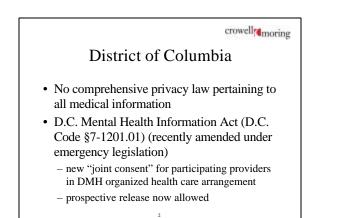
STATE PRIVACY REGULATION: DISTRICT OF COLUMBIA, MARYLAND & VIRGINIA

Anne Marie "Nancy" Wheeler Benjamin T. Butler Crowell & Moring LLP

The Third National HIPAA Summit Washington, D.C. October 26, 2001



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District of Columbia

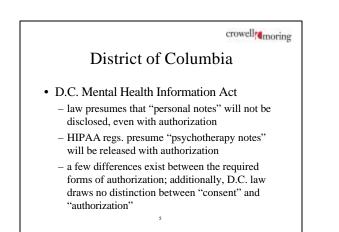
- D.C. Mental Health Information Act
 - "personal notes" -- m.h. information disclosed to m.h. professional on condition that such information not be disclosed to client or others, and m.h. professional's speculations
 - cf. "psychotherapy notes" in HIPAA regs. -separately kept notes recorded by m.h. professional documenting or analyzing contents of conversation during counseling



District of Columbia

• D.C. Mental Health Information Act

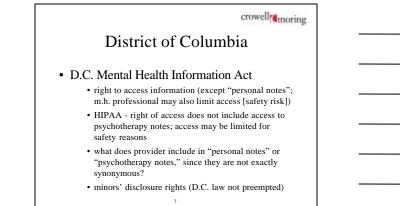
- HIPAA language re/ psychotherapy notes is somewhat broader than D.C. Act, despite exclusion of items such as Dx, Rx, Tx plan, progress, tests, session start and stop times
- interplay between federal and D.C. law could cause confusion for m.h. providers
 - preemption -- "contrary to" / "more stringent"
 - provision-by-provision assessment

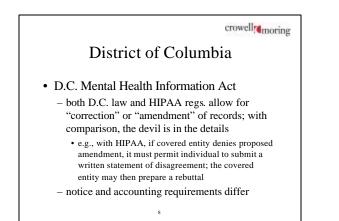


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District of Columbia

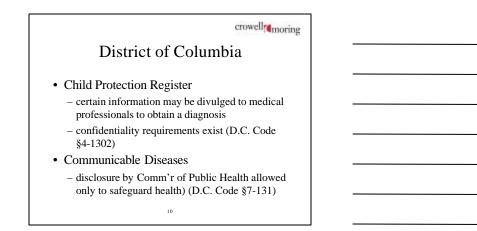
- D.C. Mental Health Information Act
 - m.h. professional has authority to limit authorized disclosures (*e.g.*, to protect client or others from substantial risk of imminent and serious physical injury or to protect client from imminent psychological impairment)
 analyze preemption: contrary to / more stringent?
 - disclosure is limited to 3rd party payors can "progress" notes be released?

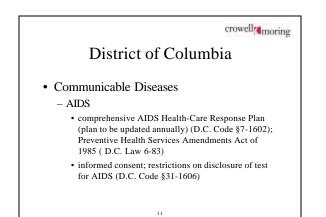


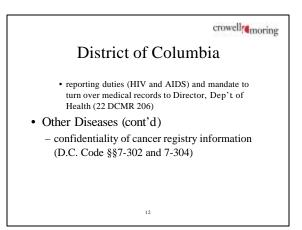


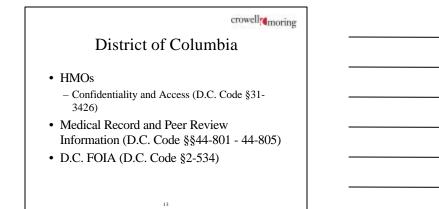
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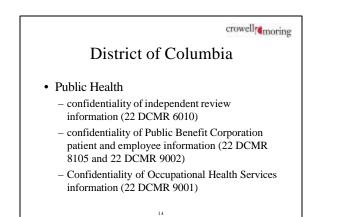
- D.C. Health Occupations Boards, Licensing of Health Professionals
 - disciplinary action may be taken against professional for:
 - failure to provide details of a patient's medical record to a hospital or other licensed health professional
 - willfully breaching a confidentiality law, regulation or ethical requirement (D.C. Code §3-1205.14)











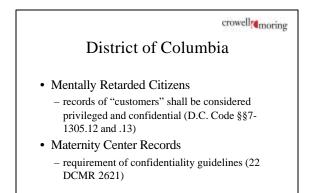
District of Columbia

- Physicians and Mental Health Professionals Privilege Law (D.C. Code §14-307)
- Medical and Psychiatric Care and Treatment; Records
 - law pertains to public hospital records (D.C. Code §21-562)

