case of substance abuse records, when permitted by and in conformity with requirements of
- 170 federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;
- 171 23. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the
- 172 adequacy or quality of professional services or the competency and qualifications for professional staff
- 173 privileges;
- 174 24. If the health records are those of a deceased or mentally incapacitated individual to the personal
- 175 representative or executor of the deceased individual or the legal guardian or committee of the incompetent or
- 176 incapacitated individual or if there is no personal representative, executor, legal guardian or committee
- 177 appointed, to the following persons in the following order of priority: a spouse, an adult son or daughter,
- 178 either parent, an adult brother or sister, or any other relative of the deceased individual in order of blood
- 179 relationship;
- 180 25. For the purpose of conducting record reviews of inpatient hospital deaths to promote identification of

181 all potential organ, eye, and tissue donors in conformance with the requirements of applicable federal law and
182 regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's designated organ procurement
183 organization certified by the United States Health Care Financing Administration and (ii) to any eye bank or
184 tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of
185 Tissue Banks;

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

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

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

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

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

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

205 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a person
206 or persons who are subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§
207 32.1-48.05 et seq.) of Chapter 2;

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

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

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

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

232 37. *To an electronic health information exchange or network for the purpose of meeting the requirements*
233 *of the 21st Century Cures Act, P.L. 114-255, and its related federal regulations.*

234 Notwithstanding the provisions of subdivisions 1 through ~~35~~ 37, a health care entity shall obtain an
235 individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by the
236 health care entity is (i) for its own training programs in which students, trainees, or practitioners in mental
237 health are being taught under supervision to practice or to improve their skills in group, joint, family, or
238 individual counseling; (ii) to defend itself or its employees or staff against any accusation of wrongful
239 conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1, to take
240 precautions to protect third parties from violent behavior or other serious harm; (iv) required in the course of
241 an investigation, audit, review, or proceeding regarding a health care entity's conduct by a duly authorized

242 law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise required by law.

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

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

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

293 Any health record copied for review by any such designated physician, clinical psychologist, clinical
294 social worker, or licensed professional counselor shall be accompanied by a statement from the custodian of
295 the health record that the individual's treating physician, clinical psychologist, clinical social worker, or
296 licensed professional counselor determined that the individual's review of his health record would be
297 reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely to
298 cause substantial harm to a person referenced in the health record who is not a health care provider.

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

302 G. A written authorization to allow release of an individual's health records shall substantially include the

303 following information:

304 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

305 Individual's Name _____

306 Health Care Entity's Name _____

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

308 _____

309 Information or Health Records to be disclosed

310 _____

311 Purpose of Disclosure or at the Request of the Individual

312 _____

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

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

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

326 _____

327 Relationship or Authority of Legal Representative

328 _____

329 Date of Signature _____

330 H. Pursuant to this subsection:

331 1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or administrative
332 action or proceeding shall request the issuance of a subpoena duces tecum for another party's health records
333 or cause a subpoena duces tecum to be issued by an attorney unless a copy of the request for the subpoena or
334 a copy of the attorney-issued subpoena is provided to the other party's counsel or to the other party if pro se,
335 simultaneously with filing the request or issuance of the subpoena. No party to an action or proceeding shall
336 request or cause the issuance of a subpoena duces tecum for the health records of a nonparty witness unless a
337 copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the nonparty
338 witness simultaneously with filing the request or issuance of the attorney-issued subpoena.

339 No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date of
340 the subpoena except by order of a court or administrative agency for good cause shown. When a court or
341 administrative agency directs that health records be disclosed pursuant to a subpoena duces tecum earlier than
342 15 days from the date of the subpoena, a copy of the order shall accompany the subpoena.

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

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

351 NOTICE TO INDIVIDUAL

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

364 that the health care provider or health care entity knows to send the health records to the clerk of court or
365 administrative agency in a sealed envelope or package for safekeeping while your motion is decided.

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

370 NOTICE TO HEALTH CARE ENTITIES

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

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

379 NO MOTION TO QUASH WAS FILED; OR

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

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

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

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

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

400 If the health care entity has actual receipt of notice that a motion to quash the subpoena has been filed or if
401 the health care entity files a motion to quash the subpoena for health records, then the health care entity shall
402 produce the health records, in a securely sealed envelope, to the clerk of the court or administrative agency
403 issuing the subpoena or in whose court or administrative agency the action is pending. The court or
404 administrative agency shall place the health records under seal until a determination is made regarding the
405 motion to quash. The securely sealed envelope shall only be opened on order of the judge or administrative
406 agency. In the event the court or administrative agency grants the motion to quash, the health records shall be
407 returned to the health care entity in the same sealed envelope in which they were delivered to the court or
408 administrative agency. In the event that a judge or administrative agency orders the sealed envelope to be
409 opened to review the health records in camera, a copy of the order shall accompany any health records
410 returned to the health care entity. The health records returned to the health care entity shall be in a securely
411 sealed envelope.

