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1 SENATE BILL NO. 171

2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
3 (Proposed by the Senate Committee on Education and Health
4 on January 22, 2026)

5 (Patron Prior to Substitute—Senator Favola)

6 A BILL to amend and reenact §§ 16.1-346.1, 32.1-127.1:03, and 37.2-505 of the Code of Virginia, relating to
7 discharge plans for minors admitted to inpatient treatment; copies provided to public elementary and
8 secondary schools; notification to parents; health records privacy exemption.

9 Be it enacted by the General Assembly of Virginia:

10 1. That §§ 16.1-346.1, 32.1-127.1:03, and 37.2-505 of the Code of Virginia are amended and reenacted
11 as follows:

12 § 16.1-346.1. Discharge plan.

13 A. Prior to discharge of any minor admitted to inpatient treatment, including a minor in detention or
14 shelter care pursuant to an order of a juvenile and domestic relations district court, a discharge plan shall be
15 formulated, provided and explained to the minor, and copies thereof shall be sent (i) to the minor's parents or
16 (ii) if the minor is in the custody of the local department of social services, to the department's director or the
17 director's designee or (iii) to the minor's parents and (a) if the juvenile is to be housed in a detention home
18 upon discharge, to the court in which the petition has been filed and the facility superintendent, or (b) if the
19 minor is in custody of the local department of social services, to the department.20 B. Except as provided in subsection C, if the minor admitted to inpatient treatment is a student at a public
21 elementary or secondary school and the facility to which the minor is admitted deems that (i) additional
22 educational services are needed or (ii) the minor poses a threat of violence or physical harm to self or others
23 at the time of the discharge, the facility shall notify the mental health professional or school counselor at
24 such minor's school prior to or at the time of discharge, but discharge from a facility may not be withheld
25 solely for the purpose of this disclosure.26 C. Prior to providing notification of any discharge information to a public elementary or secondary
27 school's mental health professional or school counselor in accordance with the provisions of subsection B,
28 each facility shall provide reasonable notice to the minor's parent of the parent's right to decline disclosure.
29 Such notice shall include (i) the content of the disclosure that would be provided to the mental health
30 professional or school counselor pursuant to subsection B and (ii) the period of time within which the parent
31 shall provide written notice to decline any or all portions of such disclosure.32 D. A copy of the discharge plan shall also be provided, upon request, to the minor's attorney and guardian
33 ad litem. If the minor was admitted to a state facility, the discharge plan shall be contained in a uniform
34 discharge document developed by the Department of Behavioral Health and Developmental Services. The
35 plan shall, at a minimum, (i) specify the services required by the released minor in the community to meet his
36 needs for treatment, housing, nutrition, physical care, and safety; (ii) specify any income subsidies for which
37 the minor is eligible; (iii) identify all local and state agencies which will be involved in providing treatment
38 and support to the minor; and (iv) specify services which would be appropriate for the minor's treatment and
39 support in the community but which are currently unavailable. A minor in detention or shelter care prior to
40 admission to inpatient treatment shall be returned to the detention home, shelter care, or other facility
41 approved by the Department of Juvenile Justice within 24 hours by the sheriff serving the jurisdiction where
42 the minor was detained upon release from the treating facility, unless the juvenile and domestic relations
43 district court having jurisdiction over the case has provided written authorization for release of the minor,
44 prior to the scheduled date of release.

45 § 32.1-127.1:03. Health records privacy.

46 A. There is hereby recognized an individual's right of privacy in the content of his health records. Health
47 records are the property of the health care entity maintaining them, and, except when permitted or required by
48 this section or by other provisions of state law, no health care entity, or other person working in a health care
49 setting, may disclose an individual's health records.

