

HEALTH: DISEASE PREVENTION AND CONTROL — REGULATION OF MEDICAL CARE FACILITIES.

ADMINISTRATION OF GOVERNMENT GENERALLY: PRIVACY PROTECTION ACT OF 1976.

Absence of statutory language requiring parental consent to transfer immunization information about individual children is not sufficient to override obligation of physician or health care provider to maintain confidentiality of patient medical records. Statutes mandating establishment of information systems containing medical records data and reporting of patient information also provide mechanisms for regulating such systems and protecting confidentiality of information.

The Honorable Marian Van Landingham

Member, House of Delegates

January 11, 1999

You ask whether § 32.1-46 of the *Code of Virginia* allows the transfer of immunization information about individual children from hospital and doctor records to the state health department immunization information system and between health professionals without requiring signed permission from each child's parent.

Section 32.1-46(A) requires "[t]he parent, guardian or person standing in loco parentis of each child within this Commonwealth [to] cause such child to be immunized" against certain diseases.¹ The vaccines may be administered by a physician or free of charge at the appropriate local health department.² The physician or local health department is to provide the person presenting the child for immunization a certificate stating the diseases for which the child has been immunized, the number of doses given, the date of the immunization, and any further immunizations needed.³ Section 32.1-46(E) provides:

For the purpose of protecting the public health by ensuring that each child receives age-appropriate immunizations, any physician, licensed institutional health care provider, local or district health department, and the Department of Health may share immunization and child locator information, including, but not limited to, the month, day, and year of each administered immunization; the child's name, address, telephone number, birth date, and social security number; and the parents' names. The immunization information; the child's name, address, telephone number, birth date, and social security number; and the parents' names shall be confidential and shall only be shared for the purposes set out in this subsection.

Prior to a 1996 amendment, § 32.1-46(E) stated that the information could be transferred "with written parental consent."⁴ The 1996 amendment deleted this language, in addition to adding language regarding the purpose for the transfer of information.⁵ A presumption generally arises that when the General Assembly adds new provisions to existing legislation, it intends to change the existing law.⁶ I am unable to conclude, however, that, because the General Assembly deleted from § 32.1-46(E) the express requirement of written parental consent, the remaining language of § 32.1-46 constitutes sufficient legislative authority for the transfer of immunization information to the state health department immunization information system without such consent.

I note that § 32.1-46 neither mandates that physicians or licensed institutional health care providers submit immunization information to the state health department nor expressly authorizes the department to establish an immunization information system.⁷ In contrast, other statutes in Title 32.1 expressly authorize the establishment of systems containing information from individual patient's medical records.⁸ These statutes not only impose a mandatory requirement on physicians, medical service providers or hospitals to submit the necessary information but also contain mechanisms or procedures for regulating the system and protecting the confidentiality of the information.⁹

In a recent decision, the Supreme Court of Virginia held that,

in the absence of a *statutory command* to the contrary, or absent a serious danger to the patient or others, a health care provider owes a duty to the patient not to disclose information gained from the patient during the course of treatment without the patient's authorization, and [a] violation of this duty gives rise to an action in tort.^[10]

In light of this decision and the general language of § 32.1-46, as compared to the specific language of other statutes mandating reporting of patient information and establishing information systems containing medical records data, it is my opinion that simply the absence of language in § 32.1-46 requiring parental consent is not alone sufficient to override the obligation of a physician or health care provider to maintain the confidentiality of a patient's medical records.¹¹

¹The diseases include diphtheria, tetanus, whooping cough, poliomyelitis, Haemophilus influenzae type b, measles (rubeola), German measles (rubella), mumps, and, for children born on or after January 1, 1994, hepatitis B. Section 32.1-46(A). The immunizations are required at different ages. *Id.*

²Section 32.1-46(A).

³Section 32.1-46(B). The statute does not apply if (1) a parent or guardian objects to the immunization on religious grounds, unless the State Board of Health declares an emergency or epidemic, or (2) a physician licensed in Virginia provides a statement declaring that one or more of the immunizing agents would be detrimental to the health of the child. Section 32.1-46(D).

⁴1996 Va. Acts: ch. 67, at 74, 75; ch. 533, at 904, 905.

⁵*See id.* Prior to the 1996 amendment, the stated purpose for sharing the information was "ensuring that each child receives age-appropriate immunizations." *Id.* The 1996 amendment added the language stating that the purpose for sharing the information is "protecting the public health." *Id.*

⁶*See Wisniewski v. Johnson*, 223 Va. 141, 144, 286 S.E.2d 223, 224-25 (1982); *see also Op. Va. Att'y Gen.*: 1996 at 61, 61; 1990 at 156, 157; 1986-1987 at 272, 273.

⁷It is my understanding that the Department of Health does not at present have such a system in operation.

⁸ See, e.g., §§ 32.1-69.1, 32.1-69.2 (establishing Virginia Congenital Anomalies Reporting and Education System); §§ 32.1-70 to 32.1-71 (establishing statewide cancer registry); §§ 32.1-116.1 to 32.1-116.3 (establishing Emergency Medical Services Patient Care Information System).

⁹ The Privacy Protection Act of 1976, §§ 2.1-377 to 2.1-386, requires government agencies that maintain information systems containing "personal information" to adhere to certain principles that ensure safeguards for personal privacy. Section 2.1-378(B). Section 2.1-379(2) of the Act defines "personal information" to include an individual's "medical history." Section 2.1-382 provides that "data subjects," those individuals about whom personal information is indexed or may be located in an information system (see § 2.1-379(3)), are to be provided certain information regarding whether they may refuse to supply the information. Social security numbers also constitute personal information that may trigger the procedural requirements of the Act. See 1987-1988 Op. Va. Att'y Gen. 5, 6, and opinions cited therein. Federal law also regulates the use of social security numbers. See Privacy Act of 1974, 5 U.S.C.A. § 552a, § 552a note at 30, 43-45 n(West 1996 & Supp. 1998) (originally enacted as Pub. L. No 93-579, 88 Stat. 1897).

¹⁰ See *Fairfax Hospital v. Curtis*, 254 Va. 437, 442, 492 S.E.2d 642, 645 (1997) (emphasis added). While § 32.1-46 provides that the physicians or entities "may" share the immunization information, it imposes no statutory command on a health care provider. The statute also contains no language limiting the disclosure of the information to situations constituting "a serious danger to the patient or others." I cannot, of course, predict how the Court might rule in a situation involving the disclosure of the immunization information specified in § 32.1-46 or whether the Court would apply the same standard to the immunization information as applied to other information regarding a patient's treatment.

¹¹ Section 32.1-127.1:03 establishes a patient's right of privacy in the content of the patient's medical record. Section 32.1-127.1:03(B) broadly defines "record" to include "any ... material maintained by a provider in the course of providing health services to a patient concerning the patient and the services provided." Section 32.1-127.1:03(D) contains 24 exceptions from the prohibition against a provider's disclosure of the records of a patient. Subsection (D)(6) authorizes disclosure "[a]s required or authorized by any other provision of law including contagious disease [and] public safety ... reporting requirements." Subsection (D)(6) lists statutes imposing such reporting requirements, and, although expressly stating that the list is not limited to the statutes specified, the list does not include § 32.1-46. While I do not interpret § 32.1-127.1:03 as prohibiting the disclosure of immunization information, neither does it indicate a clear legislative intent to exclude immunization information from the patient consent requirements imposed by the statute.