

---

# 2009 MENTAL HEALTH LEGISLATION

## Privacy Issues

---

Jane D. Hickey  
Allyson K. Tysinger  
Office of the Attorney General  
June 2009

---

# Notification of Family

HB 2461(O'Bannon)/SB 1077 (Howell)

- In considering alternative transportation, family members pointed out that if they could be notified that their family member is in crisis, they may be able to provide transportation or perhaps defuse the crisis so that emergency custody, temporary detention and involuntary admission could possibly be avoided.
- The HIPAA Privacy Rule contains a notification provision and although Virginia law allowed such notification, it was not absolutely clear to providers that such disclosure could occur.

---

# Notification of Family

HB 2461(O'Bannon)/SB 1077 (Howell)

- To clarify Virginia law, the notification provision of the HIPAA Privacy Rule (45 C.F.R. §164.510(b)) was imported into the Virginia Patient Health Records Privacy Act (§ 32.1-127.1:03(D)(34) and Title 37.2 (§ 37.2-804.2)

---

# Notification of Family

HB 2461(O'Bannon)/SB 1077 (Howell)

- Health care provider may notify a family member or personal representative of an individual who is the subject of the civil commitment process of information that is directly relevant to such person's involvement with the individual's health care, including the individual's location and general condition when:

---

# Notification of Family Individual Capacity

- Individual has capacity and
  - Has agreed to notification;
  - Has been provided opportunity to object and does not express objection; or
  - Health care provider, based on professional judgment, can reasonably infer from circumstances that individual does not object

§§ 37.2-127.1:03(D)(34), 37.2-804.2

---

# Notification of Family Incapacity/Impracticable

- If opportunity to agree or object cannot practicably be provided because of individual's incapacity or an emergency circumstance,
- Information may be provided, if health care provider, in exercise of professional judgment, determines notification in best interest of individual

§§ 37.2-127.1:03(D)(34), 37.2-804.2

---

# Notification of Family Prohibition

- Notification shall not be made if health care provider has actual knowledge that the family member or personal representative is currently prohibited by court order from contacting the individual

---

# Individual Opportunity to Notify

HB 2459 (O'Bannon)/SB 1076 (Howell)

- Individuals involved in the civil commitment process often face disruptions in their lives such as housing and financial challenges.
- One way to lessen these disruptions is to ensure that an individual involved in the civil commitment process has the opportunity to designate a person to be notified of his whereabouts, including a transfer to a different facility.

---

# Individual Opportunity to Notify

HB 2459 (O'Bannon)/SB 1076 (Howell)

- Provides individual receiving services the opportunity to have someone of his choice notified by treatment facility of his general condition, location and transfer to another location
- Requires State MHMRSAS Board to amend Human Rights Regulations to provide this opportunity

§ 37.2-400

---

# Individual Opportunity to Notify

## Purpose

- Current Human Rights Regulations permit providers to disclose this information under certain circumstances, but do not require it. See 12 VAC 35-115-80(B)(7).
- Ensures that individual can have someone notified of his whereabouts and condition to assist with health related issues or personal needs, e.g. rent, mail, pets, job issues while hospitalized
- The person the individual wishes to have notified may also be able to provide transportation
- Recommendation of 2008 Task Force on Future Commitment Reforms