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1 **HOUSE BILL NO. 973**

2 Offered January 14, 2026

3 Prefiled January 13, 2026

4 *A BILL to amend and reenact § 32.1-127.1:03 of the Code of Virginia and to amend the Code of Virginia by*
5 *adding a section numbered 32.1-127.1:06, relating to health records; disclosure of laboratory test results;*
6 *waiting period.*

7 Patron—Price

8 Committee Referral Pending

9 **Be it enacted by the General Assembly of Virginia:**10 **1. That § 32.1-127.1:03 of the Code of Virginia is amended and reenacted and that the Code of Virginia**
11 **is amended by adding a section numbered 32.1-127.1:06 as follows:**12 **§ 32.1-127.1:03. Health records privacy.**13 A. There is hereby recognized an individual's right of privacy in the content of his health records. Health
14 records are the property of the health care entity maintaining them, and, except when permitted or required by
15 this section or by other provisions of state law, no health care entity, or other person working in a health care
16 setting, may disclose an individual's health records.

17 Pursuant to this subsection:

18 1. Health care entities shall disclose health records to the individual who is the subject of the health
19 record, including an audit trail of any additions, deletions, or revisions to the health record, if specifically
20 requested, except as provided in subsections E and F and subsection B of § 8.01-413.21 2. Health records shall not be removed from the premises where they are maintained without the approval
22 of the health care entity that maintains such health records, except in accordance with a court order or
23 subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with the
24 regulations relating to change of ownership of health records promulgated by a health regulatory board
25 established in Title 54.1.26 3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health records
27 of an individual, beyond the purpose for which such disclosure was made, without first obtaining the
28 individual's specific authorization to such redisclosure. This redisclosure prohibition shall not, however,
29 prevent (i) any health care entity that receives health records from another health care entity from making
30 subsequent disclosures as permitted under this section and the federal Department of Health and Human
31 Services regulations relating to privacy of the electronic transmission of data and protected health
32 information promulgated by the United States Department of Health and Human Services as required by the
33 Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. § 1320d et seq.) or (ii) any health
34 care entity from furnishing health records and aggregate or other data, from which individually identifying
35 prescription information has been removed, encoded or encrypted, to qualified researchers, including, but not
36 limited to, pharmaceutical manufacturers and their agents or contractors, for purposes of clinical, pharmaco-
37 epidemiological, pharmaco-economic, or other health services research.38 4. Health care entities shall, upon the request of the individual who is the subject of the health record,
39 disclose health records to other health care entities, in any available format of the requester's choosing, as
40 provided in subsection E.

41 B. As used in this section:

42 "Agent" means a person who has been appointed as an individual's agent under a power of attorney for
43 health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).44 "Certification" means a written representation that is delivered by hand, by first-class mail, by overnight
45 delivery service, or by facsimile if the sender obtains a facsimile-machine-generated confirmation reflecting
46 that all facsimile pages were successfully transmitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

91 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to
92 § 16.1-248.3; or

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

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

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

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

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

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

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

116 6. As required or authorized by law relating to public health activities, health oversight activities, serious
117 threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease, public
118 safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those
119 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,
120 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,

121 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;

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

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

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

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

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

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

139 13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et seq.) of
140 Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health authority or a
141 designee of a community services board or behavioral health authority, or a law-enforcement officer
142 participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1,
143 § 19.2-169.6, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of the proceeding, and to
144 any health care provider evaluating or providing services to the person who is the subject of the proceeding or
145 monitoring the person's adherence to a treatment plan ordered under those provisions. Health records
146 disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the
147 person, or the public from physical injury or to address the health care needs of the person. Information
148 disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or
149 retained;

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

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

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

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

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

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

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

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

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

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

176 24. If the health records are those of a deceased or mentally incapacitated individual to the personal
177 representative or executor of the deceased individual or the legal guardian or committee of the incompetent or
178 incapacitated individual or if there is no personal representative, executor, legal guardian or committee
179 appointed, to the following persons in the following order of priority: a spouse, an adult son or daughter,
180 either parent, an adult brother or sister, or any other relative of the deceased individual in order of blood
181 relationship;

182 25. For the purpose of conducting record reviews of inpatient hospital deaths to promote identification of

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

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

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

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

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

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

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

207 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a person
208 or persons who are subject to an order of quarantine or an order of isolation pursuant to Article 3.02
209 (§ 32.1-48.05 et seq.) of Chapter 2;

