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SENATE BILL NO. 1439
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on)
(Patron Prior to Substitute—Senator Durant)

A BILL to amend and reenact §§ 2.2-3705.5 and 37.2-308.1 of the Code of Virginia, relating to the acute psychiatric bed registry; Bed Registry Advisory Council; patient privacy and data security; Virginia Freedom of Information Act exemption.

on _____)

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.5 and 37.2-308.1 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who

31 is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a
32 minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access
33 may be asserted by the subject person.

34 For the purposes of this chapter, statistical summaries of incidents and statistical data concerning abuse of
35 individuals receiving services compiled by the Commissioner of Behavioral Health and Developmental
36 Services shall be disclosed. No such summaries or data shall include any information that identifies specific
37 individuals receiving services.

38 2. Applications for admission to examinations or for licensure and scoring records maintained by the
39 Department of Health Professions or any board in that department on individual licensees or applicants;
40 information required to be provided to the Department of Health Professions by certain licensees pursuant to
41 § 54.1-2506.1; information held by the Health Practitioners' Monitoring Program Committee within the
42 Department of Health Professions that identifies any practitioner who may be, or who is actually, impaired to
43 the extent that disclosure is prohibited by § 54.1-2517; and information relating to the prescribing and
44 dispensing of covered substances to recipients and any abstracts from such information that are in the
45 possession of the Prescription Monitoring Program (Program) pursuant to Chapter 25.2 (§ 54.1-2519 et seq.)
46 of Title 54.1 and any material relating to the operation or security of the Program.

47 3. Reports, documentary evidence, and other information as specified in §§ 51.5-122 and 51.5-184 and
48 Chapter 1 (§ 63.2-100 et seq.) of Title 63.2 and information and statistical registries required to be kept
49 confidential pursuant to Chapter 1 (§ 63.2-100 et seq.) of Title 63.2.

50 4. Investigative notes; proprietary information not published, copyrighted or patented; information
51 obtained from employee personnel records; personally identifiable information regarding residents, clients or
52 other recipients of services; other correspondence and information furnished in confidence to the Department
53 of Education in connection with an active investigation of an applicant or licensee pursuant to Chapter 14.1
54 (§ 22.1-289.02 et seq.) of Title 22.1; other correspondence and information furnished in confidence to the
55 Department of Social Services in connection with an active investigation of an applicant or licensee pursuant
56 to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and information furnished to
57 the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (§
58 8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. However,
59 nothing in this subdivision shall prevent the disclosure of information from the records of completed

60 investigations in a form that does not reveal the identity of complainants, persons supplying information, or
61 other individuals involved in the investigation.

62 5. Information collected for the designation and verification of trauma centers and other specialty care
63 centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§
64 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

65 6. Reports and court documents relating to involuntary admission required to be kept confidential
66 pursuant to § 37.2-818.

67 7. Information acquired (i) during a review of any child death conducted by the State Child Fatality
68 Review Team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to the
69 extent that such information is made confidential by § 32.1-283.2; (ii) during a review of any death conducted
70 by a family violence fatality review team to the extent that such information is made confidential by §
71 32.1-283.3; (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the
72 extent made confidential by § 32.1-283.5 or by a local or regional adult fatality review team to the extent that
73 such information is made confidential by § 32.1-283.6; (iv) by a local or regional overdose fatality review
74 team to the extent that such information is made confidential by § 32.1-283.7; (v) during a review of any
75 death conducted by the Maternal Mortality Review Team to the extent that such information is made
76 confidential by § 32.1-283.8; or (vi) during a review of any death conducted by the Developmental
77 Disabilities Mortality Review Committee to the extent that such information is made confidential by §
78 37.2-314.1.

79 8. Patient level data collected by the Board of Health and not yet processed, verified, and released,
80 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health
81 has contracted pursuant to § 32.1-276.4.

82 9. Information relating to a grant application, or accompanying a grant application, submitted to the
83 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter
84 14 of Title 51.5 that would (i) reveal (a) medical or mental health records or other data identifying individual
85 patients or (b) proprietary business or research-related information produced or collected by the applicant in
86 the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, or scholarly
87 issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be
88 harmful to the competitive position of the applicant.

89 10. Any information copied, recorded, or received by the Commissioner of Health in the course of an
90 examination, investigation, or review of a managed care health insurance plan licensee pursuant to §§
91 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all
92 computer or other recordings.

93 11. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept
94 confidential pursuant to § 38.2-5002.2.

95 12. Information held by the State Health Commissioner relating to the health of any person subject to an
96 order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of
97 Title 32.1. However, nothing in this subdivision shall be construed to prevent the disclosure of statistical
98 summaries, abstracts, or other information in aggregate form.

99 13. The names and addresses or other contact information of persons receiving transportation services
100 from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42
101 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under §
102 63.2-600.

103 14. Information held by certain health care committees and entities that may be withheld from discovery
104 as privileged communications pursuant to § 8.01-581.17.

