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## SENATE BILL NO. 750

Offered January 21, 2022

A *BILL to amend and reenact §§ 2.2-212, 2.2-309.1, 2.2-507, 2.2-1124, 2.2-1839, 2.2-2818, 2.2-2905, 2.2-3114, 16.1-346.1, 19.2-316, 19.2-389, 22.1-7, 22.1-215, 25.1-100, 29.1-313, 32.1-59, 32.1-283, 37.2-100, 37.2-201, 37.2-203, 37.2-304, 37.2-306, 37.2-308.1, 37.2-312, 37.2-314, 37.2-314.1, 37.2-317, 37.2-511, 37.2-700 through 37.2-721, 37.2-805, 37.2-805.1, 37.2-809, 37.2-809.1, 37.2-824, 37.2-826, 37.2-828, 37.2-834, 37.2-837, 37.2-840, 37.2-841, 40.1-28.9, 46.2-1229, 64.2-2000, and 64.2-2028 of the Code of Virginia; to amend the Code of Virginia by adding in Title 37.2 a chapter numbered 12, consisting of sections numbered 37.2-1200 through 37.2-1209; and to repeal § 37.2-316 of the Code of Virginia, relating to the Behavioral Health Hospital Authority; established.*

Patron—Dunnavant

Referred to Committee on Education and Health

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 2.2-212, 2.2-309.1, 2.2-507, 2.2-1124, 2.2-1839, 2.2-2818, 2.2-2905, 2.2-3114, 16.1-346.1, 19.2-316, 19.2-389, 22.1-7, 22.1-215, 25.1-100, 29.1-313, 32.1-59, 32.1-283, 37.2-100, 37.2-201, 37.2-203, 37.2-304, 37.2-306, 37.2-308.1, 37.2-312, 37.2-314, 37.2-314.1, 37.2-317, 37.2-511, 37.2-700 through 37.2-721, 37.2-805, 37.2-805.1, 37.2-809, 37.2-809.1, 37.2-824, 37.2-826, 37.2-828, 37.2-834, 37.2-837, 37.2-840, 37.2-841, 40.1-28.9, 46.2-1229, 64.2-2000, and 64.2-2028 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 37.2 a chapter numbered 12, consisting of sections numbered 37.2-1200 through 37.2-1209, as follows:

**§ 2.2-212. Position established; agencies for which responsible; additional powers.**

A. The position of Secretary of Health and Human Resources (the Secretary) is created. The Secretary of Health and Human Resources shall be responsible to the Governor for the following agencies: Department of Health, Department for the Blind and Vision Impaired, Department of Health Professions, Department of Behavioral Health and Developmental Services, Department for Aging and Rehabilitative Services, Department of Social Services, Department of Medical Assistance Services, Virginia Department for the Deaf and Hard-of-Hearing, the Office of Children's Services, the Assistive Technology Loan Fund Authority, and the Opioid Abatement Authority, and the Behavioral Health Hospital Authority. The Governor may, by executive order, assign any other state executive agency to the Secretary of Health and Human Resources, or reassign any agency listed above to another Secretary.

B. As requested by the Secretary and to the extent authorized by federal law, the agencies of the Secretariat shall share data, records, and information about applicants for and recipients of services from the agencies of the Secretariat, including individually identifiable health information for the purposes of (i) streamlining administrative processes and reducing administrative burdens on the agencies, (ii) reducing paperwork and administrative burdens on the applicants and recipients, and (iii) improving access to and quality of services provided by the agencies.

C. Unless the Governor expressly reserves such power to himself, the Secretary shall (i) serve as the lead Secretary for the coordination and implementation of the long-term care policies of the Commonwealth and for the blueprint for livable communities 2025 throughout the Commonwealth, working with the Secretaries of Transportation, Commerce and Trade, and Education, and the Commissioner of Insurance, to facilitate interagency service development and implementation, communication, and cooperation; (ii) serve as the lead Secretary for the Children's Services Act, working with the Secretary of Education and the Secretary of Public Safety and Homeland Security to facilitate interagency service development and implementation, communication, and cooperation; and (iii) coordinate the disease prevention activities of agencies in the Secretariat to ensure efficient, effective delivery of health related services and financing.

**§ 2.2-309.1. Additional powers and duties; behavioral health and developmental services.**

A. The definitions found in § 37.2-100 shall apply mutatis mutandis to the terms used in this section.

B. In addition to the duties set forth in this chapter, the State Inspector General shall have the following powers and duties to:

1. Provide inspections of and make policy and operational recommendations for state facilities hospitals and training centers and for providers, including licensed mental health treatment units in state correctional facilities, in order to prevent problems, abuses, and deficiencies in and improve the effectiveness of their programs and services. The State Inspector General shall provide oversight and conduct announced and unannounced inspections of state facilities hospitals and training centers and of providers, including licensed mental health treatment units in state correctional facilities, on an ongoing

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59 basis in response to specific complaints of abuse, neglect, or inadequate care and as a result of  
60 monitoring serious incident reports and reports of abuse, neglect, or inadequate care or other information  
61 received. The State Inspector General shall conduct unannounced inspections at each state facility  
62 *hospital and training center* at least once annually;

63 2. Inspect, monitor, and review the quality of services provided in state facilities and by providers as  
64 defined in § 37.2-403, including licensed mental health treatment units in state correctional facilities;

65 3. Access any and all information, including confidential consumer information, related to the  
66 delivery of services to consumers in state facilities or served by providers, including licensed mental  
67 health treatment units in state correctional facilities. However, the State Inspector General shall not be  
68 given access to any proceedings, minutes, records, or reports of providers that are privileged under  
69 § 8.01-581.17, except that the State Inspector General shall be given access to any privileged  
70 information in state facilities and licensed mental health treatment units in state correctional facilities.  
71 All consumer information shall be maintained by the State Inspector General as confidential in the same  
72 manner as is required by the agency or provider from which the information was obtained;

73 4. Keep the General Assembly and the Joint Commission on Health Care fully and currently  
74 informed by means of reports required by § 2.2-313 concerning significant problems, abuses, and  
75 deficiencies relating to the administration of the programs and services of state facilities and of  
76 providers, including licensed mental health treatment units in state correctional facilities, to recommend  
77 corrective actions concerning the problems, abuses, and deficiencies, and report on the progress made in  
78 implementing the corrective actions;

79 5. Provide oversight of the Department of Behavioral Health and Developmental Services and  
80 community-based providers to identify system-level issues and conditions affecting quality of care and  
81 safety and provide recommendations to alleviate such issues and conditions;

82 6. Implement a program to promote awareness of the complaints line operated by the Office of the  
83 State Inspector General among residents of facilities operated by the Department of Behavioral Health  
84 and Developmental Services and persons receiving services from community-based providers regulated  
85 by the Department of Behavioral Health and Developmental Services;

86 7. Review, comment on, and make recommendations about, as appropriate, any reports prepared by  
87 the Department of Behavioral Health and Developmental Services and the critical incident data collected  
88 by the Department of Behavioral Health and Developmental Services in accordance with regulations  
89 adopted under § 37.2-400 to identify issues related to quality of care, seclusion and restraint, medication  
90 usage, abuse and neglect, staff recruitment and training, and other systemic issues;

91 8. As deemed necessary, monitor, review, and comment on regulations adopted by the Board of  
92 Behavioral Health and Developmental Services; and

93 9. Receive reports, information, and complaints from the Commonwealth's designated protection and  
94 advocacy system concerning issues related to quality of care provided in state facilities and by providers,  
95 including licensed mental health treatment units in state correctional facilities, and conduct independent  
96 reviews and investigations.

97 **§ 2.2-507. Legal service in civil matters.**

98 A. All legal service in civil matters for the Commonwealth, the Governor, and every state  
99 department, institution, division, commission, board, bureau, agency, entity, official, court, or judge,  
100 including the conduct of all civil litigation in which any of them are interested, shall be rendered and  
101 performed by the Attorney General, except as provided in this chapter and except for any litigation  
102 concerning a justice or judge initiated by the Judicial Inquiry and Review Commission. No regular  
103 counsel shall be employed for or by the Governor or any state department, institution, division,  
104 commission, board, bureau, agency, entity, or official. The Attorney General may represent personally or  
105 through one or more of his assistants any number of state departments, institutions, divisions,  
106 commissions, boards, bureaus, agencies, entities, officials, courts, or judges that are parties to the same  
107 transaction or that are parties in the same civil or administrative proceeding and may represent multiple  
108 interests within the same department, institution, division, commission, board, bureau, agency, or entity.  
109 The soil and water conservation district directors or districts may request legal advice from local, public,  
110 or private sources; however, upon request of the soil and water conservation district directors or districts,  
111 the Attorney General shall provide legal service in civil matters for such district directors or districts.

112 B. The Attorney General may represent personally or through one of his assistants any of the  
113 following persons who are made defendant in any civil action for damages arising out of any matter  
114 connected with their official duties:

115 1. Members, agents, or employees of the Virginia Alcoholic Beverage Control Authority;

116 2. Agents inspecting or investigators appointed by the State Corporation Commission;

117 3. Agents, investigators, or auditors employed by the Department of Taxation;

118 4. Members, agents, or employees of the State Board of Behavioral Health and Developmental  
119 Services, the Department of Behavioral Health and Developmental Services, the State Board of Health,  
120 the State Department of Health, the Department of General Services, the State Board of Social Services,

the Department of Social Services, the State Board of Local and Regional Jails, the Department of Corrections, the State Board of Juvenile Justice, the Department of Juvenile Justice, the Virginia Parole Board, or the Department of Agriculture and Consumer Services;

5. Persons employed by the Commonwealth Transportation Board, the Department of Transportation, or the Department of Rail and Public Transportation;

6. Persons employed by the Commissioner of Motor Vehicles;

7. Persons appointed by the Commissioner of Marine Resources;

8. Police officers appointed by the Superintendent of State Police;

9. Conservation police officers appointed by the Department of Wildlife Resources;

10. Hearing officers appointed to hear a teacher's grievance pursuant to § 22.1-311;

11. Staff members or volunteers participating in a court-appointed special advocate program pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1;

12. Any emergency medical services agency that is a licensee of the Department of Health in any civil matter and any guardian ad litem appointed by a court in a civil matter brought against him for alleged errors or omissions in the discharge of his court-appointed duties;

13. Conservation officers of the Department of Conservation and Recreation; ~~or~~

14. A person appointed by written order of a circuit court judge to run an existing corporation or company as the judge's representative, when that person is acting in execution of a lawful order of the court and the order specifically refers to this section and appoints such person to serve as an agent of the Commonwealth; *or*

15. *Members or employees of the Behavioral Health Hospital Authority.*

Upon request of the affected individual, the Attorney General may represent personally or through one of his assistants (i) any basic or advanced emergency medical care attendant or technician possessing a valid certificate issued by authority of the State Board of Health in any civil matter in which a defense of immunity from liability is raised pursuant to § 8.01-225 or (ii) any member of the General Assembly in any civil matter alleging that such member in his official capacity violated the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to § 2.2-3713 or 2.2-3714.

C. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal service to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General. The compensation for such special counsel shall be paid out of the funds appropriated for the administration of the board, commission, division, or department being represented or whose members, officers, inspectors, investigators, or other employees are being represented pursuant to this section. Notwithstanding any provision of this section to the contrary, the Supreme Court may employ its own counsel in any matter arising out of its official duties in which it, or any justice, is a party.

D. Nothing herein shall limit the powers granted in § 16.1-88.03.

#### **§ 2.2-1124. Disposition of surplus materials.**

A. For purposes of this section, "surplus materials" means personal property, including materials, supplies, equipment, and recyclable items, but does not include property as defined in § 2.2-1147 that is determined to be surplus. "Surplus materials" does not include finished products that a state hospital *operated by the Behavioral Health Hospital Authority* or training center operated by the Department of Behavioral Health and Developmental Services sells for the benefit of individuals receiving services in the state hospital or training center, provided that (i) most of the supplies, equipment, or products have been donated to the state hospital or training center; (ii) the individuals in the state hospital or training center have substantially altered the supplies, equipment, or products in the course of occupational or other therapy; and (iii) the substantial alterations have resulted in a finished product.

B. The Department shall establish procedures for the disposition of surplus materials from departments, divisions, institutions, and agencies of the Commonwealth. Such procedures shall:

1. Permit surplus materials to be transferred between or sold to departments, divisions, institutions, or agencies of the Commonwealth;

2. Permit surplus materials to be sold to Virginia charitable corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge;

3. Permit public sales or auctions, including online public auctions;

4. Permit surplus motor vehicles to be sold prior to public sale or auction to local social service departments for the purpose of resale at cost to TANF recipients;

5. Permit surplus materials to be sold to Virginia charitable corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as children's homes;

6. Permit donations to political subdivisions of the Commonwealth under the circumstances specified

182 in this section;

183 7. Permit other methods of disposal when (a) the cost of the sale will exceed the potential revenue to  
184 be derived therefrom or (b) the surplus material is not suitable for sale;

185 8. Permit any animal especially trained for police work to be sold at a price of \$1 to the handler  
186 who last was in control of the animal. The agency or institution may allow the immediate survivor of  
187 any full-time sworn law-enforcement officer who (i) is killed in the line of duty or (ii) dies in service  
188 and has at least 10 years of service to purchase the service animal at a price of \$1. Any such sale shall  
189 not be deemed a violation of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et  
190 seq.);

191 9. Permit the transfer of surplus clothing to an appropriate department, division, institution, or agency  
192 of the Commonwealth for distribution to needy individuals by and through local social services boards;

193 10. Encourage the recycling of paper products, beverage containers, electronics, and used motor oil;

194 11. Require the proceeds from any sale or recycling of surplus materials be promptly deposited into  
195 the state treasury in accordance with § 2.2-1802 and report the deposit to the State Comptroller;

196 12. Permit donations of surplus computers and related equipment to:

197 a. Public schools in the Commonwealth;

198 b. Virginia charitable corporations granted tax-exempt status under § 501(c)(3) of the Internal  
199 Revenue Code and providing services to persons with disabilities, at-risk youths, or low-income families.  
200 For the purposes of this subdivision, "at-risk youths" means school-age children approved eligible to  
201 receive free or reduced price meals in the federally funded lunch program; and

202 c. Organizations in the Commonwealth granted tax-exempt status under § 501(c)(3) of the Internal  
203 Revenue Code that refurbish computers and related equipment for donation to veterans and active  
204 military, naval, or air service members, as defined in § 2.2-2000.1. Any donation to an organization  
205 under this subdivision shall be conditioned upon, and in consideration of, the organization's promise to  
206 refurbish the donated equipment and distribute it free of charge to such veterans or active military,  
207 naval, or air service members.

208 13. Permit surplus materials to be transferred or sold, prior to public sale or auction, to public  
209 television stations located in the state and other nonprofit organizations approved for the distribution of  
210 federal surplus materials;

211 14. Permit a public institution of higher education to dispose of its surplus materials at the location  
212 where the surplus materials are held and to retain any proceeds from such disposal, provided that the  
213 institution meets the conditions prescribed in subsection A of § 23.1-1002 and § 23.1-1019 (regardless of  
214 whether or not the institution has been granted any authority under Article 4 (§ 23.1-1004 et seq.) of  
215 Chapter 10 of Title 23.1);

216 15. Permit surplus materials from (i) the Department of Defense Excess Property Program or (ii)  
217 other surplus property programs administered by the Commonwealth to be transferred or sold to Virginia  
218 charitable corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and  
219 operating as an educational institution devoted to emergency management training, preparedness, and  
220 response;

221 16. Require, to the extent practicable, the recycling and disposal of computers and other information  
222 technology assets. Additionally, for computers or information technology assets that may contain  
223 confidential state data or personal identifying information of citizens of the Commonwealth, the  
224 Department shall ensure all policies for the transfer or other disposition of computers or information  
225 technology assets are consistent with data and information security policies developed by the Virginia  
226 Information Technologies Agency; and

227 17. Permit surplus materials to be sold, prior to public sale or auction, to (i) service disabled  
228 veteran-owned businesses, (ii) veterans service organizations, (iii) active military-owned businesses, and  
229 (iv) military spouse-owned businesses.

230 For purposes of this subdivision:

231 "Active military" means military service members who perform full-time duty in the Armed Forces  
232 of the United States, or a reserve component thereof, including the National Guard.

233 "Military spouse" means a person whose spouse is an active military, naval, or air service member or  
234 veteran as those terms are defined in § 2.2-2000.1.