50 Pursuant to this subsection:

51 1. Health care entities shall disclose health records to the individual who is the subject of the health
52 record, including an audit trail of any additions, deletions, or revisions to the health record, if specifically
53 requested, except as provided in subsections E and F and subsection B of § 8.01-413.54 2. Health records shall not be removed from the premises where they are maintained without the approval
55 of the health care entity that maintains such health records, except in accordance with a court order or
56 subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with the
57 regulations relating to change of ownership of health records promulgated by a health regulatory board
58 established in Title 54.1.

59 3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health records

60 of an individual, beyond the purpose for which such disclosure was made, without first obtaining the
61 individual's specific authorization to such redisclosure. This redisclosure prohibition shall not, however,
62 prevent (i) any health care entity that receives health records from another health care entity from making
63 subsequent disclosures as permitted under this section and the federal Department of Health and Human
64 Services regulations relating to privacy of the electronic transmission of data and protected health
65 information promulgated by the United States Department of Health and Human Services as required by the
66 Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. § 1320d et seq.) or (ii) any health
67 care entity from furnishing health records and aggregate or other data, from which individually identifying
68 prescription information has been removed, encoded or encrypted, to qualified researchers, including, but not
69 limited to, pharmaceutical manufacturers and their agents or contractors, for purposes of clinical, pharmaco-
70 epidemiological, pharmaco-economic, or other health services research.

71 4. Health care entities shall, upon the request of the individual who is the subject of the health record,
72 disclose health records to other health care entities, in any available format of the requester's choosing, as
73 provided in subsection E.

74 B. As used in this section:

75 "Agent" means a person who has been appointed as an individual's agent under a power of attorney for
76 health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

77 "Certification" means a written representation that is delivered by hand, by first-class mail, by overnight
78 delivery service, or by facsimile if the sender obtains a facsimile-machine-generated confirmation reflecting
79 that all facsimile pages were successfully transmitted.

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

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

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

90 "Health care provider" means those entities listed in the definition of "health care provider" in
91 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the
92 purposes of this section. Health care provider shall also include all persons who are licensed, certified,
93 registered or permitted or who hold a multistate licensure privilege issued by any of the health regulatory
94 boards within the Department of Health Professions, except persons regulated by the Board of Funeral
95 Directors and Embalmers or the Board of Veterinary Medicine.

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

98 "Health record" means any written, printed or electronically recorded material maintained by a health care
99 entity in the course of providing health services to an individual concerning the individual and the services
100 provided. "Health record" also includes the substance of any communication made by an individual to a
101 health care entity in confidence during or in connection with the provision of health services or information
102 otherwise acquired by the health care entity about an individual in confidence and in connection with the
103 provision of health services to the individual.

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

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

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

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

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

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

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

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

122 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to
 123 § 16.1-248.3; or

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

126 5. *The notice of a minor's discharge plan to a public elementary or secondary school in accordance with
 127 §§ 16.1-346.1 and 37.2-505.*

128 D. Health care entities may, and, when required by other provisions of state law, shall, disclose health
 129 records:

130 1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the case
 131 of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of minors
 132 pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment pursuant to
 133 § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an individual's written
 134 authorization, pursuant to the individual's oral authorization for a health care provider or health plan to
 135 discuss the individual's health records with a third party specified by the individual;

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

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

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

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

149 6. As required or authorized by law relating to public health activities, health oversight activities, serious
 150 threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease, public
 151 safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those
 152 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,
 153 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,
 154 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;

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

156 8. In connection with the health care entity's own health care operations or the health care operations of
 157 another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in
 158 accordance with accepted standards of practice within the health services setting; however, the maintenance,
 159 storage, and disclosure of the mass of prescription dispensing records maintained in a pharmacy registered or
 160 permitted in Virginia shall only be accomplished in compliance with §§ 54.1-3410, 54.1-3411, and
 161 54.1-3412;

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

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

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

168 12. To the guardian ad litem and any attorney appointed by the court to represent an individual who is or
 169 has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5 (§ 37.2-814
 170 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
 171 authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of Title 37.2;

