



The health law solution.

May 8, 2009

2009 Health Care Legislation Highlights

The 2009 General Assembly Session adjourned on February 28, 2009. While the medical community focused heavily this session on preventing further cuts to Medicaid, a number of other legislative initiatives affecting hospitals and health care systems were passed. Summarized below are highlights of relevant health care bills Governor Kaine has approved. Except as noted, these new laws will go into effect July 1, 2009.

Posting of Charity Care Policies

House Bill 2458 – Delegate John O'Bannon

This bill creates a new section in the Code of Virginia which requires all hospitals to conspicuously post written information about their charity care policies, including policies related to free and discounted care. This information must be posted in public areas of the hospital, such as admissions or registration areas, emergency departments, and associated waiting rooms. In addition, information regarding specific eligibility criteria and procedures for applying for charity care must be (i) provided to a patient at the time of admission or discharge, or at the time services are provided, (ii) included with any billing statements sent to uninsured patients, and (iii) included on any website maintained by the hospital (Code of Virginia § 32.1-137.01).

Copies of Medical Bills

Senate Bill 1154 – Senator Ryan McDougle

In its original form this bill required that a patient's account balance or itemized listing of charges from a hospital, ambulance, nursing facility or health care provider be provided at no cost to the requesting patient, patient's attorney, or authorized insurer. However, final amendments to the legislation added provisions to clarify that upon request, a patient's account balance or itemized listing of charges maintained by a health care provider shall be supplied at no cost up to three times every twelve months to either the patient or the patient's attorney (Code of Virginia § 8.01-413).

Confidentiality of Investigations

House Bill 1852 – Delegate Joe Morrissey

This bill amends Code of Virginia § 54.1-2400.2, relating to the confidentiality of Department of Health Professions (DHP) investigations, and was introduced in order to address concerns raised by health care providers involved in investigative and disciplinary procedures at the Department. As a result of the bill's passage, the DHP is now required to provide a licensee who is the subject of a complaint or report with a copy of that document and any records or supporting



Hancock, Daniel, Johnson & Nagle, PC (HDJN) provides assistance and guidance to health care providers in virtually all legal matters affecting healthcare. Generally, these include corporate, employment, administrative, and transactional matters; litigation; and governmental affairs.

documentation *prior to* interviewing the licensee or at the time the licensee is first notified of the complaint or report, whichever occurs first. This requirement is void if such a provision would materially obstruct a criminal or regulatory investigation. Additionally, the bill clarifies that as provided under § 54.1-2506, DHP investigative staff is not prohibited from *interviewing fact witnesses, disclosing to fact witnesses the identity of the subject of the complaint or report, or reviewing with fact witnesses any portion of records or other supporting documentation necessary to refresh the fact witnesses' recollection.*

Public Addresses of Health Professionals

Senate Bill 1282 – Senator Steve Newman

In order to further protect the privacy and security of licensed health professionals, this bill was passed to amend Code of Virginia § 54.1-2400.02, relating to the collection of such individuals' address information. Specifically, the bill requires the DHP to collect an official address of record from each licensed health professional to be used solely by the Department and health regulatory boards. The bill also requires that health professionals be permitted to list a work address, post office box, or home address for use as their public address, which may be publicly disclosed or provided to a private entity for resale. If a health professional does not provide a second address, then his or her address of record will be used as the public address.

Furthermore, this legislation amends § 54.1-3005, which relates to the specific powers and duties of the Board of Nursing (BON). A new subsection directs the BON to promulgate regulations permitting the

use of first name, first letter of last name, and appropriate title on identification badges for those individuals practicing in hospital emergency departments, psychiatric and mental health units, or health care units treating patients in legal custody. Once this law takes effect in July, the BON will begin the process of drafting new regulations that if deemed non-controversial, may be fast-tracked through the regulatory process.

Prescription Monitoring Program

House Bill 2211 – Delegate Chris Jones; Senate Bill 1195 – Senator Phil Puckett

This bill amends Virginia law to remove the requirement that a prescriber obtain written consent from a patient before querying the Prescription Monitoring Program (PMP). Under the new law, prescribers must notify their patients that information *may be requested* from the program. Furthermore, this bill allows prescribers to delegate authority to access the PMP to up to two licensed health care professionals who are employed at the same facility and are under the direct supervision of the prescriber. An emergency clause was included in this bill, making these changes effective with the Governor's approval on March 16, 2009.