235 "Military spouse-owned business" means a business concern that is at least 51 percent owned by one  
236 or more military spouses or, in the case of a corporation, partnership, or limited liability company or  
237 other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or  
238 limited liability company or other entity is owned by one or more individuals who are military spouses  
239 and both the management and daily business operations are controlled by one or more individuals who  
240 are military spouses.

241 "Service disabled veteran" means the same as that term is defined in § 2.2-2000.1.

242 "Service disabled veteran-owned business" means the same as that term is defined in § 2.2-2000.1.

243 "Veterans service organization" means an association or other entity organized for the benefit of

veterans that has been recognized by the U.S. Department of Veterans Affairs or chartered by Congress.

C. The Department shall dispose of surplus materials pursuant to the procedures established in subsection B or permit any department, division, institution, or agency of the Commonwealth to dispose of its surplus materials consistent with the procedures so established. No surplus materials shall be disposed of without prior consent of the head of the department, division, institution, or agency of the Commonwealth in possession of such surplus materials or the Governor.

D. Departments, divisions, institutions, or agencies of the Commonwealth or the Governor may donate surplus materials only under the following circumstances:

1. Emergencies declared in accordance with § 44-146.18:2 or 44-146.28;

2. As set forth in the budget bill as defined by § 2.2-1509, provided that (a) the budget bill contains a description of the surplus materials, the method by which the surplus materials shall be distributed, and the anticipated recipients, and (b) such information shall be provided by the Department to the Department of Planning and Budget in sufficient time for inclusion in the budget bill;

3. When the market value of the surplus materials, which shall be donated for a public purpose, is less than \$500; however, the total market value of all surplus materials so donated by any department, division, institution, or agency shall not exceed 25 percent of the revenue generated by such department's, division's, institution's, or agency's sale of surplus materials in the fiscal year, except these limits shall not apply in the case of surplus computer equipment and related items donated to Virginia public schools; or

4. During a local emergency, upon written request of the head of a local government or a political subdivision in the Commonwealth to the head of a department, division, institution, or agency.

E. On or before October 1 of each year, the Department shall prepare, and file with the Secretary of the Commonwealth, a plan that describes the expected disposition of surplus materials in the upcoming fiscal year pursuant to subdivision B 6.

F. The Department may make available to any local public body of the Commonwealth the services or facilities authorized by this section; however, the furnishing of any such services shall not limit or impair any services normally rendered any department, division, institution, or agency of the Commonwealth. All public bodies shall be authorized to use the services of the Department's Surplus Property Program under the guidelines established pursuant to this section and the surplus property policies and procedures of the Department. Proceeds from the sale of the surplus property shall be returned to the local body minus a service fee. The service fee charged by the Department shall be consistent with the fee charged by the Department to state public bodies.

**§ 2.2-1839. Risk management plans administered by the Department of the Treasury's Risk Management Division for political subdivisions, constitutional officers, etc.**

A. The Division shall establish one or more risk management plans specifying the terms and conditions for coverage, subject to the approval of the Governor, and which plans may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide protection against liability imposed by law for damages and against incidental medical payments resulting from any claim made against any county, city or town; authority, board, or commission; sanitation, soil and water, planning or other district; public service corporation owned, operated or controlled by a locality or local government authority; constitutional officer; state court-appointed attorney; any attorney for any claim arising out of the provision of pro bono legal services for custody and visitation to an eligible indigent person under a program approved by the Supreme Court of Virginia or the Virginia State Bar; any receiver for an attorney's practice appointed under § 54.1-3900.01 or 54.1-3936; any attorney authorized by the Virginia State Bar for any claim arising out of the provision of pro bono legal services in a Virginia State Bar approved program; affiliate or foundation of a state department, agency or institution; any clinic that is organized in whole or primarily for the delivery of health care services without charge; volunteer drivers for any nonprofit organization providing transportation for persons who are elderly, disabled, or indigent to medical treatment and services, provided the volunteer driver has successfully completed training approved by the Division; any local chapter or program of the Meals on Wheels Association of America or any area agency on aging, providing meal and nutritional services to persons who are elderly, homebound, or disabled, and volunteer drivers for such entities who have successfully completed training approved by the Division; any individual serving as a guardian or limited guardian as defined in § 64.2-2000 for any individual receiving services from a community services board or behavioral health authority or from a state facility hospital operated by the Behavioral Health Hospital Authority or training center operated by the Department of Behavioral Health and Developmental Services; for nontransportation-related state construction contracts less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317; or the officers, agents or employees of any of the foregoing for acts or omissions of any nature while in an authorized governmental or proprietary capacity and in the course and scope of employment or

305 authorization.

306 For the purposes of this section, "delivery of health care services without charge" shall be deemed to  
307 include the delivery of dental, medical or other health services when a reasonable minimum fee is  
308 charged to cover administrative costs.

309 For purposes of this section, a sheriff or deputy sheriff shall be considered to be acting in the scope  
310 of employment or authorization when performing any law-enforcement-related services authorized by the  
311 sheriff, and coverage for such service by the Division shall not be subject to any prior notification to or  
312 authorization by the Division.

313 B. In any case in which the coverage provided by one or more risk management plans established  
314 pursuant to this section applies, no sheriff or deputy shall be liable for any verdict or civil judgment in  
315 his individual capacity in excess of the approved maximum coverage amount as established by the  
316 Division and set forth in the respective coverage plans, which shall be at least \$1.5 million for sheriffs  
317 and deputies. If a jury returns an award in excess of \$1.5 million, the judge shall reduce the award and  
318 enter judgment against the sheriff or deputy for such damages in the amount of \$1.5 million, provided  
319 that this shall not affect the ability of a court to order a remittitur. Nothing in this subsection shall be  
320 construed to limit the ability of a plaintiff to pursue the full amount of any judgment against a sheriff or  
321 deputy from any available insurance coverage. To the extent that any such award exceeds the coverage  
322 available under such risk management plans, the sheriff and any deputy shall be considered immune  
323 defendants under subsection F of § 38.2-2206. Automobile insurance carried by a sheriff or deputy in  
324 his personal capacity shall not be available to satisfy any verdict or civil judgment under the  
325 circumstances in which coverage is provided by one or more risk management plans.

326 C. Participation in the risk management plan shall be voluntary and shall be approved by the  
327 participant's respective governing body or by the State Compensation Board in the case of constitutional  
328 officers; by the office of the Executive Secretary of the Virginia Supreme Court in the case of state  
329 court-appointed attorneys, including attorneys appointed to serve as receivers under § 54.1-3900.01 or  
330 54.1-3936, or attorneys under Virginia Supreme Court approved programs; by the Virginia State Bar in  
331 the case of attorneys providing pro bono services under Virginia State Bar approved programs; by the  
332 *Chief Executive Officer of the Behavioral Health Hospital Authority for any individual serving as a*  
333 *guardian or limited guardian for any individual receiving services in a state hospital operated by the*  
334 *Behavioral Health Hospital Authority, the Commissioner of the Department of Behavioral Health and*  
335 *Developmental Services for any individual serving as a guardian or limited guardian for any individual*  
336 *receiving services from a state facility training center operated by the Department, or by the executive*  
337 *director of a community services board or behavioral health authority for any individual serving as a*  
338 *guardian or limited guardian for any individual receiving services from the board or authority; and by*  
339 *the Division. Upon such approval, the Division shall assume sole responsibility for plan management,*  
340 *compliance, or removal. The Virginia Supreme Court shall pay the cost for coverage of eligible persons*  
341 *performing services in approved programs of the Virginia Supreme Court. The Virginia State Bar shall*  
342 *pay the cost for coverage of eligible attorneys providing pro bono services in Virginia State Bar*  
343 *approved programs. The Behavioral Health Hospital Authority shall be responsible for paying the cost*  
344 *of coverage for eligible persons performing services as a guardian or limited guardian for any*  
345 *individual receiving services from a state hospital operated by the Behavioral Health Hospital Authority.*  
346 *The Department of Behavioral Health and Developmental Services shall be responsible for paying the*  
347 *cost of coverage for eligible persons performing services as a guardian or limited guardian for any*  
348 *individual receiving services from a state facility training center operated by the Department. The*  
349 *applicable community services board or behavioral health authority shall be responsible for paying the*  
350 *cost of coverage for eligible persons performing services as a guardian or limited guardian for*  
351 *individuals receiving services from the board or authority.*

352 D. The Division shall provide for the legal defense of participating entities and shall reserve the right  
353 to settle or defend claims presented under the plan. All prejudgment settlements shall be approved in  
354 advance by the Division.

355 E. The risk management plan established pursuant to this section shall provide for the establishment  
356 of a trust fund for the payment of claims covered under such plan. The funds shall be invested in the  
357 manner provided in § 2.2-1806 and interest shall be added to the fund as earned.

358 The trust fund shall also provide for payment of legal defense costs, actuarial costs, administrative  
359 costs, contractual costs and all other expenses related to the administration of such plan.

360 F. The Division shall, in its sole discretion, set the premium and administrative cost to be paid to it  
361 for providing a risk management plan established pursuant to this section. The premiums and  
362 administrative costs set by the Division shall be payable in the amounts at the time and in the manner  
363 that the Division in its sole discretion shall require. The premiums and administrative costs need not be  
364 uniform among participants, but shall be set so as to best ensure the financial stability of the plan.

365 G. Notwithstanding any provision to the contrary, a sheriff's department of any city or county, or a  
366 regional jail shall not be precluded from securing excess liability insurance coverage beyond the

coverage provided by the Division pursuant to this section.

**§ 2.2-2818. Health and related insurance for state employees.**

A. The Department of Human Resource Management shall establish a plan, subject to the approval of the Governor, for providing health insurance coverage, including chiropractic treatment, hospitalization, medical, surgical and major medical coverage, for state employees and retired state employees with the Commonwealth paying the cost thereof to the extent of the coverage included in such plan. The same plan shall be offered to all part-time state employees, but the total cost shall be paid by such part-time employees. The Department of Human Resource Management shall administer this section. The plan chosen shall provide means whereby coverage for the families or dependents of state employees may be purchased. Except for part-time employees, the Commonwealth may pay all or a portion of the cost thereof, and for such portion as the Commonwealth does not pay, the employee, including a part-time employee, may purchase the coverage by paying the additional cost over the cost of coverage for an employee.

Such contribution shall be financed through appropriations provided by law.

B. The plan shall:

1. Include coverage for low-dose screening mammograms for determining the presence of occult breast cancer. Such coverage shall make available one screening mammogram to persons age 35 through 39, one such mammogram biennially to persons age 40 through 49, and one such mammogram annually to persons age 50 and over and may be limited to a benefit of \$50 per mammogram subject to such dollar limits, deductibles, and coinsurance factors as are no less favorable than for physical illness generally.

The term "mammogram" shall mean an X-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the X-ray tube, filter, compression device, screens, film, and cassettes, with an average radiation exposure of less than one rad mid-breast, two views of each breast.

In order to be considered a screening mammogram for which coverage shall be made available under this section:

a. The mammogram shall be (i) ordered by a health care practitioner acting within the scope of his licensure and, in the case of an enrollee of a health maintenance organization, by the health maintenance organization provider; (ii) performed by a registered technologist; (iii) interpreted by a qualified radiologist; and (iv) performed under the direction of a person licensed to practice medicine and surgery and certified by the American Board of Radiology or an equivalent examining body. A copy of the mammogram report shall be sent or delivered to the health care practitioner who ordered it;

b. The equipment used to perform the mammogram shall meet the standards set forth by the Virginia Department of Health in its radiation protection regulations; and

c. The mammography film shall be retained by the radiologic facility performing the examination in accordance with the American College of Radiology guidelines or state law.

2. Include coverage for postpartum services providing inpatient care and a home visit or visits that shall be in accordance with the medical criteria, outlined in the most current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards for Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and Gynecologists. Such coverage shall be provided incorporating any changes in such Guidelines or Standards within six months of the publication of such Guidelines or Standards or any official amendment thereto.

3. Include an appeals process for resolution of complaints that shall provide reasonable procedures for the resolution of such complaints and shall be published and disseminated to all covered state employees. The appeals process shall be compliant with federal rules and regulations governing nonfederal, self-insured governmental health plans. The appeals process shall include a separate expedited emergency appeals procedure that shall provide resolution within time frames established by federal law. For appeals involving adverse decisions as defined in § 32.1-137.7, the Department shall contract with one or more independent review organizations to review such decisions. Independent review organizations are entities that conduct independent external review of adverse benefit determinations. The Department shall adopt regulations to assure that the independent review organization conducting the reviews has adequate standards, credentials and experience for such review. The independent review organization shall examine the final denial of claims to determine whether the decision is objective, clinically valid, and compatible with established principles of health care. The decision of the independent review organization shall (i) be in writing, (ii) contain findings of fact as to the material issues in the case and the basis for those findings, and (iii) be final and binding if consistent with law and policy.

Prior to assigning an appeal to an independent review organization, the Department shall verify that the independent review organization conducting the review of a denial of claims has no relationship or

association with (i) the covered person or the covered person's authorized representative; (ii) the treating health care provider, or any of its employees or affiliates; (iii) the medical care facility at which the covered service would be provided, or any of its employees or affiliates; or (iv) the development or manufacture of the drug, device, procedure or other therapy that is the subject of the final denial of a claim. The independent review organization shall not be a subsidiary of, nor owned or controlled by, a health plan, a trade association of health plans, or a professional association of health care providers. There shall be no liability on the part of and no cause of action shall arise against any officer or employee of an independent review organization for any actions taken or not taken or statements made by such officer or employee in good faith in the performance of his powers and duties.

4. Include coverage for early intervention services. For purposes of this section, "early intervention services" means medically necessary speech and language therapy, occupational therapy, physical therapy and assistive technology services and devices for dependents from birth to age three who are certified by the Department of Behavioral Health and Developmental Services as eligible for services under Part H of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.). Medically necessary early intervention services for the population certified by the Department of Behavioral Health and Developmental Services shall mean those services designed to help an individual attain or retain the capability to function age-appropriately within his environment, and shall include services that enhance functional ability without effecting a cure.

For persons previously covered under the plan, there shall be no denial of coverage due to the existence of a preexisting condition. The cost of early intervention services shall not be applied to any contractual provision limiting the total amount of coverage paid by the insurer to or on behalf of the insured during the insured's lifetime.

5. Include coverage for prescription drugs and devices approved by the United States Food and Drug Administration for use as contraceptives.

6. Not deny coverage for any drug approved by the United States Food and Drug Administration for use in the treatment of cancer on the basis that the drug has not been approved by the United States Food and Drug Administration for the treatment of the specific type of cancer for which the drug has been prescribed, if the drug has been recognized as safe and effective for treatment of that specific type of cancer in one of the standard reference compendia.

7. Not deny coverage for any drug prescribed to treat a covered indication so long as the drug has been approved by the United States Food and Drug Administration for at least one indication and the drug is recognized for treatment of the covered indication in one of the standard reference compendia or in substantially accepted peer-reviewed medical literature.

8. Include coverage for equipment, supplies and outpatient self-management training and education, including medical nutrition therapy, for the treatment of insulin-dependent diabetes, insulin-using diabetes, gestational diabetes and noninsulin-using diabetes if prescribed by a health care professional legally authorized to prescribe such items under law. To qualify for coverage under this subdivision, diabetes outpatient self-management training and education shall be provided by a certified, registered or licensed health care professional.

9. Include coverage for reconstructive breast surgery. For purposes of this section, "reconstructive breast surgery" means surgery performed on and after July 1, 1998, (i) coincident with a mastectomy performed for breast cancer or (ii) following a mastectomy performed for breast cancer to reestablish symmetry between the two breasts. For persons previously covered under the plan, there shall be no denial of coverage due to preexisting conditions.

10. Include coverage for annual pap smears, including coverage, on and after July 1, 1999, for annual testing performed by any FDA-approved gynecologic cytology screening technologies.

11. Include coverage providing a minimum stay in the hospital of not less than 48 hours for a patient following a radical or modified radical mastectomy and 24 hours of inpatient care following a total mastectomy or a partial mastectomy with lymph node dissection for treatment of breast cancer. Nothing in this subdivision shall be construed as requiring the provision of inpatient coverage where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate.

12. Include coverage (i) to persons age 50 and over and (ii) to persons age 40 and over who are at high risk for prostate cancer, according to the most recent published guidelines of the American Cancer Society, for one PSA test in a 12-month period and digital rectal examinations, all in accordance with American Cancer Society guidelines. For the purpose of this subdivision, "PSA testing" means the analysis of a blood sample to determine the level of prostate specific antigen.