District of Columbia

• Treatment of Minors - Health Professional May Inform Parents of Certain Medical Conditions (except as provided in D.C. Mental Health Information Act) (22 DCMR 602)

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District of Columbia

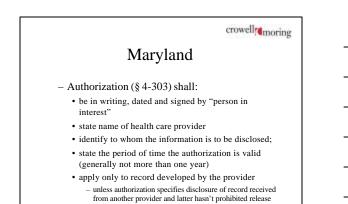
- Community Residence Facilities

 requirement of confidentiality (22 DCMR 3412 and 22 DCMR 3801)
- Confidentiality of Medical Information Held by the Commission on Judicial Disabilities and Tenure (28 DCMR 2044)
- Crime Victims Compensation Program -Privacy of Claimant's Medical Records (28 DCMR 2308)

Maryland

- Fairly comprehensive health care information/ medical record law governing release of information, confidentiality and patient access to information (Md. Code Ann., Health-Gen. § 4-301 *et seq.*)
 - "directory information" (presence and general condition of patient in h.c. facility) generally does not require authorization

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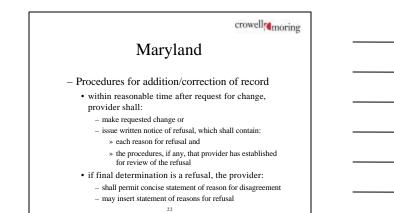


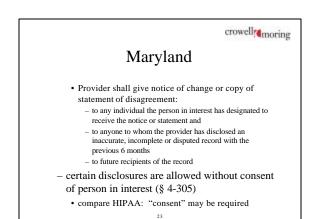
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- Patient access to records

- h.c. provider shall comply within reasonable period of time after a person in interest requests in writing to receive a copy or see and copy the medical record
- if record is related to psychiatric or psychological problem, and attending provider believes disclosure would be injurious to person or recipient, provider
- may refuse to disclose that portion but
 make summary available; insert summary in record; permit exam/copying by another provider; and inform patient of right to select another provider (§ 4-304)



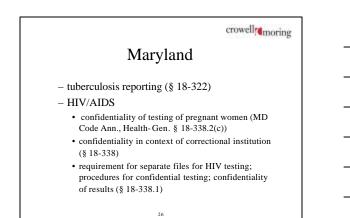


Maryland
 Mental health "personal notes" (§ 4-307 (a)(6).
 work product and personal property of a mental health provider
 - does not include Dx, Tx plan, symptoms, prognosis or progress notes
 not discoverable or administrative actions (except malpractice or similar claims against provider)
 must be maintained separately; "sole possession" notes (except for disclosure to supervisor, consulting provider or provider's attorney)

Maryland

- Detailed procedures re/ use of medical information by courts, correctional facilities, and pursuant to subpoena or other compulsory process (§ 4-307)
- Penalties (§ 4-308)
- Reporting of Infectious Diseases and Confidentiality Requirements (Md. Code Ann., Health-Gen. § 18-205)

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Maryland

- Records Maintenance and Destruction --New Confidentiality Provisions (MD Code Ann., Health-Gen. § 4-403) (effective 10/1/01)
 - Sec'y of Health and Mental Hygiene is authorized to promulgate new regulations; these will presumably apply to health care providers, including certain facilities and HMOs

Maryland

- Law Permits Physicians and Certain Medical Staff Members to Release Information about Treatment of Minor to Parent or Guardian (§ 20-104)
 - law has been expanded to include psychologists (effective 10/1/01)

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Abortion Notice (§20-103)

• Vital Records (§ 4-224)

Cancer Reporting (§§ 18-203 and 18-204)
 Cancer Reporting (§§ 18-203 and 18-204)
 Maryland Health Care Commission Medical Care Database (§§ 19-103 and 19-134)
 HMO - Health and Medical Records System

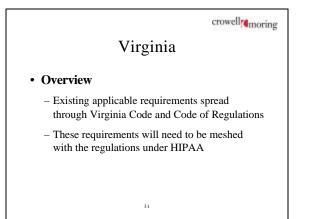
 requirements of confidentiality while allowing ready access to authorized persons; documentation requirements (§ 19-710)
 Department examinations (§ 19-719)

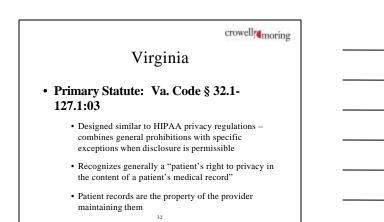
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Maryland

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- Health Occupations Regulatory Boards -Release of Health Records (MD Code Ann., Health Occup. §§ 6-205.2, 6-205.3, 12-313, 12-403, 12-409, 14-404, 14-411, 16-312)
- Insurance-- Medical Files (MD Code Ann., Insurance §§ 4-402, 4-403, 4-404)
 - Genetic Information (§ 27-909)
- State Gov't. (§§ 10-615, 10-616, 10-617)





