

Virginia Health Care Legislative Update 2022

The 2022 Virginia General Assembly considered many health care-related bills during the course of the most recent session. Here are some of the more notable ones that became law July 1, 2022, unless otherwise noted.

Changes to Health Record Privacy Law

Virginia's health record privacy law is revised to provide that an authorization for the disclosure of health records shall remain in effect until (i) the authorization is revoked in writing and delivered to the health care entity maintaining the health record subject to the authorization, (ii) any expiration date set forth in the authorization, or (iii) the health care entity maintaining the health record becomes aware of any expiration event described in the authorization, whichever occurs first, and that a revocation shall not be effective to the extent that the health care entity maintaining the health record released health records prior to the delivery of such revocation. The bill also provides that authorization for the release of health records shall include authorization for the person named in the authorization to assist the person who is the subject of the health record in accessing health care services, including scheduling appointments for the person who is the subject of the health record and attending appointments together with the person who is the subject of the health record. The bill also provides that every health care provider shall make health records of a patient available to any person designated by a patient in an authorization to release health records and that a health care provider shall allow a spouse, parent, adult child, adult sibling, or other person identified by a patient to make an appointment for medical services on behalf of such patient, regardless of whether such patient has executed an authorization to release health records. (HB1359)

Disclosure of Information During Involuntary Temporary Detention

In any case in which a person subject to an evaluation to determine whether such person meets the criteria for an involuntary temporary detention order is receiving services in a hospital emergency department, the treating physician or his designee and the employee or designee of the local community services board shall disclose to each other relevant information pertaining to the individual's treatment in the emergency department. (HB684/SB119)

Temporary Detention: Transportation and Emergency Custody

When a magistrate orders alternative transportation for an individual under a temporary detention order, the primary law enforcement agency that executes the order may transfer custody of the person to the alternative transportation provider immediately upon execution of the order. Such alternative transportation provider shall maintain custody of the person from the time custody is transferred to the alternative transportation provider by the primary law enforcement agency until such time as custody of the person is transferred to the temporary detention facility, as is appropriate. Employees of and persons providing services pursuant to a contract with the Department of Behavioral Health and Developmental Services are added to the list of individuals who may serve as alternative transportation providers. The bill clarifies that if no alternative transportation provider is available, the magistrate shall order a person to be kept in law enforcement custody. (SB268)

Triennial Audit Requirement for Home Care Organizations

This directs the Department of Health to remove the triennial audit requirement for home care organizations from its regulations. (SB580)



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Home Care Organization License Renewal

This legislation changes the license renewal requirement for home care organizations from an annual renewal to a triennial renewal. The bill prohibits the Department of Health, upon renewal of a home care organization license, from requiring home care organizations to submit financial documents other than those required for initial licensure. *(HB93)*

Criminal History Background Checks for Employees of Children's Residential Facilities

A person who is required to undergo a background check as a condition of employment at a children's residential facility may now be employed by the children's residential facility pending the results of the check of the central registry of child abuse and neglect records maintained by the Department of Social Services, provided that (i) the person has received qualifying results on the fingerprint-based criminal history background check, (ii) the person does not work in the children's residential facility or any other location where children placed in such facility are present, and (iii) such employment is permitted under federal law and regulations. *(SB577)*

Minors' Health Records

This provides that every hospital and health care provider that makes patients' health records available to patients through a secure website shall make all health records of a patient who is a minor available to the patient's parent through such secure website unless the hospital or health care provider cannot otherwise make such health record available under state law. *(HB916)*

Expansion of Authority of Licensed Professional Counselors

Adds licensed professional counselors to the list of eligible providers who can disclose or recommend the withholding of patient records, face a malpractice review panel, and provide recommendations on involuntary temporary detention orders. *(HB242)*

Licensed Practical Nurse Authority to Pronounce Death

This extends to licensed practical nurses the authority to pronounce the death of a patient in hospice, provided that certain conditions are met. Current law provides that physicians, registered nurses, and physician assistants may pronounce death. *(SB169)*

Accessibility to Medicaid Program Information

This legislation directs the Board of Medical Assistance Services to require every person that provides program information to ensure that all program information, defined in the bill, be made available in a manner that is accessible to (i) individuals with limited English proficiency through the provision of language access services, including oral interpretation and written translations, and (ii) individuals with disabilities through the provision of auxiliary aids services, when doing so is a reasonable step to providing meaningful access to health care coverage. The bill provides that language access services and auxiliary aids services be provided free of charge and that information regarding how to

receive the language access services and auxiliary aids services shall be included with program information documents on a website maintained by the Department of Medical Assistance Services and on the website of every agency of the Commonwealth that disseminates program information. The bill also requires every person that makes program information available to use an objective readability measure approved by the Department to test the readability of its program information documents and requires such persons to make program information documents available to the Department for review upon request. *(HB987)*