13. Permit any individual covered under the plan direct access to the health care services of a participating specialist (i) authorized to provide services under the plan and (ii) selected by the covered individual. The plan shall have a procedure by which an individual who has an ongoing special condition may, after consultation with the primary care physician, receive a referral to a specialist for such condition who shall be responsible for and capable of providing and coordinating the individual's



primary and specialty care related to the initial specialty care referral. If such an individual's care would most appropriately be coordinated by such a specialist, the plan shall refer the individual to a specialist. For the purposes of this subdivision, "special condition" means a condition or disease that is (i) life-threatening, degenerative, or disabling and (ii) requires specialized medical care over a prolonged period of time. Within the treatment period authorized by the referral, such specialist shall be permitted to treat the individual without a further referral from the individual's primary care provider and may authorize such referrals, procedures, tests, and other medical services related to the initial referral as the individual's primary care provider would otherwise be permitted to provide or authorize. The plan shall have a procedure by which an individual who has an ongoing special condition that requires ongoing care from a specialist may receive a standing referral to such specialist for the treatment of the special condition. If the primary care provider, in consultation with the plan and the specialist, if any, determines that such a standing referral is appropriate, the plan or issuer shall make such a referral to a specialist. Nothing contained herein shall prohibit the plan from requiring a participating specialist to provide written notification to the covered individual's primary care physician of any visit to such specialist. Such notification may include a description of the health care services rendered at the time of the visit.

14. Include provisions allowing employees to continue receiving health care services for a period of up to 90 days from the date of the primary care physician's notice of termination from any of the plan's provider panels. The plan shall notify any provider at least 90 days prior to the date of termination of the provider, except when the provider is terminated for cause.

For a period of at least 90 days from the date of the notice of a provider's termination from any of the plan's provider panels, except when a provider is terminated for cause, a provider shall be permitted by the plan to render health care services to any of the covered employees who (i) were in an active course of treatment from the provider prior to the notice of termination and (ii) request to continue receiving health care services from the provider.

Notwithstanding the provisions of this subdivision, any provider shall be permitted by the plan to continue rendering health services to any covered employee who has entered the second trimester of pregnancy at the time of the provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue through the provision of postpartum care directly related to the delivery.

Notwithstanding the provisions of this subdivision, any provider shall be permitted to continue rendering health services to any covered employee who is determined to be terminally ill (as defined under § 1861(dd)(3)(A) of the Social Security Act) at the time of a provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue for the remainder of the employee's life for care directly related to the treatment of the terminal illness.

A provider who continues to render health care services pursuant to this subdivision shall be reimbursed in accordance with the carrier's agreement with such provider existing immediately before the provider's termination of participation.

15. Include coverage for patient costs incurred during participation in clinical trials for treatment studies on cancer, including ovarian cancer trials.

The reimbursement for patient costs incurred during participation in clinical trials for treatment studies on cancer shall be determined in the same manner as reimbursement is determined for other medical and surgical procedures. Such coverage shall have durational limits, dollar limits, deductibles, copayments and coinsurance factors that are no less favorable than for physical illness generally.

For purposes of this subdivision:

"Cooperative group" means a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group. "Cooperative group" includes (i) the National Cancer Institute Clinical Cooperative Group and (ii) the National Cancer Institute Community Clinical Oncology Program.

"FDA" means the Federal Food and Drug Administration.

"Multiple project assurance contract" means a contract between an institution and the federal Department of Health and Human Services that defines the relationship of the institution to the federal Department of Health and Human Services and sets out the responsibilities of the institution and the procedures that will be used by the institution to protect human subjects.

"NCI" means the National Cancer Institute.

"NIH" means the National Institutes of Health.

"Patient" means a person covered under the plan established pursuant to this section.

"Patient cost" means the cost of a medically necessary health care service that is incurred as a result of the treatment being provided to a patient for purposes of a clinical trial. "Patient cost" does not include (i) the cost of nonhealth care services that a patient may be required to receive as a result of the

551 treatment being provided for purposes of a clinical trial, (ii) costs associated with managing the research  
552 associated with the clinical trial, or (iii) the cost of the investigational drug or device.

553 Coverage for patient costs incurred during clinical trials for treatment studies on cancer shall be  
554 provided if the treatment is being conducted in a Phase II, Phase III, or Phase IV clinical trial. Such  
555 treatment may, however, be provided on a case-by-case basis if the treatment is being provided in a  
556 Phase I clinical trial.

557 The treatment described in the previous paragraph shall be provided by a clinical trial approved by:

- 558 a. The National Cancer Institute;
- 559 b. An NCI cooperative group or an NCI center;
- 560 c. The FDA in the form of an investigational new drug application;
- 561 d. The federal Department of Veterans Affairs; or
- 562 e. An institutional review board of an institution in the Commonwealth that has a multiple project  
563 assurance contract approved by the Office of Protection from Research Risks of the NCI.

564 The facility and personnel providing the treatment shall be capable of doing so by virtue of their  
565 experience, training, and expertise.

566 Coverage under this subdivision shall apply only if:

- 567 (1) There is no clearly superior, noninvestigational treatment alternative;
- 568 (2) The available clinical or preclinical data provide a reasonable expectation that the treatment will  
569 be at least as effective as the noninvestigational alternative; and
- 570 (3) The patient and the physician or health care provider who provides services to the patient under  
571 the plan conclude that the patient's participation in the clinical trial would be appropriate, pursuant to  
572 procedures established by the plan.

573 16. Include coverage providing a minimum stay in the hospital of not less than 23 hours for a  
574 covered employee following a laparoscopy-assisted vaginal hysterectomy and 48 hours for a covered  
575 employee following a vaginal hysterectomy, as outlined in Milliman & Robertson's nationally recognized  
576 guidelines. Nothing in this subdivision shall be construed as requiring the provision of the total hours  
577 referenced when the attending physician, in consultation with the covered employee, determines that a  
578 shorter hospital stay is appropriate.

579 17. Include coverage for biologically based mental illness.

580 For purposes of this subdivision, a "biologically based mental illness" is any mental or nervous  
581 condition caused by a biological disorder of the brain that results in a clinically significant syndrome  
582 that substantially limits the person's functioning; specifically, the following diagnoses are defined as  
583 biologically based mental illness as they apply to adults and children: schizophrenia, schizoaffective  
584 disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder,  
585 attention deficit hyperactivity disorder, autism, and drug and alcoholism addiction.

586 Coverage for biologically based mental illnesses shall neither be different nor separate from coverage  
587 for any other illness, condition or disorder for purposes of determining deductibles, benefit year or  
588 lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits,  
589 copayment and coinsurance factors, and benefit year maximum for deductibles and copayment and  
590 coinsurance factors.

591 Nothing shall preclude the undertaking of usual and customary procedures to determine the  
592 appropriateness of, and medical necessity for, treatment of biologically based mental illnesses under this  
593 option, provided that all such appropriateness and medical necessity determinations are made in the same  
594 manner as those determinations made for the treatment of any other illness, condition or disorder  
595 covered by such policy or contract.

596 18. Offer and make available coverage for the treatment of morbid obesity through gastric bypass  
597 surgery or such other methods as may be recognized by the National Institutes of Health as effective for  
598 the long-term reversal of morbid obesity. Such coverage shall have durational limits, dollar limits,  
599 deductibles, copayments and coinsurance factors that are no less favorable than for physical illness  
600 generally. Access to surgery for morbid obesity shall not be restricted based upon dietary or any other  
601 criteria not approved by the National Institutes of Health. For purposes of this subdivision, "morbid  
602 obesity" means (i) a weight that is at least 100 pounds over or twice the ideal weight for frame, age,  
603 height, and gender as specified in the 1983 Metropolitan Life Insurance tables, (ii) a body mass index  
604 (BMI) equal to or greater than 35 kilograms per meter squared with comorbidity or coexisting medical  
605 conditions such as hypertension, cardiopulmonary conditions, sleep apnea, or diabetes, or (iii) a BMI of  
606 40 kilograms per meter squared without such comorbidity. As used herein, "BMI" equals weight in  
607 kilograms divided by height in meters squared.

608 19. Include coverage for colorectal cancer screening, specifically screening with an annual fecal  
609 occult blood test, flexible sigmoidoscopy or colonoscopy, or in appropriate circumstances radiologic  
610 imaging, in accordance with the most recently published recommendations established by the American  
611 College of Gastroenterology, in consultation with the American Cancer Society, for the ages, family  
612 histories, and frequencies referenced in such recommendations. The coverage for colorectal cancer

screening shall not be more restrictive than or separate from coverage provided for any other illness, condition or disorder for purposes of determining deductibles, benefit year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayments and coinsurance factors.

20. On and after July 1, 2002, require that a prescription benefit card, health insurance benefit card, or other technology that complies with the requirements set forth in § 38.2-3407.4:2 be issued to each employee provided coverage pursuant to this section, and shall upon any changes in the required data elements set forth in subsection A of § 38.2-3407.4:2, either reissue the card or provide employees covered under the plan such corrective information as may be required to electronically process a prescription claim.

21. Include coverage for infant hearing screenings and all necessary audiological examinations provided pursuant to § 32.1-64.1 using any technology approved by the United States Food and Drug Administration, and as recommended by the national Joint Committee on Infant Hearing in its most current position statement addressing early hearing detection and intervention programs. Such coverage shall include follow-up audiological examinations as recommended by a physician, physician assistant, nurse practitioner or audiologist and performed by a licensed audiologist to confirm the existence or absence of hearing loss.

22. Notwithstanding any provision of this section to the contrary, every plan established in accordance with this section shall comply with the provisions of § 2.2-2818.2.

C. Claims incurred during a fiscal year but not reported during that fiscal year shall be paid from such funds as shall be appropriated by law. Appropriations, premiums and other payments shall be deposited in the employee health insurance fund, from which payments for claims, premiums, cost containment programs and administrative expenses shall be withdrawn from time to time. The funds of the health insurance fund shall be deemed separate and independent trust funds, shall be segregated from all other funds of the Commonwealth, and shall be invested and administered solely in the interests of the employees and their beneficiaries. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize the use of such trust funds for any purpose other than as provided in law for benefits, refunds, and administrative expenses, including but not limited to legislative oversight of the health insurance fund.

D. For the purposes of this section:

"Peer-reviewed medical literature" means a scientific study published only after having been critically reviewed for scientific accuracy, validity, and reliability by unbiased independent experts in a journal that has been determined by the International Committee of Medical Journal Editors to have met the Uniform Requirements for Manuscripts submitted to biomedical journals. Peer-reviewed medical literature does not include publications or supplements to publications that are sponsored to a significant extent by a pharmaceutical manufacturing company or health carrier.

"Standard reference compendia" means:

1. American Hospital Formulary Service — Drug Information;
2. National Comprehensive Cancer Network's Drugs & Biologics Compendium; or
3. Elsevier Gold Standard's Clinical Pharmacology.

"State employee" means state employee as defined in § 51.1-124.3; employee as defined in § 51.1-201; the Governor, Lieutenant Governor and Attorney General; judge as defined in § 51.1-301 and judges, clerks and deputy clerks of regional juvenile and domestic relations, county juvenile and domestic relations, and district courts of the Commonwealth; interns and residents employed by the School of Medicine and Hospital of the University of Virginia, and interns, residents, and employees of the Virginia Commonwealth University Health System Authority as provided in § 23.1-2415; *employees of the Behavioral Health Hospital Authority as provided in § 37.2-1205*; and employees of the Virginia Alcoholic Beverage Control Authority as provided in § 4.1-101.05.

E. Provisions shall be made for retired employees to obtain coverage under the above plan, including, as an option, coverage for vision and dental care. The Commonwealth may, but shall not be obligated to, pay all or any portion of the cost thereof.

F. Any self-insured group health insurance plan established by the Department of Human Resource Management that utilizes a network of preferred providers shall not exclude any physician solely on the basis of a reprimand or censure from the Board of Medicine, so long as the physician otherwise meets the plan criteria established by the Department.

G. The plan shall include, in each planning district, at least two health coverage options, each sponsored by unrelated entities. No later than July 1, 2006, one of the health coverage options to be available in each planning district shall be a high deductible health plan that would qualify for a health savings account pursuant to § 223 of the Internal Revenue Code of 1986, as amended.

In each planning district that does not have an available health coverage alternative, the Department shall voluntarily enter into negotiations at any time with any health coverage provider who seeks to

674 provide coverage under the plan.

675 This subsection shall not apply to any state agency authorized by the Department to establish and  
676 administer its own health insurance coverage plan separate from the plan established by the Department.

677 H. Any self-insured group health insurance plan established by the Department of Human Resource  
678 Management that includes coverage for prescription drugs on an outpatient basis may apply a formulary  
679 to the prescription drug benefits provided by the plan if the formulary is developed, reviewed at least  
680 annually, and updated as necessary in consultation with and with the approval of a pharmacy and  
681 therapeutics committee, a majority of whose members are actively practicing licensed (i) pharmacists,  
682 (ii) physicians, and (iii) other health care providers.

683 If the plan maintains one or more drug formularies, the plan shall establish a process to allow a  
684 person to obtain, without additional cost-sharing beyond that provided for formulary prescription drugs  
685 in the plan, a specific, medically necessary nonformulary prescription drug if, after reasonable  
686 investigation and consultation with the prescriber, the formulary drug is determined to be an  
687 inappropriate therapy for the medical condition of the person. The plan shall act on such requests within  
688 one business day of receipt of the request.

689 Any plan established in accordance with this section shall be authorized to provide for the selection  
690 of a single mail order pharmacy provider as the exclusive provider of pharmacy services that are  
691 delivered to the covered person's address by mail, common carrier, or delivery service. As used in this  
692 subsection, "mail order pharmacy provider" means a pharmacy permitted to conduct business in the  
693 Commonwealth whose primary business is to dispense a prescription drug or device under a prescriptive  
694 drug order and to deliver the drug or device to a patient primarily by mail, common carrier, or delivery  
695 service.

696 I. Any plan established in accordance with this section requiring preauthorization prior to rendering  
697 medical treatment shall have personnel available to provide authorization at all times when such  
698 preauthorization is required.

699 J. Any plan established in accordance with this section shall provide to all covered employees written  
700 notice of any benefit reductions during the contract period at least 30 days before such reductions  
701 become effective.

702 K. No contract between a provider and any plan established in accordance with this section shall  
703 include provisions that require a health care provider or health care provider group to deny covered  
704 services that such provider or group knows to be medically necessary and appropriate that are provided  
705 with respect to a covered employee with similar medical conditions.

706 L. The Department of Human Resource Management shall appoint an Ombudsman to promote and  
707 protect the interests of covered employees under any state employee's health plan.

708 The Ombudsman shall:

709 1. Assist covered employees in understanding their rights and the processes available to them  
710 according to their state health plan.

711 2. Answer inquiries from covered employees by telephone and electronic mail.

712 3. Provide to covered employees information concerning the state health plans.

713 4. Develop information on the types of health plans available, including benefits and complaint  
714 procedures and appeals.

715 5. Make available, either separately or through an existing Internet web site utilized by the  
716 Department of Human Resource Management, information as set forth in subdivision 4 and such  
717 additional information as he deems appropriate.

718 6. Maintain data on inquiries received, the types of assistance requested, any actions taken and the  
719 disposition of each such matter.

720 7. Upon request, assist covered employees in using the procedures and processes available to them  
721 from their health plan, including all appeal procedures. Such assistance may require the review of health  
722 care records of a covered employee, which shall be done only in accordance with the federal Health  
723 Insurance Portability and Accountability Act privacy rules. The confidentiality of any such medical  
724 records shall be maintained in accordance with the confidentiality and disclosure laws of the  
725 Commonwealth.

726 8. Ensure that covered employees have access to the services provided by the Ombudsman and that  
727 the covered employees receive timely responses from the Ombudsman or his representatives to the  
728 inquiries.

729 9. Report annually on his activities to the standing committees of the General Assembly having  
730 jurisdiction over insurance and over health and the Joint Commission on Health Care by December 1 of  
731 each year.

732 M. The plan established in accordance with this section shall not refuse to accept or make  
733 reimbursement pursuant to an assignment of benefits made to a dentist or oral surgeon by a covered  
734 employee.

735 For purposes of this subsection, "assignment of benefits" means the transfer of dental care coverage

reimbursement benefits or other rights under the plan. The assignment of benefits shall not be effective until the covered employee notifies the plan in writing of the assignment.

N. Beginning July 1, 2006, any plan established pursuant to this section shall provide for an identification number, which shall be assigned to the covered employee and shall not be the same as the employee's social security number.