The Virginia Board of Pharmacy recently published final regulations that will become effective May 13, 2009, and implement the prescribed legislative changes. Amendments to 18 VAC 76-20 make it necessary for health professionals who are delegated access to the PMP to be registered with the program and use their own name and unique identifiers when querying the program. Furthermore, the regulatory changes require prescribers intending to use the program to notify patients or



HDJN is one of the largest Virginia law firms primarily focusing its practice on the needs of the healthcare industry.

prospective patients that they may access information on all Schedule II, III or IV prescriptions dispensed to a patient using one of the following methods: by conspicuously posting a sign, by providing written notice, or by obtaining written consent from the patient. The amended regulations also remove the requirement for dispensers located outside of Virginia to hold a nonresident pharmacy license. This clause was removed in order to permit interoperability among state monitoring programs.

Durable Do Not Resuscitate Orders
Senate Bill 1085 – Senator Edd Houck

This legislation amends Code of Virginia § 54.1-2987 and provides that no person other than a patient can revoke a Durable Do Not Resuscitate Order (DDNR), except in instances when the patient is a minor or when the DDNR was issued at the request of a person authorized to consent on the patient's behalf. In addition, the bill clarifies that a health care provider's authority to follow a DDNR is *revoked* if a patient is able to, and does, express the desire to be resuscitated following a cardiac or respiratory event.

Previously, Virginia law provided that a health care provider was not *authorized* to follow a DDNR if a patient expressed the desire to be resuscitated. The term "authorized" created confusion and implied that the DDNR still existed but could not be used. Under the new law, the patient (or the patient's authorized representative) is clearly empowered to "revoke" a DDNR by expressing the desire to be resuscitated. Once a DDNR is revoked, a new DDNR may only be issued upon the consent of the patient or the person authorized to consent on the patient's behalf.

Advance Medical Directives

*House Bill 2396 – Delegate Rob Bell;
Senate Bill 1142 – Senator Mary Margaret Whipple*

This legislation was introduced with the intent of permitting an advance medical directive to be used for mental health care and admissions. Various substitutions were offered over the course of the session, resulting in a final bill that contained multiple revisions to the Health Care Decisions Act. In summary, this legislation amends the Act to: (i) permit use of an advance medical directive for mental health care and admissions; (ii) allow an agent to consent to a person's admission to a mental health facility for no more than ten days; (iii) clarify the process for determining when a patient is incapable of making an informed decision; (iv) require that determinations of incapacity be made by two physicians or a physician and a clinical psychologist, one of whom is not otherwise involved in the patient's care; (v) allow one physician to make a determination that a patient is again capable of making an informed decision; and (vi) determine when a physician may treat a patient over his protests. To view the final bill in its entirety, please visit <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0211>.

For more information on these 2009 legislative changes or any other health care bills that were enacted into law, please contact W. Scott Johnson or Gerald C. Canaan, II at (804) 967-9604 or by e-mail at sjohnson@hdjn.com or gcanaan@hdjn.com. Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm's website at www.hdjn.com.



HDJN offers legal solutions to handle the challenges of an ever-changing healthcare landscape.

The information contained in this advisory is for general educational purposes only. It is presented with the understanding that neither the author nor Hancock, Daniel, Johnson & Nagle, PC, is offering any legal or other professional services. Since the law in many areas is complex and can change rapidly, this information may not apply to a given factual situation and can become outdated. Individuals desiring legal advice should consult legal counsel for up-to-date and fact-specific advice. Under no circumstances will the author or Hancock, Daniel, Johnson & Nagle, PC be liable for any direct, indirect, or consequential damages resulting from the use of this material.

<p>Richmond North Park 4701 Cox Road Suite 400 Glen Allen, VA 23060 PO Box 72050 Richmond, VA 23255-2050 ○ (804) 967-9604</p>	<p>Fairfax The Flint Hill Centre 3050 Chain Bridge Road Suite 300 Fairfax, VA 22030 ○ (703) 591-3440</p>
<p>Harrisonburg 3210 Peoples Drive Harrisonburg, VA 22801 ○ (866) 967-9604</p>	<p>Virginia Beach One Columbus Center 283 Constitution Drive Suite 301 Virginia Beach, VA 23462 ○ (757) 321-6555</p>

For more information about HDJN visit the firm website at:
www.hdjn.com