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

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

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

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

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

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

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

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

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

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

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

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

306 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

307 Individual's Name _____

308 Health Care Entity's Name _____

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

310 _____
311 Information or Health Records to be disclosed

312 _____
313 Purpose of Disclosure or at the Request of the Individual

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

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

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

328 _____
329 Relationship or Authority of Legal Representative

330 _____
331 Date of Signature _____

332 H. Pursuant to this subsection:

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

341 No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date of
342 the subpoena except by order of a court or administrative agency for good cause shown. When a court or
343 administrative agency directs that health records be disclosed pursuant to a subpoena duces tecum earlier than
344 15 days from the date of the subpoena, a copy of the order shall accompany the subpoena.

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

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

353 **NOTICE TO INDIVIDUAL**

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

368 your motion is decided.

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

373 **NOTICE TO HEALTH CARE ENTITIES**

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

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

382 **NO MOTION TO QUASH WAS FILED; OR**

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

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

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

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

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

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

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

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

429 **7. Concurrent with the court or administrative agency's resolution of a motion to quash, if subpoenaed**

430 health records have been submitted by a health care entity to the court or administrative agency in a sealed
431 envelope, the court or administrative agency shall: (i) upon determining that no submitted health records
432 should be disclosed, return all submitted health records to the health care entity in a sealed envelope; (ii) upon
433 determining that all submitted health records should be disclosed, provide all the submitted health records to
434 the party on whose behalf the subpoena was issued; or (iii) upon determining that only a portion of the
435 submitted health records should be disclosed, provide such portion to the party on whose behalf the subpoena
436 was issued and return the remaining health records to the health care entity in a sealed envelope.

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

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

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

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

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

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

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

468 9. The provisions of this subsection have no application to subpoenas for health records requested under
469 § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation, audit, review or
470 proceedings regarding a health care entity's conduct.

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

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

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

478 I. Health care entities may testify about the health records of an individual in compliance with
479 §§ 8.01-399 and 8.01-400.2.

480 J. Except as provided by subsection B7 of § 8.01-413, if an individual requests a copy of his health record
481 from a health care entity, the health care entity may impose a reasonable cost-based fee, which shall include
482 only the cost of supplies for and labor of copying the requested information, postage when the individual
483 requests that such information be mailed, and preparation of an explanation or summary of such information
484 as agreed to by the individual. For the purposes of this section, "individual" shall subsume a person with
485 authority to act on behalf of the individual who is the subject of the health record in making decisions related
486 to his health care.

487 K. Nothing in this section shall prohibit a health care provider who prescribes or dispenses a controlled
488 substance required to be reported to the Prescription Monitoring Program established pursuant to Chapter
489 25.2 (§ 54.1-2519 et seq.) of Title 54.1 to a patient from disclosing information obtained from the
490 Prescription Monitoring Program and contained in a patient's health care record to another health care
491 provider when such disclosure is related to the care or treatment of the patient who is the subject of the

492 record.

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

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

512 **§ 32.1-127.1:06. Disclosure of laboratory test results.**

513 A. For the purposes of this section, "health care entity" means the same as that term is defined in §
 514 32.1-127.1:03.

515 B. Notwithstanding any other provision of law, except as provided by subsections C and D, a health care
 516 entity that requests a medical laboratory test for a patient be performed shall not engage in information
 517 blocking as described in 42 U.S.C. § 300jj-52.

518 C. The following reports or test results shall not be disclosed to a patient as part of the patient's electronic
 519 health record or, in the case of a clinical laboratory test result or pathology report, shall not be disclosed to
 520 a patient as part of the patient's electronic health record by the health care entity that administers and
 521 controls the patient's health record until 72 hours after the results are finalized, unless such disclosure is
 522 permitted pursuant to subsection D or the health care entity directs the release of the results before the end of
 523 the 72-hour period:

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

527 D. The reports or test results described in subsection C may be released prior to the end of the 72-hour
 528 period if:

- 529 1. The patient or his representative request and consent to such early release;
- 530 2. The health care entity is unable to withhold the test results without delaying the release of other results
 or information due to limitations of the electronic health record system in use by the health care entity; or
- 531 3. The health care entity or treating health care provider determines it is in the patient's best interest to
 release the results early.

532 E. No health care entity shall be subject to civil, criminal, or administrative liability or professional
 533 disciplinary action for failure to comply with the provisions of this section.