O. Any group health insurance plan established by the Department of Human Resource Management that contains a coordination of benefits provision shall provide written notification to any eligible employee as a prominent part of its enrollment materials that if such eligible employee is covered under another group accident and sickness insurance policy, group accident and sickness subscription contract, or group health care plan for health care services, that insurance policy, subscription contract or health care plan may have primary responsibility for the covered expenses of other family members enrolled with the eligible employee. Such written notification shall describe generally the conditions upon which the other coverage would be primary for dependent children enrolled under the eligible employee's coverage and the method by which the eligible enrollee may verify from the plan that coverage would have primary responsibility for the covered expenses of each family member.

P. Any plan established by the Department of Human Resource Management pursuant to this section shall provide that coverage under such plan for family members enrolled under a participating state employee's coverage shall continue for a period of at least 30 days following the death of such state employee.

Q. The plan established in accordance with this section that follows a policy of sending its payment to the covered employee or covered family member for a claim for services received from a nonparticipating physician or osteopath shall (i) include language in the member handbook that notifies the covered employee of the responsibility to apply the plan payment to the claim from such nonparticipating provider, (ii) include this language with any such payment sent to the covered employee or covered family member, and (iii) include the name and any last known address of the nonparticipating provider on the explanation of benefits statement.

R. The Department of Human Resource Management shall report annually, by November 30 of each year, on cost and utilization information for each of the mandated benefits set forth in subsection B, including any mandated benefit made applicable, pursuant to subdivision B 22, to any plan established pursuant to this section. The report shall be in the same detail and form as required of reports submitted pursuant to § 38.2-3419.1, with such additional information as is required to determine the financial impact, including the costs and benefits, of the particular mandated benefit.

**§ 2.2-2905. Certain officers and employees exempt from chapter.**

The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;
2. Officers and employees of the Supreme Court and the Court of Appeals;
3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;
4. Officers elected by popular vote or by the General Assembly or either house thereof;
5. Members of boards and commissions however selected;
6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;
7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;
8. The presidents and teaching and research staffs of state educational institutions;
9. Commissioned officers and enlisted personnel of the National Guard;
10. Student employees at institutions of higher education and patient or inmate help in other state institutions;
11. Upon general or special authorization of the Governor, laborers, temporary employees, and employees compensated on an hourly or daily basis;
12. County, city, town, and district officers, deputies, assistants, and employees;
13. The employees of the Virginia Workers' Compensation Commission;
14. The officers and employees of the Virginia Retirement System;
15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, The Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History, the New College Institute, the Southern Virginia Higher Education Center, and The Library of Virginia, and approved by the Director of the Department of Human Resource Management as requiring specialized and professional training;
16. Employees of the Virginia Lottery;

797 17. Employees of the Department for the Blind and Vision Impaired's rehabilitative manufacturing  
798 and service industries who have a human resources classification of industry worker;

799 18. Employees of the Virginia Commonwealth University Health System Authority;

800 19. Employees of the University of Virginia Medical Center. Any changes in compensation plans for  
801 such employees shall be subject to the review and approval of the Board of Visitors of the University of  
802 Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia  
803 Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the  
804 provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);

805 20. In executive branch agencies the employee who has accepted serving in the capacity of chief  
806 deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential  
807 assistant for policy or administration. An employee serving in either one of these two positions shall be  
808 deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve  
809 in this exempt capacity;

810 21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the  
811 provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);

812 22. Officers and employees of the Virginia Port Authority;

813 23. Employees of the Virginia College Savings Plan;

814 24. Directors of state facilities operated by the Department of Behavioral Health and Developmental  
815 Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to  
816 § 37.2-707. Such employees shall remain subject to the provisions of the State Grievance Procedure  
817 (§ 2.2-3000 et seq.);

818 25. Employees of the Virginia Foundation for Healthy Youth. Such employees shall be treated as  
819 state employees for purposes of participation in the Virginia Retirement System, health insurance, and  
820 all other employee benefits offered by the Commonwealth to its classified employees;

821 26. Employees of the Virginia Indigent Defense Commission;

822 27. Any chief of a campus police department that has been designated by the governing body of a  
823 public institution of higher education as exempt, pursuant to § 23.1-809;

824 28. The Chief Executive Officer, agents, officers, and employees of the Virginia Alcoholic Beverage  
825 Control Authority; and

826 29. Officers and employees of the Fort Monroe Authority; and

827 30. *Employees of the Behavioral Health Hospital Authority.*

828 **§ 2.2-3114. Disclosure by state officers and employees.**

829 A. In accordance with the requirements set forth in § 2.2-3118.2, the Governor, Lieutenant  
830 Governor, Attorney General, Justices of the Supreme Court, judges of the Court of Appeals, judges of  
831 any circuit court, judges and substitute judges of any district court, members of the State Corporation  
832 Commission, members of the Virginia Workers' Compensation Commission, members of the  
833 Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement  
834 System, members of the Board of Directors of the Virginia Alcoholic Beverage Control Authority,  
835 members of the Board of the Virginia College Savings Plan, *members of the Board of Directors of the*  
836 *Behavioral Health Hospital Authority*, and members of the Virginia Lottery Board and other persons  
837 occupying such offices or positions of trust or employment in state government, including members of  
838 the governing bodies of authorities, as may be designated by the Governor, or officers or employees of  
839 the legislative branch, as may be designated by the Joint Rules Committee of the General Assembly,  
840 shall file with the Council, as a condition to assuming office or employment, a disclosure statement of  
841 their personal interests and such other information as is required on the form prescribed by the Council  
842 pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before February 1.

843 B. In accordance with the requirements set forth in § 2.2-3118.2, nonsalaried citizen members of all  
844 policy and supervisory boards, commissions and councils in the executive branch of state government,  
845 other than the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia  
846 Retirement System, members of the Board of the Virginia College Savings Plan, and the Virginia  
847 Lottery Board, shall file with the Council, as a condition to assuming office, a disclosure form of their  
848 personal interests and such other information as is required on the form prescribed by the Council  
849 pursuant to § 2.2-3118 and thereafter shall file such form annually on or before February 1. Nonsalaried  
850 citizen members of other boards, commissions and councils, including advisory boards and authorities,  
851 may be required to file a disclosure form if so designated by the Governor, in which case the form shall  
852 be that prescribed by the Council pursuant to § 2.2-3118.

853 C. The disclosure forms required by subsections A and B shall be made available by the Council at  
854 least 30 days prior to the filing deadline. Disclosure forms shall be filed electronically with the Council  
855 in accordance with the standards approved by it pursuant to § 30-356. All forms shall be maintained as  
856 public records for five years in the office of the Council. Such forms shall be made public no later than  
857 six weeks after the filing deadline.

858 D. Candidates for the offices of Governor, Lieutenant Governor or Attorney General shall file a

disclosure statement of their personal interests as required by § 24.2-502.

E. Any officer or employee of state government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to subsection A of § 2.2-3112, or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall also be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental agency or advisory agency or, if the agency has a clerk, in the clerk's office.

F. An officer or employee of state government who is required to declare his interest pursuant to subdivision B 1 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

G. An officer or employee of state government who is required to declare his interest pursuant to subdivision B 2 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) that a party to the transaction is a client of his firm, (iii) that he does not personally represent or provide services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

H. Notwithstanding any other provision of law, chairs of departments at a public institution of higher education in the Commonwealth shall not be required to file the disclosure form prescribed by the Council pursuant to § 2.2-3117 or 2.2-3118.

#### **§ 16.1-346.1. Discharge plan.**

Prior to discharge of any minor admitted to inpatient treatment, including a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court, a discharge plan shall be formulated, provided and explained to the minor, and copies thereof shall be sent (i) to the minor's parents or (ii) if the minor is in the custody of the local department of social services, to the department's director or the director's designee or (iii) to the minor's parents and (a) if the juvenile is to be housed in a detention home upon discharge, to the court in which the petition has been filed and the facility superintendent, or (b) if the minor is in custody of the local department of social services, to the department. A copy of the plan shall also be provided, upon request, to the minor's attorney and guardian ad litem. If the minor was admitted to a state ~~facility~~ hospital, the discharge plan shall be contained in a uniform discharge document developed by the Behavioral Health Hospital Authority. If the minor was admitted to a training center, the discharge plan shall be contained in a uniform discharge document developed by the Department of Behavioral Health and Developmental Services. The plan shall, at a minimum, (i) specify the services required by the released minor in the community to meet his needs for treatment, housing, nutrition, physical care, and safety; (ii) specify any income subsidies for which the minor is eligible; (iii) identify all local and state agencies which will be involved in providing treatment and support to the minor; and (iv) specify services which would be appropriate for the minor's treatment and support in the community but which are currently unavailable. A minor in detention or shelter care prior to admission to inpatient treatment shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice within 24 hours by the sheriff serving the jurisdiction where the minor was detained upon release from the treating facility, unless the juvenile and domestic relations district court having jurisdiction over the case has provided written authorization for release of the minor, prior to the scheduled date of release.

#### **§ 19.2-316. Evaluation and report prior to determining punishment.**

Following conviction and prior to sentencing, the court shall order such defendant committed to the Department of Corrections for a period not to exceed 60 days from the date of referral for evaluation

and diagnosis by the Department to determine the person's potential for rehabilitation through confinement and treatment in the facilities and programs established pursuant to § 53.1-63. The evaluation and diagnosis shall include a complete physical and mental examination of the defendant and may be conducted by the Department of Corrections at any state or local facility, probation and parole office, or other location deemed appropriate by the Department. The Department of Corrections shall conduct the evaluation and diagnosis and shall review all aspects of the case within 60 days from the date of conviction or revocation of ordinary probation and shall recommend that the defendant be committed to the facility established pursuant to § 53.1-63 upon finding that (i) such defendant is physically and emotionally suitable for the program, (ii) such commitment is in the best interest of the Commonwealth and the defendant, and (iii) facilities are available for confinement of the defendant.

If the Director of the Department of Corrections determines such person should be confined in a facility other than one established pursuant to § 53.1-63, a written report giving the reasons for such decision shall be submitted to the sentencing court. The court shall not be bound by such written report in the matter of determining punishment. Additionally, the person may be committed or transferred to a state hospital operated by the ~~Department of Behavioral Health and Developmental Services~~ *Behavioral Health Hospital Authority* or other mental health hospital, as provided by law, during such 60-day period.

**§ 19.2-389. Dissemination of criminal history record information.**

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 4, and 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

- 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person



with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including, but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination; however, nothing in this subdivision shall be construed to prohibit the Commissioner of Social Services' representative from issuing written certifications regarding the results of a background check that was conducted before July 1, 2021, in accordance with subsection J of § 22.1-289.035 or § 22.1-289.039;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§ 58.1-4000 et seq.) and casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1, and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed assisted living facilities and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed assisted living facilities and licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof and general registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) interventions with first offenders under § 18.2-251 or (ii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

1043 22. The Department of Behavioral Health and Developmental Services and facilities operated by the  
1044 Department for the purpose of determining an individual's fitness for employment pursuant to  
1045 departmental instructions;

1046 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or  
1047 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such  
1048 records information on behalf of such governing boards or administrators pursuant to a written  
1049 agreement with the Department of State Police;

1050 24. Public institutions of higher education and nonprofit private institutions of higher education for  
1051 the purpose of screening individuals who are offered or accept employment;

1052 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4,  
1053 by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of  
1054 higher education, for the purpose of assessing or intervening with an individual whose behavior may  
1055 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal  
1056 history record information obtained pursuant to this section or otherwise use any record of an individual  
1057 beyond the purpose that such disclosure was made to the threat assessment team;

1058 26. Executive directors of community services boards or the personnel director serving the  
1059 community services board for the purpose of determining an individual's fitness for employment,  
1060 approval as a sponsored residential service provider, permission to enter into a shared living arrangement  
1061 with a person receiving medical assistance services pursuant to a waiver, or permission for any person  
1062 under contract with the community services board to serve in a direct care position on behalf of the  
1063 community services board pursuant to §§ 37.2-506 and 37.2-607;

1064 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of  
1065 determining an individual's fitness for employment, approval as a sponsored residential service provider,  
1066 permission to enter into a shared living arrangement with a person receiving medical assistance services  
1067 pursuant to a waiver, or permission for any person under contract with the behavioral health authority to  
1068 serve in a direct care position on behalf of the behavioral health authority pursuant to §§ 37.2-506 and  
1069 37.2-607;

1070 28. The Commissioner of Social Services for the purpose of locating persons who owe child support  
1071 or who are alleged in a pending paternity proceeding to be a putative father, provided that only the  
1072 name, address, demographics and social security number of the data subject shall be released;

1073 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of  
1074 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the  
1075 purpose of determining if any applicant who accepts employment in any direct care position or requests  
1076 approval as a sponsored residential service provider, permission to enter into a shared living arrangement  
1077 with a person receiving medical assistance services pursuant to a waiver, or permission for any person  
1078 under contract with the provider to serve in a direct care position has been convicted of a crime that  
1079 affects his fitness to have responsibility for the safety and well-being of individuals with mental illness,  
1080 intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

1081 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants  
1082 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20  
1083 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

1084 31. The Chairman of the Senate Committee on the Judiciary or the Chairman of the House  
1085 Committee for Courts of Justice for the purpose of determining if any person being considered for  
1086 election to any judgeship has been convicted of a crime;

1087 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of  
1088 determining an individual's fitness for employment in positions designated as sensitive under Department  
1089 of Human Resource Management policies developed pursuant to § 2.2-1201.1;

1090 33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under  
1091 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually  
1092 Violent Predators Act (§ 37.2-900 et seq.);

1093 34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,  
1094 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary  
1095 companies, for the conduct of investigations of applications for employment or for access to facilities,  
1096 by contractors, leased laborers, and other visitors;

1097 35. Any employer of individuals whose employment requires that they enter the homes of others, for  
1098 the purpose of screening individuals who apply for, are offered, or have accepted such employment;

1099 36. Public agencies when and as required by federal or state law to investigate (i) applicants as  
1100 providers of adult foster care and home-based services or (ii) any individual with whom the agency is  
1101 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,  
1102 subject to the restriction that the data shall not be further disseminated by the agency to any party other  
1103 than a federal or state authority or court as may be required to comply with an express requirement of  
1104 law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.), Chapter 19 (§ 6.2-1900 et seq.), or Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19, or 26 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

43. The Department of Education or its agents or designees for the purpose of screening individuals seeking to enter into a contract with the Department of Education or its agents or designees for the provision of child care services for which child care subsidy payments may be provided;

44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of a juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

45. The State Corporation Commission, for the purpose of screening applicants for insurance licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2;

46. Administrators and board presidents of and applicants for licensure or registration as a child day program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to the Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034 through 22.1-289.037, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Superintendent of Public Instruction's representative, or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination; however, nothing in this subdivision shall be construed to prohibit the Superintendent of Public Instruction's representative from issuing written certifications regarding the results of prior background checks in accordance with subsection J of § 22.1-289.035 or § 22.1-289.039; and

47. *The Behavioral Health Hospital Authority and state hospitals operated by the Behavioral Health Hospital Authority for the purpose of determining an individual's fitness for employment pursuant to departmental instructions; and*

48. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further, except as otherwise provided in subdivision A 46.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.

**§ 22.1-7. Responsibility of each state board, agency, and institution having children in residence or in custody.**

A. Each state board, state agency, and state institution having children in residence or in custody shall have responsibility for providing for the education and training to such children which is at least comparable to that which would be provided to such children in the public school system. Such board, agency, or institution may provide such education and training either directly with its own facilities and personnel in cooperation with the Board of Education or under contract with a school division or any other public or private nonreligious school, agency, or institution.

B. The Board of Education shall supervise the education and training provided to school-age individuals in state training centers, and shall provide for and direct the education for school-age individuals in state hospitals operated by the ~~Department of Behavioral Health and Developmental Services~~ *Behavioral Health Hospital Authority* in cooperation with the ~~Department of Behavioral Health and Developmental Services~~ *Behavioral Health Hospital Authority*.

C. The Board shall prescribe standards and regulations for all such education and training provided directly by a state board, state agency, or state institution.

D. Each state board, state agency, or state institution providing such education and training shall submit annually its program therefor to the Board of Education for approval in accordance with regulations of the Board.

E. If any child in the custody of any state board, state agency, or state institution is a child with disabilities as defined in § 22.1-213 and such board, agency, or institution must contract with a private nonreligious school to provide special education as defined in § 22.1-213 for such child, the state board, state agency, or state institution may proceed as a guardian pursuant to the provisions of subsection A of § 22.1-218.