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

418 6. In the event that the individual whose health records are being sought files a motion to quash the
419 subpoena, the court or administrative agency shall decide whether good cause has been shown by the
420 discovering party to compel disclosure of the individual's health records over the individual's objections. In
421 determining whether good cause has been shown, the court or administrative agency shall consider (i) the
422 particular purpose for which the information was collected; (ii) the degree to which the disclosure of the
423 records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the disclosure on
424 the individual's future health care; (iv) the importance of the information to the lawsuit or proceeding; and (v)

425 any other relevant factor.

426 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if subpoenaed
427 health records have been submitted by a health care entity to the court or administrative agency in a sealed
428 envelope, the court or administrative agency shall: (i) upon determining that no submitted health records
429 should be disclosed, return all submitted health records to the health care entity in a sealed envelope; (ii) upon
430 determining that all submitted health records should be disclosed, provide all the submitted health records to
431 the party on whose behalf the subpoena was issued; or (iii) upon determining that only a portion of the
432 submitted health records should be disclosed, provide such portion to the party on whose behalf the subpoena
433 was issued and return the remaining health records to the health care entity in a sealed envelope.

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

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

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

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

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

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

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

465 9. The provisions of this subsection have no application to subpoenas for health records requested under §
466 8.01-413, or issued by a duly authorized administrative agency conducting an investigation, audit, review or
467 proceedings regarding a health care entity's conduct.

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

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

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

475 I. Health care entities may testify about the health records of an individual in compliance with §§
476 8.01-399 and 8.01-400.2.

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

483 K. Nothing in this section shall prohibit a health care provider who prescribes or dispenses a controlled
484 substance required to be reported to the Prescription Monitoring Program established pursuant to Chapter
485 25.2 (§ 54.1-2519 et seq.) of Title 54.1 to a patient from disclosing information obtained from the

486 Prescription Monitoring Program and contained in a patient's health care record to another health care
 487 provider when such disclosure is related to the care or treatment of the patient who is the subject of the
 488 record.

489 L. An authorization for the disclosure of health records executed pursuant to this section shall remain in
 490 effect until (i) the authorization is revoked in writing and delivered to the health care entity maintaining the
 491 record that is subject to the authorization by the person who executed the authorization, (ii) any expiration
 492 date set forth in the authorization, or (iii) the health care entity maintaining the record becomes aware of any
 493 expiration event described in the authorization, whichever occurs first. However, any revocation of an
 494 authorization for the disclosure of health records executed pursuant to this section shall not be effective to the
 495 extent that the health care entity maintaining the record has disclosed health records prior to delivery of such
 496 revocation in reliance upon the authorization or as otherwise provided pursuant to 45 C.F.R. § 164.508. A
 497 statement in an authorization for the disclosure of health records pursuant to this section that the information
 498 to be used or disclosed is "all health records" is a sufficient description for the disclosure of all health records
 499 of the person maintained by the health care provider to whom the authorization was granted. If a health care
 500 provider receives a written revocation of an authorization for the disclosure of health records in accordance
 501 with this subsection, a copy of such written revocation shall be included in the person's original health record
 502 maintained by the health care provider.

503 An authorization for the disclosure of health records executed pursuant to this section shall, unless
 504 otherwise expressly limited in the authorization, be deemed to include authorization for the person named in
 505 the authorization to assist the person who is the subject of the health record in accessing health care services,
 506 including scheduling appointments for the person who is the subject of the health record and attending
 507 appointments together with the person who is the subject of the health record.

508 **§ 32.1-127.1:06. Disclosure of laboratory test results.**

509 *A. Notwithstanding any other provision of law, except as provided by subsection B, a health care entity as*
 510 *defined in § 32.1-127.1:03 that requests a medical laboratory test for a patient be performed shall not engage*
 511 *in information blocking as described in 42 U.S.C. § 300jj-52.*

512 *B. The following reports or test results shall not be disclosed to a patient as part of the patient's health*
 513 *record or, in the case of a clinical laboratory test result or pathology report, shall not be disclosed by the*
 514 *health care entity as defined in § 32.1-127.1:03 that administers and controls the patient's health record until*
 515 *72 hours after the results are finalized, unless the health care entity directs the release of the results before*
 516 *the end of that 72-hour period:*

- 517 1. Pathology reports that have a reasonable likelihood of showing a finding of malignancy;
- 518 2. Radiology reports that have a reasonable likelihood of showing a finding of malignancy; or
- 519 3. Tests that could reveal genetic markers.

INTRODUCED

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