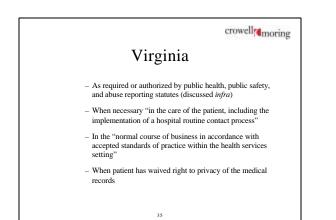
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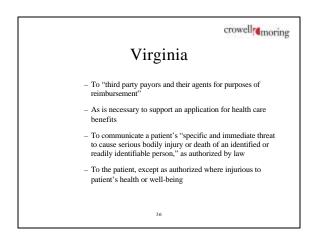
- Providers or other persons "working in a health care setting" may not disclose patient records except as authorized by section 127.1:03 or "by another provision of state or federal law"
- Patient records may not be removed from premises where maintained without approval of provider, except as authorized by law
- With certain exceptions, redisclosure of patient records is not permitted beyond purpose for which disclosure was made without first obtaining patient's specific consent to redisclosure

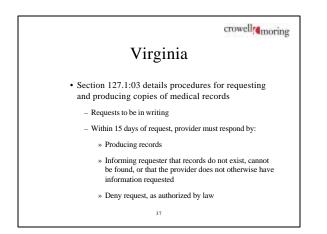


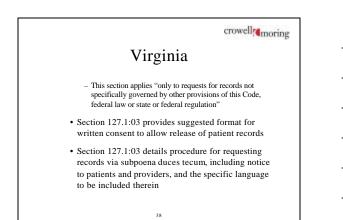
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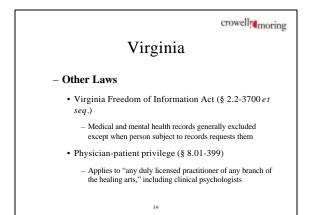
- Section 127.1:03 lists 26 circumstances when providers' disclosure is permissible under statute, including:
 - Pursuant to written consent of patient (or in emergency, oral consent, to discuss records with third party specified by patient)
 - In compliance with a legally-authorized subpoena
 - When necessary to establish or collect a fee or defend against accusation of wrongful conduct
 - As required in course of investigation of provider
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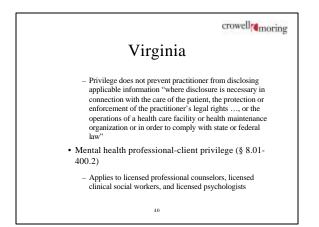


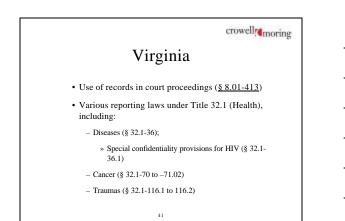


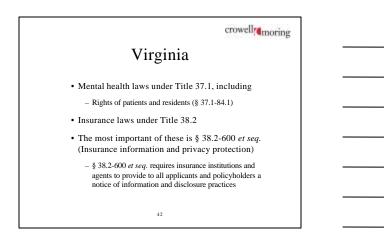




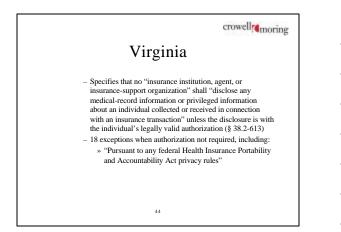


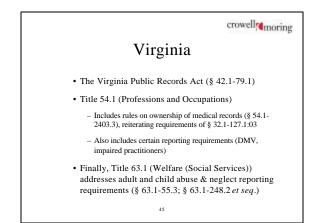


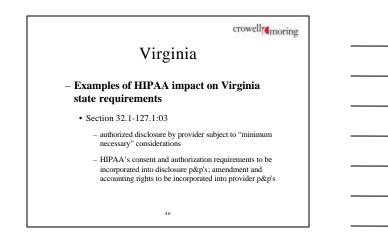


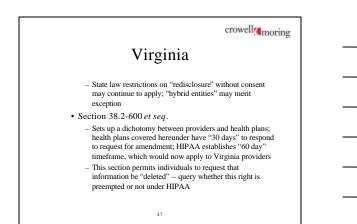


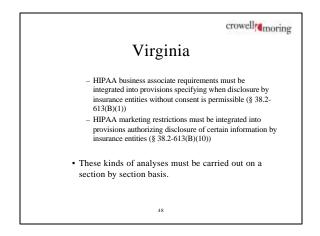
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Conclusion

- <u>Parting thought</u>: Take a look at your state requirements; where significant privacy protections already exist, a thorough analysis will be required.
- Developing a comprehensive understanding of existing state law now will save your organization both time and money over the long term.

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