



Medical Database Breach Notification Subcommittee
Monday, November 14, 2011 10:00 a.m.
General Assembly Building, 6th Floor, Speaker's Conference Room

- Call to Order; Introduction of Members
- Overview of HB 2315 and current database breach notification requirements in the Code of Virginia

Staff provided a brief history and overview of HB2315, which had been introduced by Delegate Byron during the 2011 Regular Session of the General Assembly. The bill would have amended the medical information notification statute at § 32.1-127.1:05 of the Code of Virginia to include any entity, public or private, not already required by state or federal law to provide notice of a database breach involving medical information.

Concerns were raised about possible hardships that were not identified in the language of the bill. In particular, attorneys were concerned about a new burden that would be placed on attorneys who have copies of client medical records. Staff presented information from the Virginia Bar regarding the ethics requirements of lawyers, showing that an attorney would have a duty to notify a client of a database breach regarding any confidential information. Specifically, Rule 4.1 would be interpreted to include medical database breaches as a “matter” under the language of the rule; however, no ethics opinion has been issued on-point.

- Discussion & public comment

The chair opened the floor for discussion and public comment. Representatives from the legal community expressed an interest in making Section G of the statute amended to more precisely exclude attorneys, given that the Virginia Bar already would require attorneys to notify their clients in the event of such a database breach.

Following the public comment and discussion, staff was directed to produce a report from the advisory panel that no further action should be taken on the bill this year. However, Delegate Byron, chairman of the Advisory Committee, noted that if future issues related to database breach notification should arise, the issues should be sent to JCOTS for review.