F. Any person of school age who is admitted pursuant to § 16.1-338, 16.1-339, or 16.1-340.1 or in accordance with an order of involuntary commitment entered pursuant to §§ 16.1-341 through 16.1-345 to a ~~state facility~~ *training center* for children and adolescents operated by the Department of Behavioral Health and Developmental Services *or a state hospital operated by the Behavioral Health Hospital Authority* shall, upon admission, be permitted to participate in any education program offered in the ~~facility~~ *training center or state hospital* that is administered by the Department of Education, regardless of his enrollment status. Information required to enroll such person in any such education program may be disclosed in accordance with state and federal law. Nothing in this subsection shall be construed to require enrollment in an education program if such person has been excused from attendance at school

pursuant to subdivision B 1 of § 22.1-254.

**§ 22.1-215. School divisions to provide special education; plan to be submitted to Board.**

Each school division shall provide free and appropriate education, including special education, for (i) the children with disabilities residing within its jurisdiction and (ii) the children with disabilities who do not reside within its jurisdiction but reside in the Commonwealth and are enrolled in a full-time virtual school program provided by the school division, in accordance with regulations of the Board of Education. A school division that is required to provide a free and appropriate education, including special education, for a nonresident student who is enrolled in its full-time virtual school program pursuant to this section shall be entitled to any federal and state funds applicable to the education of such student. In the case of a student who is a resident of the Commonwealth but does not reside in the school division in which he is enrolled in a full-time virtual school program, the school division in which the student resides shall be released from the obligation to provide a free and appropriate education, including special education, for such student.

For the purposes of this section, "children with disabilities, residing within its jurisdiction" shall include: (a) those individuals of school age identified as appropriate to be placed in public school programs who are residing in a state ~~facility~~ *hospital operated by the Behavioral Health Hospital Authority or a training center* operated by the Department of Behavioral Health and Developmental Services located within the school division; or (b) those individuals of school age who are Virginia residents and are placed and living in a foster care home or child-caring institution or group home located within the school division and licensed under the provisions of Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 as a result of being in the custody of a local department of social services or welfare or being privately placed, not solely for school purposes.

The Board of Education shall promulgate regulations to identify those children placed within facilities operated by the Department of Behavioral Health and Developmental Services who are eligible to be appropriately placed in public school programs.

The cost of the education provided to children residing in state facilities who are appropriate to place within the public schools shall remain the responsibility of the Department of Behavioral Health and Developmental Services. The cost of the education provided to children who are not residents of the Commonwealth and are placed and living in a foster care home or child-caring institution or group home located within the school division and licensed under the provisions of Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 shall be billed to the sending agency or person by the school division as provided in subsection C of § 22.1-5. No school division shall refuse to educate any such child or charge tuition to any such child.

Each school division shall submit to the Board of Education in accordance with the schedule and by the date specified by the Board, a plan acceptable to the Board for such education for the period following and a report indicating the extent to which the plan required by law for the preceding period has been implemented. However, the schedule specified by the Board shall not require plans to be submitted more often than annually unless changes to the plan are required by federal or state law or regulation.

Each local school division shall complete a self-assessment and action planning instrument addressing inclusion practices, as developed by the Department, once every three years and report the results of the assessment and plans for improvement to the Department, the division's superintendent, the division's special education director, and the chairs of the local school board and local special education advisory committee.

**§ 25.1-100. Definitions.**

As used in this title, unless the context requires a different meaning:

"Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

"Body determining just compensation" means a panel of commissioners empaneled pursuant to § 25.1-227.2, jury selected pursuant to § 25.1-229, or the court if neither a panel of commissioners nor a jury is appointed or empaneled.

"Court" means the court having jurisdiction as provided in § 25.1-201.

"Date of valuation" means the time of the lawful taking by the petitioner, or the date of the filing of the petition pursuant to § 25.1-205, whichever occurs first.

"Freeholder" means any person owning an interest in land in fee, including a person owning a condominium unit.

"Land" means real estate and all rights and appurtenances thereto, together with the structures and other improvements thereon, and any right, title, interest, estate or claim in or to real estate.

"Locality" or "local government" means a county, city, or town, as the context may require.

"Lost access" means a material impairment of direct access to property, a portion of which has been

1289 taken or damaged as set out in subsection B of § 25.1-230.1. This definition of the term "lost access"  
1290 shall not diminish any existing right or remedy, and shall not create any new right or remedy other than  
1291 to allow the body determining just compensation to consider a change in access in awarding just  
1292 compensation.

1293 "Lost profits" means a loss of business profits, as defined in § 25.1-230.1, that is suffered as a result  
1294 of a taking of the property on which a business or farm operation is located, subject to adjustment using  
1295 generally accepted accounting principles consistently applied, from a business or farm operation for a  
1296 period not to exceed three years from the later of (i) the date of valuation or (ii) the date the state  
1297 agency or its contractor prevents the owner from using the land or any of the owner's other property  
1298 rights are taken. The person claiming lost profits is entitled to compensation whether part of the  
1299 property or the entire parcel of property is taken. In order to qualify for an award of lost profits, one of  
1300 the following conditions shall be met: (a) the business is owned by the owner of the property taken, or  
1301 by a tenant whose leasehold interest grants the tenant exclusive possession of substantially all the  
1302 property taken, or (b) the farm operation is operated by the owner of the property taken, or by a tenant  
1303 using for a farm operation the property taken, to the extent that the loss is determined and proven  
1304 pursuant to subsection C of § 25.1-230.1. This definition of the term "lost profits" shall not create any  
1305 new right or remedy or diminish any existing right or remedy other than to allow the body determining  
1306 just compensation to consider lost profits in awarding just compensation if a person asserts a right to  
1307 lost profits in a claim for compensation.

1308 "Owner" means any person who owns property, provided that the person's ownership of the property  
1309 is of record in the land records of the clerk's office of the circuit court of the county or city where the  
1310 property is located. The term "owner" shall not include trustees or beneficiaries under a deed of trust,  
1311 any person with a security interest in the property, or any person with a judgment or lien against the  
1312 property. This definition of the term "owner" shall not affect in any way the valuation of property.

1313 "Person" means any individual; firm; cooperative; association; corporation; limited liability company;  
1314 trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in  
1315 bankruptcy or any other person acting in a fiduciary or representative capacity, whether appointed by a  
1316 court or otherwise; club, society or other group or combination acting as a unit; the Commonwealth or  
1317 any department, agency or instrumentality thereof; any city, county, town, or other political subdivision  
1318 or any department, agency or instrumentality thereof; or any interstate body to which the  
1319 Commonwealth is a party.

1320 "Petitioner" or "condemnor" means any person who possesses the power to exercise the right of  
1321 eminent domain and who seeks to exercise such power. The term "petitioner" or "condemnor" includes a  
1322 state agency.

1323 "Property" means land and personal property, and any right, title, interest, estate or claim in or to  
1324 such property.

1325 "State agency" means any (i) department, agency or instrumentality of the Commonwealth; (ii) public  
1326 authority, municipal corporation, local governmental unit or political subdivision of the Commonwealth  
1327 or any department, agency or instrumentality thereof; (iii) person who has the authority to acquire  
1328 property by eminent domain under state law; or (iv) two or more of the aforementioned that carry out  
1329 projects that cause persons to be displaced.

1330 "State institution" means any (i) institution enumerated in § 23.1-1100 or, (ii) state hospital *operated*  
1331 *by the Behavioral Health Hospital Authority*, or (iii) state training center operated by the Department of  
1332 Behavioral Health and Developmental Services.

1333 **§ 29.1-313. Issuance of licenses for use of individuals in certain state hospitals and training**  
1334 **centers.**

1335 The Director shall have authority to issue at the regular fee, up to 25 state resident licenses to fish in  
1336 the name of any state ~~facility~~ *hospital operated by the Behavioral Health Hospital Authority or training*  
1337 *center* operated by the Department of Behavioral Health and Developmental Services for use by  
1338 individuals receiving services in those facilities.

1339 **§ 32.1-59. Examination and treatment in certain institutions.**

1340 Every person admitted to any state correctional institution and every person admitted to a state  
1341 hospital *operated by the Behavioral Health Hospital Authority* or training center operated by the  
1342 Department of Behavioral Health and Developmental Services shall be examined and tested for venereal  
1343 disease. If the person is found to be infected with a venereal disease, the person in charge of such  
1344 institution or state hospital or training center shall promptly provide treatment and shall report such case  
1345 as provided in § 32.1-37.

1346 **§ 32.1-283. Investigation of deaths; obtaining consent to removal of organs, etc.; fees.**

1347 A. Upon the death of any person from trauma, injury, violence, poisoning, accident, suicide or  
1348 homicide, or suddenly when in apparent good health, or when unattended by a physician, or in jail,  
1349 prison, other correctional institution or in police custody, or who is an individual receiving services in a  
1350 state hospital *operated by the Behavioral Health Hospital Authority* or training center operated by the

Department of Behavioral Health and Developmental Services, or suddenly as an apparent result of fire, or in any suspicious, unusual or unnatural manner, or the sudden death of any infant the Office of the Chief Medical Examiner shall be notified by the physician in attendance, hospital, law-enforcement officer, funeral director, or any other person having knowledge of such death. Good faith efforts shall be made by any person or institution having initial custody of the dead body to identify and to notify the next of kin of the decedent. Notification shall include informing the person presumed to be the next of kin that he has a right to have identification of the decedent confirmed without due delay and without being held financially responsible for any procedures performed for the purpose of the identification. Identity of the next of kin, if determined, shall be provided to the Office of the Chief Medical Examiner upon transfer of the dead body.

B. Upon being notified of a death as provided in subsection A, the Office of the Chief Medical Examiner shall take charge of the dead body and the Chief Medical Examiner shall cause an investigation into the cause and manner of death to be made and a full report, which shall include written findings, to be prepared. In order to facilitate the investigation, the Office of the Chief Medical Examiner is authorized to inspect and copy the pertinent medical records of the decedent whose death is the subject of the investigation. Full directions as to the nature, character, and extent of the investigation to be made in such cases shall be furnished each medical examiner appointed pursuant to § 32.1-282 by the Office of the Chief Medical Examiner, together with appropriate forms for the required reports and instructions for their use. The facilities and personnel of the Office of the Chief Medical Examiner shall be made available to any medical examiner investigating a death in accordance with this section. Reports and findings of the Office of the Chief Medical Examiner shall be confidential and shall not under any circumstance be disclosed or made available for discovery pursuant to a court subpoena or otherwise, except as provided in this chapter. Nothing in this subsection shall prohibit the Office of the Chief Medical Examiner from releasing the cause or manner of death or prohibit disclosure of reports or findings to the parties in a criminal case.

C. A copy of each report pursuant to this section shall be delivered to the appropriate attorney for the Commonwealth and to the appropriate law-enforcement agency investigating the death. A copy of any such report regarding the death of a victim of a traffic accident shall be furnished upon request to the State Police and the Highway Safety Commission. In addition, a copy of any autopsy report concerning an individual receiving services in a state hospital ~~or operated by the Behavioral Health Hospital Authority~~ shall be delivered to the Chief Executive Officer of the Behavioral Health Hospital Authority and to the State Inspector General, and a copy of any autopsy report concerning an individual receiving services in a training center operated by the Department of Behavioral Health and Developmental Services shall be delivered to the Commissioner of Behavioral Health and Developmental Services and to the State Inspector General. A copy of any autopsy report concerning a prisoner committed to the custody of the Director of the Department of Corrections shall, upon request of the Director of the Department of Corrections, be delivered to the Director of the Department of Corrections. A copy of any autopsy report concerning a prisoner committed to any local correctional facility shall be delivered to the local sheriff or superintendent. Upon request, the Office of the Chief Medical Examiner shall release such autopsy report to the decedent's attending physician and to the personal representative or executor of the decedent. At the discretion of the Chief Medical Examiner, an autopsy report may be released to the following persons in the following order of priority: (i) the spouse of the decedent, (ii) an adult son or daughter of the decedent, (iii) either parent of the decedent, (iv) an adult sibling of the decedent, (v) any other adult relative of the decedent in order of blood relationship, or (vi) any appropriate health facility quality assurance program.

D. For each investigation under this article, including the making of the required reports, the medical examiner appointed pursuant to § 32.1-282 shall receive a fee established by the Board within the limitations of appropriations for the purpose. Such fee shall be paid by the Commonwealth if the deceased is not a legal resident of the county or city in which his death occurred. In the event the deceased is a legal resident of the county or city in which his death occurred, such county or city shall be responsible for the fee up to \$20. If the deceased is an individual who receives services in a state hospital ~~or operated by the Behavioral Health Hospital Authority~~, the fee shall be paid by the Behavioral Health Hospital Authority, and if the deceased is an individual who receives services in a training center operated by the Department of Behavioral Health and Developmental Services, the fee shall be paid by the Department of Behavioral Health and Developmental Services.

E. Nothing herein shall be construed to interfere with the autopsy procedure or with the routine obtaining of consent for removal of organs as conducted by surgical teams or others.

#### § 37.2-100. Definitions.

As used in this title, unless the context requires a different meaning:

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the Department, excluding those

operated by the Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates, or humiliates the individual;
4. Misuse or misappropriation of the individual's assets, goods, or property;
5. Use of excessive force when placing an individual in physical or mechanical restraint;
6. Use of physical or mechanical restraints on an individual that is not in compliance with federal and state laws, regulations, and policies, professionally accepted standards of practice, or his individualized services plan; and
7. Use of more restrictive or intensive services or denial of services to punish an individual or that is not consistent with his individualized services plan.

"Administrative policy community services board" or "administrative policy board" means the public body organized in accordance with the provisions of Chapter 5 (§ 37.2-500 et seq.) that is appointed by and accountable to the governing body of each city and county that established it to set policy for and administer the provision of mental health, developmental, and substance abuse services. The "administrative policy community services board" or "administrative policy board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties enumerated in subsection A of § 37.2-504 and § 37.2-505. Mental health, developmental, and substance abuse services are provided through local government staff or through contracts with other organizations and providers.

"Behavioral health authority" or "authority" means a public body and a body corporate and politic organized in accordance with the provisions of Chapter 6 (§ 37.2-600 et seq.) that is appointed by and accountable to the governing body of the city or county that established it for the provision of mental health, developmental, and substance abuse services. "Behavioral health authority" or "authority" also includes the organization that provides these services through its own staff or through contracts with other organizations and providers.

*"Behavioral Health Hospital Authority" means the Behavioral Health Hospital Authority established pursuant to Chapter 12 (§ 37.2-1200 et seq.).*

"Behavioral health services" means the full range of mental health and substance abuse services.

"Board" means the State Board of Behavioral Health and Developmental Services.

"Commissioner" means the Commissioner of Behavioral Health and Developmental Services.

"Community services board" means the public body established pursuant to § 37.2-501 that provides mental health, developmental, and substance abuse services within each city and county that established it; the term "community services board" shall include administrative policy community services boards, operating community services boards, and local government departments with policy-advisory community services boards.

"Department" means the Department of Behavioral Health and Developmental Services.

"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment, or a combination of mental and physical impairments, other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. An individual from birth to age nine, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

"Developmental services" means planned, individualized, and person-centered services and supports provided to individuals with developmental disabilities for the purpose of enabling these individuals to increase their self-determination and independence, obtain employment, participate fully in all aspects of community life, advocate for themselves, and achieve their fullest potential to the greatest extent possible.

"Facility" means a state or licensed hospital, training center, psychiatric hospital, or other type of residential or outpatient mental health or developmental services facility. ~~When modified by the word "state," "facility" means a state hospital or training center operated by the Department, including the buildings and land associated with it.~~

"Family member" means an immediate family member of an individual receiving services or the



principal caregiver of that individual. A principal caregiver is a person who acts in the place of an immediate family member, including other relatives and foster care providers, but does not have a proprietary interest in the care of the individual receiving services.

"Hospital," when not modified by the words "state" or "licensed," means a state hospital and a licensed hospital that provides care and treatment for persons with mental illness.

"Individual receiving services" or "individual" means a current direct recipient of public or private mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and includes the terms "consumer," "patient," "resident," "recipient," or "client."

"Intellectual disability" means a disability, originating before the age of 18 years, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Licensed hospital" means a hospital or institution, including a psychiatric unit of a general hospital, that is licensed pursuant to the provisions of this title.

"Mental health services" means planned individualized interventions intended to reduce or ameliorate mental illness or the effects of mental illness through care, treatment, counseling, rehabilitation, medical or psychiatric care, or other supports provided to individuals with mental illness for the purpose of enabling these individuals to increase their self-determination and independence, obtain remunerative employment, participate fully in all aspects of community life, advocate for themselves, and achieve their fullest potential to the greatest extent possible.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Neglect" means failure by a person or a program or facility operated, licensed, or funded by the Department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse.