Nurse Practitioner Authority to Declare Death and Cause of Death

This legislation authorizes autonomous nurse practitioners, defined in the bill, to declare death and determine cause of death; allows nurse practitioners who are not autonomous nurse practitioners to pronounce the death of a patient in certain circumstances; and eliminates the requirement for a valid Do Not Resuscitate Order for the deceased patient for declaration of death by a registered nurse, physician assistant, or nurse practitioner who is not an autonomous nurse practitioner. *(HB286)*

Out-of-state Licenses and Telehealth Providers

A practitioner of a profession regulated by the Board of Medicine who is licensed in another state or the District of Columbia and who is in good standing with the applicable regulatory agency in that state or the District of Columbia may engage in the practice of that profession with a patient located in the Commonwealth when (i) such practice is for the purpose of providing continuity of care through the use of telemedicine services and (ii) the patient is a current patient of the practitioner (or a member of their multi-specialty group) has previously established a practitioner-patient relationship and performed an in-person examination of the patient within the previous 12 months. *(HB264/SB369)*

Out-of-state Behavioral Health Providers and Telemedicine

Practitioners who would otherwise be regulated by the Boards of Medicine, Counseling, Psychology, and Social Work who provide behavioral health services and who are licensed and in good standing in another state, the District of Columbia, or a United States territory or possession may engage in the practice of that profession with a patient located in the Commonwealth when (i) such practice is for the purpose of providing continuity of care through the use of telemedicine services and (ii) the practitioner has previously established a practitioner-patient relationship with the patient (including an in-person evaluation within the previous year). The practitioner may provide such services for a period of no more than one year from the date on which the practitioner began providing such services to such patient. *(HB537)*

Remote Patient Monitoring and Provider-to-Provider Consult Payment

Virginia Medicaid must amend the state plan for medical assistance services to provide for the payment of medical assistance for (i) remote patient monitoring services provided via telemedicine for patients who have experienced a chronic or acute health condition who have had two or more

hospitalizations or emergency department visits related to such health condition in the previous 12 months, when there is evidence that the use of remote patient monitoring is likely to prevent readmission to a hospital or emergency department, and (ii) provider-to-provider consultations that is no more restrictive than, and is at least equal in amount, duration, and scope to, that available through the fee-for-service program. *(SB426)*

Payment of Telemedicine Services Facilitated by Emergency Medical Services

Virginia Medicaid must amend the state plan for medical assistance services to include a provision for the payment of the originating site fee to emergency medical services agencies for facilitating synchronous telehealth visits with a distant site provider delivered to a Medicaid member. The bill defines "originating site" as any location where the patient is located, including any medical care facility or office of a health care provider, the home of the patient, the patient's place of employment, or any public or private primary or secondary school or postsecondary institution of higher education at which the person to whom telemedicine services are provided is located. *(SB663)*

Transfer of Patient Records in Conjunction with Closure, Sale or Relocation of Practice

Health care providers may notify patients either electronically or by mail prior to the transfer of patient records in conjunction with the closure, sale or relocation of the health care provider's practice. Current law requires health care providers to provide such notice by mail. *(HB555)*

Temporary Practice Authorization for Practitioners Licensed Out-of-state

This allows a health care practitioner licensed in another state or the District of Columbia who has an offer of employment in Virginia and has submitted an application for licensure to the appropriate health regulatory board to temporarily practice for a period of 90 days pending licensure, provided that certain conditions are met. *(HB1187/SB317)*

Cardiopulmonary Resuscitation

Employees of programs licensed by the Department of Behavioral Health and Developmental Services (DBHDS) who are certified in cardiopulmonary resuscitation to comply with a program participant's valid written order not to resuscitate in the event of cardiac and respiratory arrest if the valid written order not to resuscitate is included in the program participant's individualized service plan. The bill directs DBHDS to develop and distribute to providers guidance regarding compliance with a program participant's valid written order not to resuscitate by program employees certified in cardiopulmonary resuscitation. *(SB100)*

Patient Care Team Physician Supervision

A physician may serve as a patient care team physician on a patient care team with up to 10 nurse practitioners licensed in the category of psychiatric-mental health nurse practitioner. The bill retains, in all other cases, the existing provision that a physician may serve as a patient care team physician on a patient care team with no more than six nurse practitioners. *(SB414)*

Hospital Price Transparency

This requires every hospital to make information about standard charges for items and services provided by the hospital available on the hospital's website by July 1, 2023. *(HB481)*

Hospital or Nursing Home Bed Addition

This creates an exemption from the requirement for a certificate of public need or a license for the temporary addition of beds located in a temporary structure or satellite location by a hospital or nursing home in cases in which the Board of Health or the Commissioner of Health has entered an emergency order for the purpose of suppressing a nuisance dangerous to public health or a communicable, contagious, or infectious disease or other danger to the public life and health. It provides that such exemption shall apply for the duration of the emergency order plus 30 days. The legislation also expands the duration of the existing exemption from the requirement for a certificate of public need or a license for the addition of temporary beds when the Commissioner of Health has determined that a natural or man-made disaster has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a shortage of hospital or nursing home beds to the duration of such determination plus 30 days and makes clear that such exemption shall apply to the temporary addition of beds located in a temporary structure or satellite location by a hospital or nursing home. *(HB900/SB130)*

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