172 13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et seq.) of
 173 Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health authority or a
 174 designee of a community services board or behavioral health authority, or a law-enforcement officer
 175 participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1,
 176 § 19.2-169.6, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of the proceeding, and to
 177 any health care provider evaluating or providing services to the person who is the subject of the proceeding or
 178 monitoring the person's adherence to a treatment plan ordered under those provisions. Health records
 179 disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the
 180 person, or the public from physical injury or to address the health care needs of the person. Information
 181 disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or
 182 retained;

183 14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or

184 administrative proceeding, if the court or administrative hearing officer has entered an order granting the
185 attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the health
186 care entity of such order;

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

189 16. To an agent appointed under an individual's power of attorney or to an agent or decision maker
190 designated in an individual's advance directive for health care or for decisions on anatomical gifts and organ,
191 tissue or eye donation or to any other person consistent with the provisions of the Health Care Decisions Act
192 (§ 54.1-2981 et seq.);

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

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

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

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

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

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

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

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

215 25. For the purpose of conducting record reviews of inpatient hospital deaths to promote identification of
216 all potential organ, eye, and tissue donors in conformance with the requirements of applicable federal law and
217 regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's designated organ procurement
218 organization certified by the United States Health Care Financing Administration and (ii) to any eye bank or
219 tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of
220 Tissue Banks;

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

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

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

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

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

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

240 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a person
241 or persons who are subject to an order of quarantine or an order of isolation pursuant to Article 3.02
242 (§ 32.1-48.05 et seq.) of Chapter 2;

243 33. To the Commissioner of the Department of Labor and Industry or his designee by each licensed
244 emergency medical services agency when the records consist of the prehospital patient care report required
245 by § 32.1-116.1 and the patient has suffered an injury or death on a work site while performing duties or tasks

246 that are within the scope of his employment;

247 34. To notify a family member or personal representative of an individual who is the subject of a
 248 proceeding pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or Chapter 8 (§ 37.2-800 et
 249 seq.) of Title 37.2 of information that is directly relevant to such person's involvement with the individual's
 250 health care, which may include the individual's location and general condition, when the individual has the
 251 capacity to make health care decisions and (i) the individual has agreed to the notification, (ii) the individual
 252 has been provided an opportunity to object to the notification and does not express an objection, or (iii) the
 253 health care provider can, on the basis of his professional judgment, reasonably infer from the circumstances
 254 that the individual does not object to the notification. If the opportunity to agree or object to the notification
 255 cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the
 256 health care provider may notify a family member or personal representative of the individual of information
 257 that is directly relevant to such person's involvement with the individual's health care, which may include the
 258 individual's location and general condition if the health care provider, in the exercise of his professional
 259 judgment, determines that the notification is in the best interests of the individual. Such notification shall not
 260 be made if the provider has actual knowledge the family member or personal representative is currently
 261 prohibited by court order from contacting the individual;

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

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

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

276 E. Health care records required to be disclosed pursuant to this section shall be made available
 277 electronically only to the extent and in the manner authorized by the federal Health Information Technology
 278 for Economic and Clinical Health Act (P.L. 111-5) and implementing regulations and the Health Insurance
 279 Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and implementing regulations.
 280 Notwithstanding any other provision to the contrary, a health care entity shall not be required to provide
 281 records in an electronic format requested if (i) the electronic format is not reasonably available without
 282 additional cost to the health care entity, (ii) the records would be subject to modification in the format
 283 requested, or (iii) the health care entity determines that the integrity of the records could be compromised in
 284 the electronic format requested. Requests for copies of or electronic access to health records shall (a) be in
 285 writing, dated and signed by the requester; (b) identify the nature of the information requested; and (c)
 286 include evidence of the authority of the requester to receive such copies or access such records, and
 287 identification of the person to whom the information is to be disclosed; and (d) specify whether the requester
 288 would like the records in electronic format, if available, or in paper format. The health care entity shall accept
 289 a photocopy, facsimile, or other copy of the original signed by the requester as if it were an original. Within
 290 30 days of receipt of a request for copies of or electronic access to health records, the health care entity shall
 291 do one of the following: (1) furnish such copies of or allow electronic access to the requested health records
 292 to any requester authorized to receive them in electronic format if so requested; (2) inform the requester if the
 293 information does not exist or cannot be found; (3) if the health care entity does not maintain a record of the
 294 information, so inform the requester and provide the name and address, if known, of the health care entity
 295 who maintains the record; or (4) deny the request (A) under subsection F, (B) on the grounds that the
 296 requester has not established his authority to receive such health records or proof of his identity, or (C) as
 297 otherwise provided by law. Procedures set forth in this section shall apply only to requests for health records
 298 not specifically governed by other provisions of state law.