"Operating community services board" or "operating board" means the public body organized in accordance with the provisions of Chapter 5 (§ 37.2-500 et seq.) that is appointed by and accountable to the governing body of each city and county that established it for the direct provision of mental health, developmental, and substance abuse services. The "operating community services board" or "operating board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties enumerated in subsection A of § 37.2-504 and § 37.2-505. "Operating community services board" or "operating board" also includes the organization that provides such services, through its own staff or through contracts with other organizations and providers.

"Performance contract" means the annual agreement negotiated and entered into by a community services board or behavioral health authority with the Department through which it provides state and federal funds appropriated for mental health, developmental, and substance abuse services to that community services board or behavioral health authority.

"Policy-advisory community services board" or "policy-advisory board" means the public body organized in accordance with the provisions of Chapter 5 that is appointed by and accountable to the governing body of each city or county that established it to provide advice on policy matters to the local government department that provides mental health, developmental, and substance abuse services pursuant to subsection A of § 37.2-504 and § 37.2-505. The "policy-advisory community services board" or "policy-advisory board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties enumerated in subsection B of § 37.2-504.

"Service area" means the city or county or combination of cities and counties or counties or cities that is served by a community services board or behavioral health authority or the cities and counties that are served by a state facility.

"Special justice" means a person appointed by a chief judge of a judicial circuit for the purpose of performing the duties of a judge pursuant to § 37.2-803.

"State hospital" means a hospital, psychiatric institute, or other institution operated by the ~~Department~~ *Behavioral Health Hospital Authority* that provides care and treatment for persons with mental illness.

"Substance abuse" means the use of drugs, enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.), without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior and (iii), because of such substance abuse, requires care and treatment for the

1535 health of the individual. This care and treatment may include counseling, rehabilitation, or medical or  
1536 psychiatric care.

1537 "Training center" means a facility operated by the Department that provides training, habilitation, or  
1538 other individually focused supports to persons with intellectual disability.

1539 **§ 37.2-201. Internal evaluation committee of Board.**

1540 The Board shall appoint an internal evaluation committee to be composed of at least three members  
1541 of the Board who shall review and evaluate the effects of designated policies of the Board and the  
1542 performance of the Department, ~~state facilities training centers~~, community services boards, and  
1543 behavioral health authorities in carrying out those policies. The committee and any staff designated by  
1544 the Commissioner shall have access to all records of the Department, ~~state facilities training centers~~,  
1545 community services boards, and behavioral health authorities in carrying out these monitoring activities.  
1546 The committee shall report its findings to the Board, which shall take action thereon as it deems  
1547 appropriate.

1548 **§ 37.2-203. Powers and duties of Board.**

1549 The Board shall have the following powers and duties:

1550 1. To develop and establish programmatic and fiscal policies governing the operation of ~~state~~  
1551 ~~hospitals~~, training centers, community services boards, and behavioral health authorities;

1552 2. To ensure the development of long-range programs and plans for mental health, developmental,  
1553 and substance abuse services provided by the Department, community services boards, and behavioral  
1554 health authorities;

1555 3. To review and comment on all budgets and requests for appropriations for the Department prior to  
1556 their submission to the Governor and on all applications for federal funds;

1557 4. To monitor the activities of the Department and its effectiveness in implementing the policies of  
1558 the Board;

1559 5. To advise the Governor, Commissioner, and General Assembly on matters relating to mental  
1560 health, developmental, and substance abuse services;

1561 6. To adopt regulations that may be necessary to carry out the provisions of this title and other laws  
1562 of the Commonwealth administered by the Commissioner or the Department;

1563 7. To ensure the development of programs to educate citizens about and elicit public support for the  
1564 activities of the Department, community services boards, and behavioral health authorities;

1565 8. To ensure that the Department assumes the responsibility for providing for education and training  
1566 of school-age individuals receiving services in ~~state facilities training centers~~, pursuant to § 37.2-312;

1567 9. To change the names of ~~state facilities training centers~~; and

1568 10. To adopt regulations that establish the qualifications, education, and experience for registration of  
1569 peer recovery specialists by the Board of Counseling.

1570 Prior to the adoption, amendment, or repeal of any regulation regarding substance abuse services, the  
1571 Board shall, in addition to the procedures set forth in the Administrative Process Act (§ 2.2-4000 et  
1572 seq.), present the proposed regulation to the Substance Abuse Services Council, established pursuant to  
1573 § 2.2-2696, at least 30 days prior to the Board's action for the Council's review and comment.

1574 **§ 37.2-304. Duties of Commissioner.**

1575 The Commissioner shall be the chief executive officer of the Department and shall have the  
1576 following duties and powers:

1577 1. To supervise and manage the Department and ~~its state facilities training centers~~.

1578 2. To employ the personnel required to carry out the purposes of this title.

1579 3. To make and enter into all contracts and agreements necessary or incidental to the performance of  
1580 the Department's duties and the execution of its powers under this title, including contracts with the  
1581 United States, other states, and agencies and governmental subdivisions of the Commonwealth,  
1582 consistent with policies and regulations of the Board and applicable federal and state statutes and  
1583 regulations.

1584 4. To accept, hold, and enjoy gifts, donations, and bequests on behalf of the Department from the  
1585 United States government, agencies and instrumentalities thereof, and any other source, subject to the  
1586 approval of the Governor. To these ends, the Commissioner shall have the power to comply with  
1587 conditions and execute agreements that may be necessary, convenient, or desirable, consistent with  
1588 policies and regulations of the Board.

1589 5. To accept, execute, and administer any trust in which the Department may have an interest, under  
1590 the terms of the instruments creating the trust, subject to the approval of the Governor.

1591 6. To transfer between ~~state hospitals~~ and training centers school-age individuals who have been  
1592 identified as appropriate to be placed in public school programs and to negotiate with other school  
1593 divisions for placements in order to ameliorate the impact on those school divisions located in a  
1594 jurisdiction in which a ~~state hospital~~ or training center is located.

1595 7. To provide to the Director of the Commonwealth's designated protection and advocacy system,  
1596 established pursuant to § 51.5-39.13, a written report setting forth the known facts of (i) critical

incidents, as that term is defined in § 37.2-709.1, or deaths of individuals receiving services in facilities *other than a state hospital*, within 15 working days of such critical incident or death; (ii) serious incidents and deaths that are required to be reported to the Department through its incident reporting system, as required by regulations adopted by the Board pursuant to Chapter 4 (§ 37.2-400 et seq.), within 15 working days of the date the report is received; and (iii) allegations of abuse or neglect that are required to be reported pursuant to regulations adopted by the Board pursuant to Chapter 4 (§ 37.2-400 et seq.), within five working days of the date on which the director's final decision on the allegation is reported to the Department.

8. To work with the appropriate state and federal entities to ensure that any individual who has received services in a *state facility training center* for more than one year has possession of or receives prior to discharge any of the following documents, when they are needed to obtain the services contained in his discharge plan: a Department of Motor Vehicles approved identification card that will expire 90 days from issuance, a copy of his birth certificate if the individual was born in the Commonwealth, or a social security card from the Social Security Administration. *State facility Training center* directors, as part of their responsibilities pursuant to § 37.2-837, shall implement this provision when discharging individuals.

9. To work with the Department of Veterans Services and the Department for Aging and Rehabilitative Services to establish a program for mental health and rehabilitative services for Virginia veterans and members of the Virginia National Guard and Virginia residents in the Armed Forces Reserves not in active federal service and their family members pursuant to § 2.2-2001.1.

10. To establish and maintain a pharmaceutical and therapeutics committee composed of representatives of the Department of Medical Assistance Services, *state facilities training centers* operated by the Department, community services boards, at least one health insurance plan, and at least one individual receiving services to develop a drug formulary for use at all community services boards, *state facilities training centers* operated by the Department, and providers licensed by the Department.

11. To establish and maintain the Commonwealth Mental Health First Aid Program pursuant to § 37.2-312.2.

12. To submit a report for the preceding fiscal year by December 1 of each year to the Governor and the Chairmen of the House Committee on Appropriations and Senate Committee on Finance and Appropriations that provides information on the operation of Virginia's publicly funded behavioral health and developmental services system. The report shall include a brief narrative and data on the number of individuals receiving *state facility* services *in a state hospital or training center* or *from a* community services board services, including purchased inpatient psychiatric services; the types and amounts of services received by these individuals; and *state facility state hospital, training center*, and community services board service capacities, staffing, revenues, and expenditures. The annual report shall describe major new initiatives implemented during the past year and shall provide information on the accomplishment of systemic outcome and performance measures during the year.

13. To establish a comprehensive program for the prevention and treatment of problem gambling in the Commonwealth and administer the Problem Gambling Treatment and Support Fund established pursuant to § 37.2-314.2.

Unless specifically authorized by the Governor to accept or undertake activities for compensation, the Commissioner shall devote his entire time to his duties.

**§ 37.2-306. Research into causes of mental illness, developmental disabilities, substance abuse, and related subjects.**

The Commissioner is hereby directed to promote research into the causes of mental illness, developmental disabilities, and substance abuse throughout the Commonwealth. The Commissioner shall encourage the directors of the *state facilities hospitals and training centers* and their staffs in the investigation of all subjects relating to mental illness, developmental disabilities, and substance abuse. In these research programs, the Commissioner shall make use, insofar as practicable, of the services and facilities of medical schools and the hospitals allied with them.

**§ 37.2-308.1. Acute psychiatric bed registry.**

A. The Department shall develop and administer a web-based acute psychiatric bed registry to collect, aggregate, and display information about available acute beds in public and private inpatient psychiatric facilities and public and private residential crisis stabilization units to facilitate the identification and designation of facilities for the temporary detention and treatment of individuals who meet the criteria for temporary detention pursuant to § 37.2-809.

B. The acute psychiatric bed registry created pursuant to subsection A shall:

1. Include descriptive information for every public and private inpatient psychiatric facility and every public and private residential crisis stabilization unit in the Commonwealth, including contact information for the facility or unit;

2. Provide real-time information about the number of beds available at each facility or unit and, for

each available bed, the type of patient that may be admitted, the level of security provided, and any other information that may be necessary to allow employees or designees of community services boards and employees of inpatient psychiatric facilities or public and private residential crisis stabilization units to identify appropriate facilities for detention and treatment of individuals who meet the criteria for temporary detention; and

3. Allow employees and designees of community services boards, employees of inpatient psychiatric facilities or public and private residential crisis stabilization units, and health care providers as defined in § 8.01-581.1 working in an emergency room of a hospital or clinic or other facility rendering emergency medical care to perform searches of the registry to identify available beds that are appropriate for the detention and treatment of individuals who meet the criteria for temporary detention.

C. Every state ~~facility~~ *hospital*, community services board, behavioral health authority, and private inpatient provider licensed by the Department shall participate in the acute psychiatric bed registry established pursuant to subsection A and shall designate such employees as may be necessary to submit information for inclusion in the acute psychiatric bed registry and serve as a point of contact for addressing requests for information related to data reported to the acute psychiatric bed registry.

D. Every state ~~facility~~ *hospital*, community services board, behavioral health authority, and private inpatient provider licensed by the Department shall update information included in the acute psychiatric bed registry whenever there is a change in bed availability for the ~~facility~~ *hospital*, board, authority, or provider or, if no change in bed availability has occurred, at least daily.

E. The Commissioner may enter into a contract with a private entity for the development and administration of the acute psychiatric bed registry established pursuant to subsection A.

**§ 37.2-312. Department responsible for education and training programs.**

The Department shall be responsible for providing for education and training of school-age individuals in ~~state facilities~~ *training centers*. The Board of Education shall supervise the education and training provided to school-age individuals in training centers, ~~and shall provide for and direct the education for school-age individuals in state hospitals in cooperation with the Department.~~ In discharging this responsibility, the Department shall exercise leadership by: (i) coordinating actions with the Department of Education and ~~state facilities~~ *training centers* to ensure consistency between treatment and educational priorities in the policy and implementation of direct services for school-age individuals in ~~state facilities~~ *training centers*; (ii) ensuring that comparable resources especially in career and technical education, appropriate to the students' disabilities and needs, are available in all ~~state facilities~~ *training centers*; (iii) monitoring the quality of the instruction provided to all school-age individuals in ~~state facilities~~ *training centers*; (iv) requiring ~~state facility~~ *training center* directors to evaluate the performance of the education directors pursuant to guidelines developed in cooperation with the Board of Education; (v) developing and implementing, in cooperation with the Department of Education, programs to ensure that the educational and treatment needs of children with dual diagnoses in ~~state facilities~~ *training centers* are met; (vi) taking an active role with the Department of Education to evaluate the effectiveness of prevalent educational models in ~~state facilities~~ *training centers*; and (vii) designing a mechanism for maintaining constant direct contact and the sharing of ideas, approaches, and innovations between the education directors and teachers whether they are employees of local school divisions or of the Commonwealth who are educating school-age individuals in ~~state facilities~~ *training centers*.

**§ 37.2-314. Background check required.**

A. As a condition of employment, the Department shall require any applicant who (i) accepts a position of employment at a state ~~facility~~ *hospital or training center* and was not employed by that state ~~facility~~ *hospital or training center* prior to July 1, 1996, or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to fingerprinting and provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant.

B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated employment persons who have been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

C. Notwithstanding the provisions of subsection B, the Department may hire for compensated employment at an adult substance abuse or adult mental health treatment program a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any first offense misdemeanor violation of § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282, 18.2-346, or

18.2-346.01; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection H1 or H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the Department determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. The Department and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsection C to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms; shall not be under probation or parole supervision; shall have no pending charges in any locality; shall have paid all fines, restitution, and court costs for any prior convictions; and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the Department or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the Department decides to pay the cost.

E. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the state ~~facility~~ *hospital or training center* or to the Department. If an applicant is denied employment because of information appearing on his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the state ~~facility~~ *hospital or training center* or Department shall not be disseminated except as provided in this section.

F. Those applicants listed in clause (i) of subsection A also shall provide to the state ~~facility~~ *hospital or training center* or Department a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on them.

G. The Board may adopt regulations to comply with the provisions of this section. Copies of any information received by the state ~~facility~~ *hospital or training center* or Department pursuant to this section shall be available to the Department and to the applicable state ~~facility~~ *hospital or training center* but shall not be disseminated further, except as permitted by state or federal law. The cost of obtaining the criminal history record and the central registry information shall be borne by the applicant, unless the Department ~~or, Authority, training center, or state facility~~ *hospital* decides to pay the cost.

**§ 37.2-314.1. Developmental Disabilities Mortality Review Committee; duties; membership; confidentiality; report; penalty.**

A. There is hereby created the Developmental Disabilities Mortality Review Committee (the Committee), which shall develop and implement procedures to ensure that deaths of persons with developmental disabilities receiving services from a provider licensed by the Department or in a training center or ~~other~~ state ~~facility~~ *hospital* are reviewed and analyzed in a systematic way. The Committee shall review each death of a person with a developmental disability who was receiving services from a provider licensed by the Department or in a training center or ~~other~~ state ~~facility~~ *hospital* at the time of his death. The Committee shall develop and revise as necessary operating procedures for the review of deaths of such persons, including identification of cases to be reviewed and procedures for coordinating among the agencies and professionals involved in such review. Such operating procedures shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 17 of § 2.2-4002.

B. The Committee shall consist of the following persons or their designees: the Chief Clinical Officer appointed by the Commissioner; the Clinical Manager, Program Coordinator and Clinical Reviewer of the Department's Mortality Review Team; the Senior Director of Quality Improvement of the Department; an employee of the Department with experience related to quality improvement; an employee of the Department with relevant programmatic or operational experience; a person licensed to practice medicine or osteopathy in the Commonwealth; a person licensed to practice as a registered nurse in the Commonwealth; and a person with experience in conducting mortality reviews who is not employed by or otherwise affiliated with the Department. The Chief Clinical Officer and the Clinical Manager of the Department's Mortality Review Team shall serve as co-chairs of the Committee. The co-chairs of the committee or the Commissioner may appoint such additional members of the Committee as may be needed to complete developmental disability mortality reviews pursuant to this section.

Members of the Committee shall serve such terms as may be determined by the Commissioner.

1781 C. Upon the request of the Chief Clinical Officer in his capacity as a co-chair of the Committee,  
1782 information and records regarding an individual whose death is being reviewed by the Committee,  
1783 including (i) any report of the circumstances of the death maintained by any state or local  
1784 law-enforcement agency or the Office of the Chief Medical Examiner and (ii) information or records  
1785 about the person maintained by any facility, hospital, nursing home, or health care provider that  
1786 provided services to the individual, any social services agency that provided services to the individual,  
1787 or any court shall be provided to the Chief Clinical Officer or his designee. Any presentence report  
1788 prepared pursuant to § 19.2-299 for any person convicted of a crime that may have led to the death of  
1789 the person whose death is the subject of review by the Committee shall be made available to the Chief  
1790 Clinical Officer or his designee for inspection. In addition, the Chief Clinical Officer or his designee  
1791 may inspect and copy from any health care provider in the Commonwealth, on behalf of the Committee,  
1792 any health or mental health record of the individual, without authorization.

