

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

5 [H 973]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**

8 **1. That § 32.1-127.1:03 of the Code of Virginia is amended and reenacted and that the Code of Virginia**
 9 **is amended by adding a section numbered 32.1-127.1:06 as follows:**

10 **§ 32.1-127.1:03. Health records privacy.**

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

15 Pursuant to this subsection:

16 1. Health care entities shall disclose health records to the individual who is the subject of the health
 17 record, including an audit trail of any additions, deletions, or revisions to the health record, if specifically
 18 requested, except as provided in subsections E and F and subsection B of § 8.01-413.

19 2. Health records shall not be removed from the premises where they are maintained without the approval
 20 of the health care entity that maintains such health records, except in accordance with a court order or
 21 subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with the
 22 regulations relating to change of ownership of health records promulgated by a health regulatory board
 23 established in Title 54.1.

24 3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health records
 25 of an individual, beyond the purpose for which such disclosure was made, without first obtaining the
 26 individual's specific authorization to such redisclosure. This redisclosure prohibition shall not, however,
 27 prevent (i) any health care entity that receives health records from another health care entity from making
 28 subsequent disclosures as permitted under this section and the federal Department of Health and Human
 29 Services regulations relating to privacy of the electronic transmission of data and protected health
 30 information promulgated by the United States Department of Health and Human Services as required by the
 31 Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. § 1320d et seq.) or (ii) any health
 32 care entity from furnishing health records and aggregate or other data, from which individually identifying
 33 prescription information has been removed, encoded or encrypted, to qualified researchers, including, but not
 34 limited to, pharmaceutical manufacturers and their agents or contractors, for purposes of clinical, pharmaco-
 35 epidemiological, pharmaco-economic, or other health services research.

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

39 B. As used in this section:

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

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

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

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

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

55 "Health care provider" means those entities listed in the definition of "health care provider" in
 56 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the

57 purposes of this section. Health care provider shall also include all persons who are licensed, certified,
 58 registered or permitted or who hold a multistate licensure privilege issued by any of the health regulatory
 59 boards within the Department of Health Professions, except persons regulated by the Board of Funeral
 60 Directors and Embalmers or the Board of Veterinary Medicine.

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

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

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

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

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

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

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

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

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

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

87 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to
 88 § 16.1-248.3; or

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

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

93 1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the case
 94 of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of minors
 95 pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment pursuant to
 96 § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an individual's written
 97 authorization, pursuant to the individual's oral authorization for a health care provider or health plan to
 98 discuss the individual's health records with a third party specified by the individual;

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

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

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

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

112 6. As required or authorized by law relating to public health activities, health oversight activities, serious
 113 threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease, public
 114 safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those
 115 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,
 116 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,
 117 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;

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

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

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

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

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

131 12. To the guardian ad litem and any attorney appointed by the court to represent an individual who is or
132 has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5 (§ 37.2-814
133 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
134 authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of Title 37.2;

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

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

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

152 16. To an agent appointed under an individual's power of attorney or to an agent or decision maker
153 designated in an individual's advance directive for health care or for decisions on anatomical gifts and organ,
154 tissue or eye donation or to any other person consistent with the provisions of the Health Care Decisions Act
155 (§ 54.1-2981 et seq.);

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

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

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

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

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

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

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

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

178 25. For the purpose of conducting record reviews of inpatient hospital deaths to promote identification of
179 all potential organ, eye, and tissue donors in conformance with the requirements of applicable federal law and
180 regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's designated organ procurement

181 organization certified by the United States Health Care Financing Administration and (ii) to any eye bank or
 182 tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of
 183 Tissue Banks;

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

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

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

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

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

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

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

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

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

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

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

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

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

241 E. Health care records required to be disclosed pursuant to this section shall be made available
 242 electronically only to the extent and in the manner authorized by the federal Health Information Technology

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

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

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

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

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

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

302 **AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS**

303 Individual's Name _____
 304 Health Care Entity's Name _____

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

306

307 Information or Health Records to be disclosed

308

309 Purpose of Disclosure or at the Request of the Individual

310

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

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

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

324

325 Relationship or Authority of Legal Representative

326

327 Date of Signature _____

328 H. Pursuant to this subsection:

329

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

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

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

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

349 NOTICE TO INDIVIDUAL

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

365 2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued for an

366 individual's health records shall include a Notice in the same part of the request in which the recipient of the
 367 subpoena duces tecum is directed where and when to return the health records. Such notice shall be in
 368 boldface capital letters and shall include the following language:

369 NOTICE TO HEALTH CARE ENTITIES

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

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

378 NO MOTION TO QUASH WAS FILED; OR

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

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

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

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

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

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

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

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

425 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if subpoenaed
 426 health records have been submitted by a health care entity to the court or administrative agency in a sealed

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

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

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

440 b. 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 that, since no health records have
442 previously been delivered to the court or administrative agency by the health care entity, the health care entity
443 shall comply with the subpoena duces tecum by returning the health records designated in the subpoena by
444 the return date on the subpoena or five days after receipt of certification, whichever is later;

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

449 d. 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 and that only limited disclosure
451 has been authorized. The certification shall state that only the portion of the health records as set forth in the
452 certification, consistent with the court or administrative agency's ruling, shall be disclosed. The certification
453 shall also state that health records that were previously delivered to the court or administrative agency for
454 which disclosure has been authorized will not be returned to the health care entity; however, all health
455 records for which disclosure has not been authorized will be returned to the health care entity; or

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

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

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

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

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

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

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

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

483 K. Nothing in this section shall prohibit a health care provider who prescribes or dispenses a controlled
484 substance required to be reported to the Prescription Monitoring Program established pursuant to Chapter
485 25.2 (§ 54.1-2519 et seq.) of Title 54.1 to a patient from disclosing information obtained from the
486 Prescription Monitoring Program and contained in a patient's health care record to another health care
487 provider when such disclosure is related to the care or treatment of the patient who is the subject of the
488 record.

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

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

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

509 A. For the purposes of this section, "health care entity" means the same as that term is defined in
510 § 32.1-127.1:03.

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

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

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

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

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

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