299 F. Except as provided in subsection B of § 8.01-413, copies of or electronic access to an individual's
 300 health records shall not be furnished to such individual or anyone authorized to act on the individual's behalf
 301 when the individual's treating physician, clinical psychologist, clinical social worker, or licensed professional
 302 counselor has made a part of the individual's record a written statement that, in the exercise of his
 303 professional judgment, the furnishing to or review by the individual of such health records would be
 304 reasonably likely to endanger the life or physical safety of the individual or another person, or that such
 305 health record makes reference to a person other than a health care provider and the access requested would be
 306 reasonably likely to cause substantial harm to such referenced person. If any health care entity denies a
 307 request for copies of or electronic access to health records based on such statement, the health care entity

308 shall inform the individual of the individual's right to designate, in writing, at his own expense, another
309 reviewing physician, clinical psychologist, clinical social worker, or licensed professional counselor whose
310 licensure, training and experience relative to the individual's condition are at least equivalent to that of the
311 physician, clinical psychologist, clinical social worker, or licensed professional counselor upon whose
312 opinion the denial is based. The designated reviewing physician, clinical psychologist, clinical social worker,
313 or licensed professional counselor shall make a judgment as to whether to make the health record available to
314 the individual.

315 The health care entity denying the request shall also inform the individual of the individual's right to
316 request in writing that such health care entity designate, at its own expense, a physician, clinical psychologist,
317 clinical social worker, or licensed professional counselor, whose licensure, training, and experience relative
318 to the individual's condition are at least equivalent to that of the physician, clinical psychologist, clinical
319 social worker, or licensed professional counselor upon whose professional judgment the denial is based and
320 who did not participate in the original decision to deny the health records, who shall make a judgment as to
321 whether to make the health record available to the individual. The health care entity shall comply with the
322 judgment of the reviewing physician, clinical psychologist, clinical social worker, or licensed professional
323 counselor. The health care entity shall permit copying and examination of the health record by such other
324 physician, clinical psychologist, clinical social worker, or licensed professional counselor designated by
325 either the individual at his own expense or by the health care entity at its expense.

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

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

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

337 **AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS**

338 Individual's Name _____

339 Health Care Entity's Name _____

340 Person, Agency, or Health Care Entity to whom disclosure is to be made
341 _____

342 Information or Health Records to be disclosed
343 _____

344 Purpose of Disclosure or at the Request of the Individual
345 _____

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

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

358 Signature of Individual or Individual's Legal Representative if Individual is Unable to Sign
359 _____

360 Relationship or Authority of Legal Representative
361 _____

362 Date of Signature _____

363 H. Pursuant to this subsection:

364 1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or administrative
365 action or proceeding shall request the issuance of a subpoena duces tecum for another party's health records
366 or cause a subpoena duces tecum to be issued by an attorney unless a copy of the request for the subpoena or
367 a copy of the attorney-issued subpoena is provided to the other party's counsel or to the other party if pro se,
368 simultaneously with filing the request or issuance of the subpoena. No party to an action or proceeding shall

369 request or cause the issuance of a subpoena duces tecum for the health records of a nonparty witness unless a
 370 copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the nonparty
 371 witness simultaneously with filing the request or issuance of the attorney-issued subpoena.