1793 D. All information obtained or generated by the Committee or on behalf of the Committee regarding  
1794 a review shall be confidential and excluded from the Virginia Freedom of Information Act (§ 2.2-3700  
1795 et seq.) pursuant to subdivision 7 of § 2.2-3705.5. Such information shall not be subject to subpoena or  
1796 discovery or be admissible in any civil or criminal proceeding. If available from other sources, however,  
1797 such information and records shall not be immune from subpoena, discovery, or introduction into  
1798 evidence when obtained through such other sources solely because the information and records were  
1799 presented to the Committee during a review pursuant to this section. The Committee shall compile all  
1800 requested information collected for a clinical review. The findings of the Committee may be disclosed or  
1801 published in statistical or other form but shall not identify any individuals.

1802 The portions of meetings in which individual death cases are discussed by the Committee shall be  
1803 closed pursuant to subdivision A 21 of § 2.2-3711. In addition to the requirements of § 2.2-3712, all  
1804 members of the Committee and other persons attending closed meetings of the Committee, including any  
1805 persons presenting information or records on specific deaths, shall sign an agreement to maintain the  
1806 confidentiality of the information, records, discussions, and opinions disclosed during meetings at which  
1807 the Committee reviews a specific death. No member of the Committee or other person who participates  
1808 in a review shall be required to make any statement regarding the review or any information collected  
1809 during the review. Violations of this subsection are punishable as a Class 3 misdemeanor.

1810 E. Upon notification of the death of a person with a developmental disability who was receiving  
1811 services from a provider licensed by the Department or in a training center or ~~other state facility~~  
1812 *hospital*, any state or local government agency or facility that provided services to the person or  
1813 maintained records on the person or the person's family shall retain the records for 12 months after the  
1814 date of the death.

1815 F. The Committee shall report its activities annually to the Governor and the General Assembly by  
1816 December 1. Such report shall include statistical and other data on the deaths of persons with a  
1817 developmental disability who were receiving services from a provider licensed by the Department or in a  
1818 training center or ~~other state facility~~ *hospital* at the time of their death and recommendations developed  
1819 by the Committee to address the conditions that led to such deaths. Any statistical compilations prepared  
1820 by the Committee shall be public record and shall not contain any personally identifying information.

1821 **§ 37.2-317. Definitions.**

1822 As used in this article, unless the context requires a different meaning:

1823 "Assets" means the buildings and land of state ~~facilities~~ *hospitals operated by the Behavioral Health*  
1824 *Hospital Authority and training centers* operated by the Department.

1825 "Fund" means the Behavioral Health and Developmental Services Trust Fund.

1826 "Net proceeds" means the gross amount received by the seller on account of the sale of any assets (i)  
1827 less costs incurred on behalf of the seller in connection with such sale and (ii), if after the sale the sold  
1828 assets will be used by an entity other than a state agency or instrumentality or a local governmental  
1829 entity in a governmental activity and debt obligations financed any portion of the sold assets and any  
1830 amount of such obligations is outstanding at the time of the sale, less the amount necessary to provide  
1831 for the payment or redemption of the portion of such outstanding obligations that financed the sold  
1832 assets, which amount shall be used to pay or redeem such obligations or shall be transferred to the third  
1833 party issuer of the obligations for a use permitted in accordance with such obligations.

1834 **§ 37.2-511. Liability for expenses of services.**

1835 The income and estate of an individual receiving services shall be liable for the expenses of services  
1836 under the jurisdiction or supervision of any community services board that are utilized by the individual.  
1837 Any person responsible for holding, managing, or controlling the income and estate of the individual  
1838 shall apply the income and estate toward the expenses of the services utilized by the individual.

1839 Any person responsible for the support of an individual receiving services pursuant to § 20-61 or a  
1840 common law duty to support shall be liable for the expenses of services under the jurisdiction or  
1841 supervision of any community services board that are utilized by the individual, unless the individual,  
1842 regardless of age, qualifies for and is receiving aid under a federal or state program of assistance to the

blind or disabled. Any such person shall no longer be financially liable, however, when a cumulative total of 1,826 days of (i) care and treatment or training for the individual in a state ~~facility~~ *hospital or training center*, (ii) utilization by the individual of services under the jurisdiction or supervision of any community services board, or (iii) a combination of (i) and (ii) has passed and payment for or a written agreement to pay the charges for 1,826 days of care and services has been made. Not less than three hours of service per day shall be required to include one day in the cumulative total of 1,826 days of utilization of services under the jurisdiction or supervision of any community services board. In order to claim this exemption, the person legally liable for the individual shall produce evidence sufficient to prove eligibility for it.

**§ 37.2-700. Construction of training centers; razing buildings.**

A. The Commissioner, subject to the approval of the Board and the Governor, shall determine the necessity for and select the site of any new ~~state facility~~ *training center* and any land to be taken or purchased by the Commonwealth for the purposes of any new or existing ~~state facility~~ *training center*. The Commissioner shall have charge of the construction of any new building at any ~~state facility~~ *training center*, shall determine the design of the building, and may employ architects and other experts or hold competitions for plans and designs for this purpose. If any land or property is taken or purchased by the Board, title shall be taken in the name of the Commonwealth.

B. If any building standing on property under the supervision and control of the Department is in such a state of dilapidation or disrepair that it is, in the opinion of the Commissioner, dangerous to individuals receiving services, employees of the Department, or other persons frequenting that property, the Commissioner may, with the approval of the Board and the Governor, cause the building to be torn down or razed. For this purpose, the Commissioner may contract with any person on the terms that he deems expedient and may sell or otherwise dispose of the materials composing the building.

**§ 37.2-701. Examination of properties; certain property not to be declared surplus.**

The Commissioner is hereby authorized to examine the condition of the ~~state facilities~~ *training centers* operated by the Department based upon the practices and methods employed by the Department in the care and treatment of individuals admitted to any ~~state facility~~ *training center*. No property that is being used for the care and treatment of individuals receiving services or that is reasonably related to the present or future needs of the Department for care and treatment of individuals receiving services shall be declared surplus.

**§ 37.2-702. Separate training centers for elderly individuals; free-standing training centers authorized.**

The Department shall establish and operate a separate geriatric unit within each ~~state facility~~ *training center* that serves significant numbers of elderly individuals. Each unit shall provide care and treatment for those individuals and shall be separated in a reasonable manner from the rest of the ~~state facility~~ *training center*.

The Board may, giving full consideration to the needs and resources available, authorize the establishment of free-standing ~~state facilities~~ *training centers* for elderly individuals receiving services.

**§ 37.2-703. Commissioner to prescribe system of records, accounts, and reports; access to records, accounts, and reports.**

The Commissioner shall prescribe and cause to be established and maintained at all ~~state facilities~~ *training centers*:

(a) A uniform, proper, and approved system of keeping the records and accounts and making reports of money received and disbursed; and

(b) An efficient system of keeping records concerning the individuals admitted to or receiving services in each ~~state facility~~ *training center*.

The Board, the Commissioner, and their duly authorized agents shall at all times have access to such records, accounts, and reports required to be kept under the provisions of this title.

**§ 37.2-704. Commissioner authorized to receive and expend social security and other federal payments for individuals receiving services in training centers.**

The Commissioner, under any provision of federal law and regulation and with the approval of the Governor, may be appointed or function as the agent to whom payments may be made on behalf of any beneficiary in ~~state facilities~~ *a training center*. These payments shall be expended for the use and benefit of the individuals receiving services to whom they would otherwise be payable, and any residue resulting from such payments shall be set aside in a special fund to the credit of the individual on whose account the payment is made. The charges provided for by law for the care of the individual receiving services shall be defrayed from such payments. The provisions of subsection C of § 37.2-705 shall apply to any payments received under this section.

**§ 37.2-705. Private funds provided for individuals receiving services.**

A. The Commissioner is hereby authorized to provide for the deposit with the director or other proper officer of any ~~state facility~~ *training center* of any money given or provided for the purpose of

1904 supplying extra comforts, conveniences, or services to any individual in a *state facility training center*  
1905 and any money otherwise received and held from, for, or on behalf of any individual in a *state facility*  
1906 *training center*.

1907 B. All funds so provided or received shall be deposited to the credit of the *state facility training*  
1908 *center* in a special fund in a bank or banks designated by the Commissioner and shall be disbursed as  
1909 may be required by the respective donors or, in the absence of such requirement, as directed by the  
1910 director.

1911 C. The director of each *state facility training center* shall furnish to the Commissioner annually a  
1912 statement showing the amounts of funds received and deposited, the amounts expended, and the amounts  
1913 remaining in such special funds at the end of the year. The Commissioner shall have authority to invest  
1914 so much of the remaining funds as he may deem proper in United States government bonds or other  
1915 securities authorized by law for the investment of fiduciary funds. The interest from these investments  
1916 may be expended as a part of a welfare fund at each *state facility training center*.

1917 D. If any individual receiving services for whose benefit any such fund has been or shall be provided  
1918 has departed or shall depart from any *state facility training center*, leaving any unexpended balance in  
1919 such fund, and the director, in the exercise of reasonable diligence, has been or shall be unable to find  
1920 the person or persons entitled to such unexpended balance, the Commissioner may, after the lapse of  
1921 three years from the date of such departure, authorize the use of the balance for the benefit of all or any  
1922 of the individuals then in the *state facility training center*.

1923 **§ 37.2-706. Disposal of unclaimed personal property of certain individuals in training center.**

1924 If any individual receiving services in a *state facility training center* dies, is released, is discharged,  
1925 or escapes and leaves any article of personal property, including bonds, money, and any intangible  
1926 assets, in the custody of a state facility, the director of the *state facility training center* may, after  
1927 notification in person, by telephone, or by registered mail to the individual, or the known next-of-kin or  
1928 personal representative of the individual and after the lapse of three years from the date of the death,  
1929 release, discharge, or escape, if no claim has been made:

1930 1. Sell the personal property at public or private sale and deposit the net proceeds in the welfare  
1931 fund of the *state facility training center*;

1932 2. Retain and issue for use of individuals receiving services articles of clothing suitable for continued  
1933 use; or

1934 3. Order destruction or other disposal of personal care articles, articles of clothing, and other  
1935 belongings that are not suitable by reason of their nature or condition for sale or use by others,  
1936 including personal and private papers, writings, drawings, or photographs that would compromise the  
1937 privacy or confidentiality of any person who may be the author, creator, or subject of them.

1938 **§ 37.2-707. Employment and qualifications of directors of training centers.**

1939 The Commissioner shall employ a director for each *state facility training center* who shall be skilled  
1940 in facility management and administration and who shall meet requirements that may be determined by  
1941 the Commissioner. However, the director need not be a physician.

1942 Any director of a *state facility training center* employed or reemployed by the Commissioner after  
1943 July 1, 2002, may be employed as a classified employee or under a contract that specifies the terms and  
1944 conditions of employment, including compensation, benefits, duties and responsibilities, performance  
1945 standards, evaluation criteria, and contract termination and renewal provisions. The length of  
1946 employment contracts shall be two years, with provisions for annual renewals thereafter based on the  
1947 performance of the incumbent. Any director of a *state facility training center* employed by the  
1948 Commissioner before July 1, 1999, may elect to continue his current employment status subject to the  
1949 provisions of the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, or he may choose  
1950 to be employed under a contract. Any director of a *state facility training center* employed under an  
1951 employment contract shall be exempt from the Virginia Personnel Act, yet he shall remain subject to the  
1952 provisions of the State Grievance Procedure (§ 2.2-3000 et seq.). Personnel actions under this  
1953 exemption shall be taken without regard to race, sex, sexual orientation, gender identity, color, national  
1954 origin, religion, age, disability, or political affiliation.

1955 Each director shall be responsible to the Commissioner or his designee for the safe, efficient, and  
1956 effective operation of his *state facility training center*. Each director shall take any actions consistent  
1957 with law necessary to ensure that his *facility training center* complies with all applicable federal and  
1958 state statutes, regulations, policies, and agreements. The Commissioner shall evaluate the performance of  
1959 each director of a *state facility training center* at least annually.

1960 Whenever any act required by law to be performed by a director employed hereunder constitutes the  
1961 practice of medicine, as defined in § 54.1-2900, and the director is not a licensed physician, the act  
1962 shall be performed by a licensed physician designated by the director.

1963 **§ 37.2-708. Salaries of directors and other employees of training centers.**

1964 The directors and other employees of *state facilities training centers* shall each annually receive such  
1965 salaries as shall be fixed from time to time in the appropriation act, and, when they occupy buildings on



the grounds or belonging to their ~~state facility~~ *training center*, they shall pay the rent that was fixed in accordance with law.

**§ 37.2-709. State hospital and training center reporting requirements.**

Each director of a ~~state facility~~ *training center or person in charge of a state hospital* shall notify the Director of the Commonwealth's designated protection and advocacy system, established pursuant to § 51.5-39.13, in writing within 48 hours of critical incidents or deaths of individuals receiving services in the ~~state facility~~ *hospital or training center*.

**§ 37.2-709.1. State hospital and training center reporting requirements; critical incidents involving individuals receiving services.**

A. In each case in which an individual receiving services in a state hospital or state training center is involved in a critical incident, the *person in charge of the state hospital or director of the state facility training center*, or his designee, shall notify the individual's authorized representative or person identified pursuant to subdivision A 11 of § 37.2-400 regarding the critical incident, any injury to the individual resulting from the critical incident, and any actions taken to address the factors leading to the critical incident and injuries to the individual resulting from the critical incident.

B. To the extent authorized by federal law, notice to an individual's authorized representative or person identified pursuant to subdivision A 11 of § 37.2-400 shall be made by telephone within 24 hours of the critical incident unless the individual's authorized representative or person identified pursuant to subdivision A 11 of § 37.2-400 has requested an alternate means or timeframe for notification. However, if the *person in charge of the state hospital or director of the training center*, or his designee, is unable to contact the individual's authorized representative or person identified pursuant to subdivision A 11 of § 37.2-400 by telephone within 24 hours of the critical incident, or as otherwise requested, the *person in charge of the state hospital or the director of the training center*, or his designee, shall notify the individual's authorized representative or person identified pursuant to subdivision A 11 of § 37.2-400 of the critical incident, any injury to the individual resulting from the critical incident, and any actions taken to address the factors leading to the critical incident and injuries to the individual resulting from the critical incident, in writing by registered mail to the last known address of the individual's authorized representative or person identified pursuant to subdivision A 11 of § 37.2-400.

C. In cases in which the *person in charge of a state hospital or director of a state facility training center*, or his designee, is unable to identify an individual's authorized representative or person identified pursuant to subdivision A 11 of § 37.2-400 or to obtain the telephone number or last known address of such person despite all reasonable efforts to do so, the provisions of this section shall not apply.

D. For the purposes of this section, "critical incident" shall be defined as serious bodily injury or loss of consciousness requiring medical treatment.

**§ 37.2-710. State hospital and training center reporting requirements; Virginia Patient Level Data system.**

~~State facilities~~ Every state hospital and training center shall report such data about each individual receiving services and financial data as may be required to the Virginia Patient Level Data system in accordance with Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1.

**§ 37.2-711. Exchange of information.**

The Department ~~and~~ *state facilities hospitals, and training centers* may exchange specific information about individuals who are receiving or who have received services with community services boards or behavioral health authorities to monitor the delivery, outcome, and effectiveness of services; however, no publicly available report or information produced or generated by them shall reveal the identity of any individual who is receiving or who has received services. Publicly available information shall be designed to prevent persons from being able to gain access to combinations of characteristic data elements about individuals who are receiving or who have received services that reasonably could be expected to reveal the identity of any individual. In order to collect unduplicated information, the Department, subject to all regulations adopted by the Board or by agencies of the United States government that govern confidentiality of information about individuals who are receiving or who have received services, may require that the individuals disclose or furnish their social security numbers.

**§ 37.2-712. Collection and dissemination of information concerning religious preferences and affiliations.**

A. Notwithstanding any provision of law to the contrary, any ~~state facility~~ *hospital or training center* may collect and disseminate information concerning the religious preferences and affiliations of individuals receiving services, provided that no individual may be required to indicate his religious preference or affiliation and that no dissemination of the information shall be made except to categories of persons as to whom the individual or his guardian or other legally authorized representative or other fiduciary has given his authorization that dissemination may be made.