105 15. Data and information specified in § 37.2-308.01 relating to proceedings provided for in Article 16 (§
106 16.1-335 et seq.) of Chapter 11 of Title 16.1 and Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.

107 16. Records of and information held by the Smartchart Network Program required to be kept confidential
108 pursuant to § 32.1-372.

109 *17. Information submitted to the acute psychiatric bed registry pursuant to § 37.2-308.1.*

110 **§ 37.2-308.1. Acute psychiatric bed registry.**

111 A. The Department shall develop and administer a web-based acute psychiatric bed registry to collect,
112 aggregate, and display information about available acute beds in public and private inpatient psychiatric
113 facilities and public and private residential crisis stabilization units to facilitate the identification and
114 designation of facilities for the temporary detention and treatment of individuals who meet the criteria for
115 temporary detention pursuant to § 37.2-809.

116 B. The acute psychiatric bed registry created pursuant to subsection A shall:

117 1. Include descriptive information for every public and private inpatient psychiatric facility and every

118 public and private residential crisis stabilization unit in the Commonwealth, including contact information for
119 the facility or unit;

120 2. Provide real-time information about the number of beds available at each facility or unit and, for each
121 available bed, the type of patient that may be admitted, the level of security provided, and any other
122 information that may be necessary to allow employees or designees of community services boards and
123 employees of inpatient psychiatric facilities or public and private residential crisis stabilization units to
124 identify appropriate facilities for detention and treatment of individuals who meet the criteria for temporary
125 detention; and

126 3. Allow employees and designees of community services boards, employees of inpatient psychiatric
127 facilities or public and private residential crisis stabilization units, and health care providers as defined in §
128 8.01-581.1 working in an emergency room of a hospital or clinic or other facility rendering emergency
129 medical care to perform searches of the registry to identify available beds that are appropriate for the
130 detention and treatment of individuals who meet the criteria for temporary detention.

131 *C. Data collected through the acute psychiatric bed registry shall be exclusively utilized for the purposes*
132 *of appropriate placement of individuals in need of psychiatric care. No access to individual or aggregated*
133 *data collected through the acute psychiatric bed registry shall be granted except as approved by the Advisory*
134 *Council pursuant to subsection G.*

135 *D. Every state facility, community services board, behavioral health authority, and private inpatient*
136 *provider licensed by the Department shall participate in the acute psychiatric bed registry established*
137 *pursuant to subsection A and shall designate such employees as may be necessary to submit information for*
138 *inclusion in the acute psychiatric bed registry and serve as a point of contact for addressing requests for*
139 *information related to data reported to the acute psychiatric bed registry.*

140 ~~*E. Every state facility, community services board, behavioral health authority, and private inpatient*~~
141 ~~*provider licensed by the Department shall update information included in the acute psychiatric bed registry*~~
142 ~~*whenever there is a change in bed availability for the facility, board, authority, or provider or, if no change in*~~
143 ~~*bed availability has occurred, at least daily.*~~

144 ~~*F. The Commissioner may enter into a contract with a private entity for the development and*~~
145 ~~*administration of the acute psychiatric bed registry established pursuant to subsection A. Such contract shall*~~
146 ~~*include provisions for the protection of patient privacy and data security pursuant to state and federal law*~~

147 *and regulations, including the federal Health Insurance Portability and Accountability Act (42 U.S.C. §*
148 *1320d et seq.).*

149 *G. The Commissioner shall create the Bed Registry Advisory Council (the Advisory Council), which shall*
150 *consist of representatives from the Department, the Virginia Hospital and Healthcare Association, the*
151 *Virginia College of Emergency Physicians, and the Virginia Association of Community Services Boards; two*
152 *representatives from hospitals or health systems; two emergency physician representatives, and two*
153 *representatives from community services boards. The Advisory Council shall advise the Commissioner and*
154 *the third-party contractor regarding the establishment and operation of the acute psychiatric bed registry*
155 *established pursuant to subsection A; changes to the acute psychiatric bed registry; outcome measures,*
156 *including reports developed by the contractor; details on methods used to extract, transform, and load data;*
157 *and efforts to protect patient privacy and data security. The Commissioner shall also require the Advisory*
158 *Council to review and approve requests for access to data in the acute psychiatric bed registry. The*
159 *Commissioner shall ensure that (i) all data approvals are consistent with the purposes of the acute*
160 *psychiatric bed registry pursuant to subsection A; (ii) all data approvals comply with applicable state and*
161 *federal privacy laws and state and federal laws regarding the exchange of confidential health care data; and*
162 *(iii) all releases of data collected through the acute psychiatric bed registry are approved by the Advisory*
163 *Council. The Advisory Council may approve the release of routine or frequent data reports one time, as long*
164 *as there are no substantial changes to the request.*

165 *H. Information submitted to the acute psychiatric bed registry that identifies specific individuals receiving*
166 *services shall be confidential pursuant to state and federal confidentiality laws and regulations, including the*
167 *federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and shall be exempt*
168 *from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*