372 No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date of
 373 the subpoena except by order of a court or administrative agency for good cause shown. When a court or
 374 administrative agency directs that health records be disclosed pursuant to a subpoena duces tecum earlier than
 375 15 days from the date of the subpoena, a copy of the order shall accompany the subpoena.

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

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

384 **NOTICE TO INDIVIDUAL**

385 The attached document means that _____ (insert name of party requesting or causing issuance of the
 386 subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has been
 387 issued by the other party's attorney to your doctor, other health care providers _____ (names of health care
 388 providers inserted here) or other health care entity _____ (name of health care entity to be inserted here)
 389 requiring them to produce your health records. Your doctor, other health care provider or other health care
 390 entity is required to respond by providing a copy of your health records. If you believe your health records
 391 should not be disclosed and object to their disclosure, you have the right to file a motion with the clerk of the
 392 court or the administrative agency to quash the subpoena. If you elect to file a motion to quash, such motion
 393 must be filed within 15 days of the date of the request or of the attorney-issued subpoena. You may contact
 394 the clerk's office or the administrative agency to determine the requirements that must be satisfied when filing
 395 a motion to quash and you may elect to contact an attorney to represent your interest. If you elect to file a
 396 motion to quash, you must notify your doctor, other health care provider(s), or other health care entity, that
 397 you are filing the motion so that the health care provider or health care entity knows to send the health
 398 records to the clerk of court or administrative agency in a sealed envelope or package for safekeeping while
 399 your motion is decided.

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

404 **NOTICE TO HEALTH CARE ENTITIES**

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

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

413 NO MOTION TO QUASH WAS FILED; OR

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

416 IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE BEING
 417 REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A MOTION
 418 TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO THE CLERK
 419 OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA OR IN WHICH
 420 THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE FOLLOWING
 421 PROCEDURE:

422 PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED
 423 ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY
 424 WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE
 425 HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA. THE
 426 SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER ENVELOPE
 427 OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE AGENCY.

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

430 4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a sealed

431 envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such health records
432 until they have received a certification as set forth in subdivision 5 or 8 from the party on whose behalf the
433 subpoena duces tecum was issued.

434 If the health care entity has actual receipt of notice that a motion to quash the subpoena has been filed or if
435 the health care entity files a motion to quash the subpoena for health records, then the health care entity shall
436 produce the health records, in a securely sealed envelope, to the clerk of the court or administrative agency
437 issuing the subpoena or in whose court or administrative agency the action is pending. The court or
438 administrative agency shall place the health records under seal until a determination is made regarding the
439 motion to quash. The securely sealed envelope shall only be opened on order of the judge or administrative
440 agency. In the event the court or administrative agency grants the motion to quash, the health records shall be
441 returned to the health care entity in the same sealed envelope in which they were delivered to the court or
442 administrative agency. In the event that a judge or administrative agency orders the sealed envelope to be
443 opened to review the health records in camera, a copy of the order shall accompany any health records
444 returned to the health care entity. The health records returned to the health care entity shall be in a securely
445 sealed envelope.

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

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

460 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if subpoenaed
461 health records have been submitted by a health care entity to the court or administrative agency in a sealed
462 envelope, the court or administrative agency shall: (i) upon determining that no submitted health records
463 should be disclosed, return all submitted health records to the health care entity in a sealed envelope; (ii) upon
464 determining that all submitted health records should be disclosed, provide all the submitted health records to
465 the party on whose behalf the subpoena was issued; or (iii) upon determining that only a portion of the
466 submitted health records should be disclosed, provide such portion to the party on whose behalf the subpoena
467 was issued and return the remaining health records to the health care entity in a sealed envelope.

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

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

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

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

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

491 e. All filed motions to quash have been resolved by the court or administrative agency and the disclosures

492 sought in the subpoena duces tecum are not consistent with such resolution and, since no health records have
 493 previously been delivered to the court or administrative agency by the health care entity, the health care entity
 494 shall return only those health records specified in the certification, consistent with the court or administrative
 495 agency's ruling, by the return date on the subpoena or five days after receipt of the certification, whichever is
 496 later.

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

499 9. The provisions of this subsection have no application to subpoenas for health records requested under
 500 § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation, audit, review or
 501 proceedings regarding a health care entity's conduct.

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

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

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

509 I. Health care entities may testify about the health records of an individual in compliance with
 510 §§ 8.01-399 and 8.01-400.2.

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

518 K. Nothing in this section shall prohibit a health care provider who prescribes or dispenses a controlled
 519 substance required to be reported to the Prescription Monitoring Program established pursuant to Chapter
 520 25.2 (§ 54.1-2519 et seq.) of Title 54.1 to a patient from disclosing information obtained from the
 521 Prescription Monitoring Program and contained in a patient's health care record to another health care
 522 provider when such disclosure is related to the care or treatment of the patient who is the subject of the
 523 record.

524 L. An authorization for the disclosure of health records executed pursuant to this section shall remain in
 525 effect until (i) the authorization is revoked in writing and delivered to the health care entity maintaining the
 526 record that is subject to the authorization by the person who executed the authorization, (ii) any expiration
 527 date set forth in the authorization, or (iii) the health care entity maintaining the record becomes aware of any
 528 expiration event described in the authorization, whichever occurs first. However, any revocation of an
 529 authorization for the disclosure of health records executed pursuant to this section shall not be effective to the
 530 extent that the health care entity maintaining the record has disclosed health records prior to delivery of such
 531 revocation in reliance upon the authorization or as otherwise provided pursuant to 45 C.F.R. § 164.508. A
 532 statement in an authorization for the disclosure of health records pursuant to this section that the information
 533 to be used or disclosed is "all health records" is a sufficient description for the disclosure of all health records
 534 of the person maintained by the health care provider to whom the authorization was granted. If a health care
 535 provider receives a written revocation of an authorization for the disclosure of health records in accordance
 536 with this subsection, a copy of such written revocation shall be included in the person's original health record
 537 maintained by the health care provider.

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

543 **§ 37.2-505. Coordination of services for preadmission screening and discharge planning.**

544 A. The community services board shall fulfill the following responsibilities:

545 1. Be responsible for coordinating the community services necessary to accomplish effective
 546 preadmission screening and discharge planning for persons referred to the community services board. When
 547 preadmission screening reports are required by the court on an emergency basis pursuant to Article 5
 548 (§ 37.2-814 et seq.) of Chapter 8, the community services board shall ensure the development of the report
 549 for the court. To accomplish this coordination, the community services board shall establish a structure and
 550 procedures involving staff from the community services board and, as appropriate, representatives from (i)
 551 the state hospital or training center serving the board's service area, (ii) the local department of social
 552 services, (iii) the health department, (iv) the Department for Aging and Rehabilitative Services office in the
 553 board's service area, (v) the local school division, and (vi) other public and private human services agencies,

554 including licensed hospitals.

555 2. Provide preadmission screening services prior to the admission for treatment pursuant to § 37.2-805 or
556 Article 5 (§ 37.2-814 et seq.) of Chapter 8 of any person who requires emergency mental health services
557 while in a city or county served by the community services board. In the case of inmates incarcerated in a
558 regional jail, each community services board that serves a county or city that is a participant in the regional
559 jail shall review any existing Memorandum of Understanding between the community services board and any
560 other community services boards that serve the regional jail to ensure that such memorandum sets forth the
561 roles and responsibilities of each community services board in the preadmission screening process, provides
562 for communication and information sharing protocols between the community services boards, and provides
563 for due consideration, including financial consideration, should there be disproportionate obligations on one
564 of the community services boards.

565 3. Provide, in consultation with the appropriate state hospital or training center, discharge planning for any
566 individual who, prior to admission, resided in a city or county served by the community services board. In the
567 case of any individual to be discharged from Central State Hospital, Southwestern Virginia Mental Health
568 Institute, or Southern Virginia Mental Health Institute in 30 days or less after admission, the appropriate
569 community services board shall implement the discharge plan developed by the state facility. Upon initiation
570 of discharge planning, the community services board that serves the city or county where the individual
571 resided prior to admission shall inform the individual that he may choose to return to the county or city in
572 which he resided prior to admission or to any other county or city in the Commonwealth. If the individual is
573 unable to make informed decisions regarding his care, the community services board shall so inform his
574 authorized representative, who may choose the county or city in which the individual shall reside upon
575 discharge. In either case and to the extent permitted by federal law, for individuals who choose to return to
576 the county or city in which they resided prior to admission, the community services board shall make every
577 reasonable effort to place the individuals in such county or city. The community services board serving the
578 county or city in which he will reside following discharge shall be responsible for arranging transportation for
579 the individual upon request following the discharge protocols developed by the Department.

580 The discharge plan shall be completed prior to the individual's discharge. The plan shall be prepared with
581 the involvement and participation of the individual receiving services or his representative and must reflect
582 the individual's preferences to the greatest extent possible. The plan shall include the mental health,
583 developmental, substance abuse, social, educational, medical, employment, housing, legal, advocacy,
584 transportation, and other services that the individual will need upon discharge into the community and
585 identify the public or private agencies that have agreed to provide these services. *If the individual is a minor
586 who is a student at a public elementary or secondary school, the discharge plan shall be prepared in
587 accordance with § 16.1-346.1.*

588 No individual shall be discharged from a state hospital or training center without completion by the
589 community services board of the discharge plan described in this subdivision. If state hospital or training
590 center staff identify an individual as ready for discharge and the community services board that is responsible
591 for the individual's care disagrees, the community services board shall document in the treatment plan within
592 72 hours of the individual's identification any reasons for not accepting the individual for discharge. If the
593 state hospital or training center disagrees with the community services board and the board refuses to develop
594 a discharge plan to accept the individual back into the community, the state hospital or training center or the
595 community services board shall ask the Commissioner to review the state hospital's or training center's
596 determination that the individual is ready for discharge in accordance with procedures established by the
597 Department in collaboration with state hospitals, training centers, and community services boards. If the
598 Commissioner determines that the individual is ready for discharge, a discharge plan shall be developed by
599 the Department to ensure the availability of adequate services for the individual and the protection of the
600 community. The Commissioner also shall verify that sufficient state-controlled funds have been allocated to
601 the community services board through the performance contract. If sufficient state-controlled funds have been
602 allocated, the Commissioner may contract with a private provider, another community services board, or a
603 behavioral health authority to deliver the services specified in the discharge plan and withhold allocated funds
604 applicable to that individual's discharge plan from the community services board in accordance with
605 subsections C and E of § 37.2-508.

606 4. Provide information, if available, to all hospitals licensed pursuant to Article 1 (§ 32.1-123 et seq.) of
607 Chapter 5 of Title 32.1 about alcohol and substance abuse services available to minors.

608 B. The community services board may perform the functions set out in subdivision A 1 in the case of
609 children by referring them to the locality's family assessment and planning team and by cooperating with the
610 community policy and management team in the coordination of services for troubled youths and their
611 families. The community services board may involve the family assessment and planning team and the
612 community policy and management team, but it remains responsible for performing the functions set out in
613 subdivisions A 2 and 3 in the case of children.

614 **2. That the Department of Education shall create guidelines to place safeguards around proper use of
615 student discharge planning information disclosed to public elementary or secondary schools to prevent**

616 further disclosure of the discharge plan beyond the purpose for which such disclosure was made.
617 3. That the provisions of this act shall become effective on January 1, 2027.