B. No authorization given pursuant to this section shall be construed to allow any ~~state facility~~

2027 *hospital or training center* to disseminate to federal government authorities information concerning the  
 2028 religious preferences and affiliations of individuals receiving services for the purpose of compiling a list,  
 2029 registry, or database of individuals based on religious affiliation, national origin, or ethnicity, unless such  
 2030 dissemination is specifically required by state or federal law.

2031 **§ 37.2-713. Residence of individuals in state hospitals and training centers and school-age**  
 2032 **children in state hospitals and training centers generally.**

2033 For purposes of eligibility for and receipt of social services and public assistance, each individual  
 2034 receiving services in a state ~~facility~~ *hospital or training center* shall be deemed a resident of the county  
 2035 or city in which he resided at the time of his admission to the state ~~facility~~ *hospital or training center*,  
 2036 and not of the county or city in which the state ~~facility~~ *hospital or training center* is located. The  
 2037 Department shall be entitled to receive annually from the Board of Education and the school division  
 2038 where ~~the~~ *an individual receiving services in a training center* resided at the time of his admission, and  
 2039 *the Chief Executive Officer of the Behavioral Health Hospital Authority shall be entitled to receive*  
 2040 *annually from the Board of Education and the school division where an individual receiving services in*  
 2041 *a state hospital resided at the time of his admission*, a sum equal to the required local expenditure per  
 2042 pupil, as set forth in the appropriation act, and an additional payment for special education, as  
 2043 applicable, for support of the individual's education. This amount shall be paid by the Board of  
 2044 Education, and the Board shall then deduct that payment from the amount payable by the Board of  
 2045 Education from the basic school aid fund to the school division.

2046 **§ 37.2-714. Children born in state hospitals and training centers.**

2047 Any child born in a state ~~facility~~ *hospital or training center* shall be deemed a resident of the county  
 2048 or city in which the mother resided at the time of her admission. The child shall be removed from the  
 2049 state ~~facility~~ *hospital or training center* as soon after birth as the health and well-being of the child  
 2050 permit and shall be delivered to his other parent or other member of his family. If he is unable to effect  
 2051 the child's removal as herein provided, the *person in charge of the state hospital* or director of the state  
 2052 ~~facility~~ *training center* shall cause the filing of a petition in the juvenile and domestic relations district  
 2053 court of the county or city in which the child is present, requesting adjudication of the care and custody  
 2054 of the child under the provisions of § 16.1-278.3. If the mother has received services in a state ~~facility~~  
 2055 *hospital or training center* continuously for 10 months, the Department of Social Services shall have  
 2056 financial responsibility for the care of the child, and the custody of the child shall be determined in  
 2057 accordance with the provisions of § 16.1-278.3. The judge of such court shall take appropriate action to  
 2058 effect prompt removal of the child from the state ~~facility~~ *hospital or training center*.

2059 **§ 37.2-715. Who liable for expenses; amount.**

2060 Any person who has been or who may be admitted to any state ~~facility~~ *hospital or training center* or  
 2061 who is the subject of counseling or receives treatment from the staff of a state ~~facility~~ *hospital or*  
 2062 *training center* shall be deemed to be an individual receiving services for the purposes of this article.

2063 The income and estate of an individual receiving services shall be liable for the expenses of his care,  
 2064 treatment or training, and maintenance in a state ~~facility~~ *hospital or training center*. Any person  
 2065 responsible for holding, managing, or controlling the income and estate of the individual receiving  
 2066 services shall apply the income and estate toward the expenses of the individual's care, treatment or  
 2067 training, and maintenance.

2068 Any person responsible for the support of an individual receiving services pursuant to § 20-61 shall  
 2069 be liable for the expenses of his care, treatment or training, and maintenance in a state ~~facility~~ *hospital*  
 2070 *or training center*. Any such person shall no longer be financially liable, however, when a cumulative  
 2071 total of 1,826 days of (i) care and treatment or training for the individual in a state ~~facility~~ *hospital or*  
 2072 *training center*, (ii) utilization by the individual of services or facilities under the jurisdiction or  
 2073 supervision of any community services board or behavioral health authority, or (iii) a combination of (i)  
 2074 and (ii) has passed and payment for or a written agreement to pay the charges for 1,826 days of care  
 2075 and services has been made. Not less than three hours of service per day shall be required to include  
 2076 one day in the cumulative total of 1,826 days of utilization of services under the jurisdiction or  
 2077 supervision of a community services board or behavioral health authority. In order to claim this  
 2078 exemption, the person legally liable for the individual shall produce evidence sufficient to prove  
 2079 eligibility for it.

2080 Such expenses shall not exceed the average cost for the particular type of service rendered and shall  
 2081 be determined no less frequently than annually by the *Behavioral Health Hospital Authority, for*  
 2082 *individuals receiving services in a state hospital, or the Department, for individuals receiving services in*  
 2083 *a training center*, in accordance with generally accepted accounting principles applicable to the health  
 2084 care industry. In no event shall recovery be permitted for amounts more than five years past due. A  
 2085 certificate of the *Chief Executive Officer of the Behavioral Health Hospital Authority or the*  
 2086 *Commissioner, as appropriate*, or his designee, shall be prima facie evidence of the actual charges for  
 2087 the particular type of service rendered.

2088 **§ 37.2-716. Behavioral Health and Developmental Services Revenue Fund.**

All funds collected by the Department pursuant to this article shall be paid into a special fund of the state treasury that shall be known and referred to as the Behavioral Health and Developmental Services Revenue Fund.

This fund shall be appropriated and used for the operation of the Department and its state facilities training centers for research and training. Unexpended funds in the Behavioral Health and Developmental Services Revenue Fund at the close of any fiscal year shall be retained in the fund and be available for expenditure in ensuing years as provided herein.

**§ 37.2-717. Department and Authority to investigate financial ability to pay expenses; assessments and contracts by Department.**

A. The *Chief Executive Officer of the Behavioral Health Hospital Authority or the Department, as appropriate*, shall investigate and determine which individuals receiving services or parents, guardians, conservators, trustees, or other persons legally responsible for individuals receiving services are financially able to pay the expenses of the care, treatment or training, and maintenance, and the *Chief Executive Officer of the Behavioral Health Hospital Authority or the Department, as appropriate*, shall notify these individuals or their parents, guardians, conservators, trustees, or other legally responsible persons of the expenses of care, treatment or training, and maintenance and, in general, of the provisions of this article.

B. The *Chief Executive Officer of the Behavioral Health Hospital Authority or the Department, as appropriate*, may assess or contract with any individual receiving services or the parent, guardian, conservator, trustee, or other person liable for his support and maintenance to recover care, treatment or training, and maintenance expenses. In arriving at the amount to be paid, the *Chief Executive Officer of the Behavioral Health Hospital Authority or the Department, as appropriate*, shall have due regard for the financial condition and estate of the individual, his present and future needs, and the present and future needs of his lawful dependents. Whenever it is deemed necessary to protect him or his dependents, the *Chief Executive Officer of the Behavioral Health Hospital Authority or the Department, as appropriate*, may assess or agree to accept a monthly sum for the individual's care, treatment or training, and maintenance that is less than the actual per diem cost, provided that the estate of the individual other than income shall not be depleted below the sum of \$500. Nothing contained in this title shall be construed as making any such contract permanently binding upon the *Chief Executive Officer of the Behavioral Health Hospital Authority or the Department, as appropriate*, or prohibiting ~~it~~ the *Chief Executive Officer of the Behavioral Health Hospital Authority or the Department, as appropriate*, from periodically reevaluating the actual per diem cost of care, treatment or training, and maintenance and the financial condition and estate of any individual receiving services, his present and future needs, and the present and future needs of his lawful dependents and entering into a new agreement with the individual or the parent, guardian, conservator, trustee, or other person liable for his support and maintenance, increasing or decreasing the sum to be paid for the individual's care, treatment or training, and maintenance.

C. All contracts made by and between the *Chief Executive Officer of the Behavioral Health Hospital Authority or the Department, as appropriate*, and any person acting in a fiduciary capacity for any individual receiving services adjudicated to be incapacitated under the provisions of Article 1 (§ 64.2-2000 et seq.) of Chapter 20 of Title 64.2 and all assessments made by the *Chief Executive Officer of the Behavioral Health Hospital Authority or the Department, as appropriate*, upon that individual or his fiduciaries, providing for payment of the expenses of such individual in any state facility hospital or training center, shall be subject to the approval of any circuit court having jurisdiction over the incapacitated individual's estate or for the county or city in which he resides or from which he was admitted to the state facility hospital or training center.

**§ 37.2-718. Order to compel payment of expenses.**

A. When any individual receiving services or his guardian, conservator, trustee, or other person liable for his expenses fails to pay those expenses and it appears from investigation that the individual, his guardian, conservator, trustee, or other person liable for his support is able or has sufficient estate to pay the expenses, the *Chief Executive Officer of the Behavioral Health Hospital Authority or the Department, as appropriate*, shall petition the appropriate court having jurisdiction over the estate of the individual or the court for the county or city in which the individual resides or from which he was admitted to a state facility hospital or training center for an order to compel payment of the expenses by the person liable therefor. In any case in which a person liable for the support of the individual is being proceeded against, the petition shall be directed to the appropriate court of the county or city in which the person liable for the support of the individual resides.

B. The individual receiving services and his estate shall first be liable for the payment of his expenses and thereafter, the person liable for the support of the individual. Such person shall be the father, mother, husband, wife, or child of the individual who has attained the age of majority. Multiple persons shall be jointly and severally liable. The *Chief Executive Officer of the Behavioral Health*

2150 *Hospital Authority or the Department, as appropriate, shall collect part or all of the expenses from the*  
2151 *several sources as appears proper under the circumstances and may proceed against all sources, except*  
2152 *that the principal or income or both from a trust created for the benefit of the individual shall be liable*  
2153 *for payment only as provided in Article 5 (§ 64.2-742 et seq.) of the Uniform Trust Code. In evaluating*  
2154 *the circumstances, the Chief Executive Officer of the Behavioral Health Hospital Authority or the*  
2155 *Department, as appropriate, may consider any events related to the admission of the individual for*  
2156 *treatment or training that have affected the person liable, such as the infliction of serious injury by the*  
2157 *individual on the person who is liable. The proceedings for the collection of expenses shall conform to*  
2158 *the procedure for collection of debts due the Commonwealth.*

2159 C. Notice of any hearing on the petition of the *Chief Executive Officer of the Behavioral Health*  
2160 *Hospital Authority or the Department, as appropriate, for an order to compel payment of expenses shall*  
2161 *be served at least 15 days prior to the hearing and in the manner provided for the service of civil*  
2162 *process on the individual receiving services and, if there is one, on his guardian, conservator, or trustee,*  
2163 *on the other person legally responsible for the individual's support, or on the person against whom the*  
2164 *proceedings are instituted.*

2165 D. At the hearing, the court shall hear the allegations and proofs of the parties and shall by order  
2166 require full or partial payment of maintenance by the liable parties, if they have sufficient ability, having  
2167 due regard for the financial condition and estate of the individual receiving services or any other person  
2168 liable for his expenses, his present and future needs, and the present and future needs of his lawful  
2169 dependents, if the proceeding is to charge the individual or any other person liable with such expenses.

2170 E. Upon application of any interested party and upon like notice and procedure, the court may at any  
2171 time modify an order to compel payment of expenses. If the application is made by any party other than  
2172 the *Chief Executive Officer of the Behavioral Health Hospital Authority or the Department, as*  
2173 *appropriate, the notice shall be served on the Chief Executive Officer of the Behavioral Health Hospital*  
2174 *Authority or the Commissioner, as appropriate.*

2175 F. Any party aggrieved by an order or by the judgment of the court may appeal therefrom in the  
2176 manner provided by law.

2177 G. Any order or judgment rendered by the court hereunder shall have the same force and effect and  
2178 shall be enforceable in the same manner and form as any judgment recovered in favor of the  
2179 Commonwealth.

2180 **§ 37.2-719. Statement forms to be completed by the person liable for support of an individual**  
2181 **receiving services.**

2182 The *Chief Executive Officer of the Behavioral Health Hospital Authority or the Commissioner, as*  
2183 *appropriate, may prescribe statement forms that shall be completed by those persons liable under*  
2184 *§ 37.2-715 for the support of the individual receiving services. The statement shall be sworn to by the*  
2185 *person and returned to the Chief Executive Officer of the Behavioral Health Hospital Authority or the*  
2186 *Commissioner, as appropriate, within 30 days from the time the statement was mailed to the person.*  
2187 *Should the person fail to return the properly completed statement to the Chief Executive Officer of the*  
2188 *Behavioral Health Hospital Authority or the Commissioner, as appropriate, within 30 days, the Chief*  
2189 *Executive Officer of the Behavioral Health Hospital Authority or the Commissioner, as appropriate,*  
2190 *shall send another statement by registered mail. If the statement is not then returned properly completed*  
2191 *within 30 days, the person to whom it was sent by registered mail shall be assessed \$5 for each week or*  
2192 *part of each week in excess of the 30-day period that the statement is overdue. The Chief Executive*  
2193 *Officer of the Behavioral Health Hospital Authority or the Department, as appropriate, shall collect*  
2194 *these assessments in the same manner as other sums due for the care, treatment or training, and*  
2195 *maintenance of individuals receiving services from the persons whose duty it was to complete each*  
2196 *statement. When collected, these assessments shall be paid into the same fund into which other*  
2197 *collections are paid under this article.*

2198 A statement of liability imposed by this section shall be placed in a prominent place, in boldface  
2199 type, upon each statement form.

2200 **§ 37.2-720. When collection of expenses not required.**

2201 This article shall not be held or construed to require the *Chief Executive Officer of the Behavioral*  
2202 *Health Hospital Authority or the Department, as appropriate, to collect the expenses of the care,*  
2203 *treatment or training, and maintenance of any indigent individual receiving services from that individual*  
2204 *or from any person liable for him when investigation discloses that the indigent individual or person*  
2205 *liable for his support is without financial means or that such payment would work a hardship on the*  
2206 *individual or his family. Neither shall it be the duty or obligation of the Chief Executive Officer of the*  
2207 *Behavioral Health Hospital Authority or the Department, as appropriate to institute any proceedings*  
2208 *provided for in this article to effect collection where investigation discloses that proceedings would be*  
2209 *without effect or would work a hardship on the individual receiving services or the person liable for his*  
2210 *support.*

2211 **§ 37.2-721. Liability of estate of the individual receiving services.**

Upon the death of any individual who is receiving or who has received services, his estate shall be liable only for the charges remaining unpaid and not more than five years past due and the unsatisfied portion of any judgment rendered by a court in a proceeding under this article. Upon the death of any individual who is receiving or who has received services, the provisions of § 37.2-717, which prohibit depleting the individual's estate below \$500, shall after funeral expenses have no further application, and such sum may be applied to the charges of the *Chief Executive Officer of the Behavioral Health Hospital Authority or the Department, as appropriate*, remaining unpaid or may be applied to the unsatisfied portion of any judgment.

Upon the death of any individual who is receiving or who has received services in the event amounts remain unpaid for his care, treatment or training, and maintenance, the *Chief Executive Officer of the Behavioral Health Hospital Authority or the Department, as appropriate*, having reason to believe that the individual died possessed of real or personal property from which reimbursement may be had, shall prepare and acknowledge, as deeds are acknowledged, a notice showing the name of the individual and the actual per diem cost of maintenance due and shall file the notice within four months of the date of the individual's death in the office of the clerk of the court in which deeds are admitted to record in the county or city in which the real or personal property is located. The clerk of court shall record this notice as a lien is recorded, indexing it in the names of the individual and the *Chief Executive Officer of the Behavioral Health Hospital Authority or the Department, as appropriate*. The filing of this notice shall create a lien against the estate, both real and personal, of the deceased individual prior to all other claims of the same class except prior liens. No such claim shall be enforced against any real estate of the deceased individual while such real estate is occupied by the surviving spouse of the individual or while such real estate is occupied by any dependent child of the individual.

#### **§ 37.2-805. Voluntary admission.**

Any state ~~facility~~ *hospital or training center* shall admit any person requesting admission who has been (i) screened by the community services board or behavioral health authority that serves the county or city where the person resides or, if impractical, where the person is located, (ii) examined by a physician on the staff of the state ~~facility~~ *hospital or training center*, and (iii) deemed by the board or authority and the state ~~facility~~ *hospital or training center* physician to be in need of treatment, training, or habilitation in a state ~~facility~~ *hospital or training center*. Upon motion of the treating physician, a family member or personal representative of the person, or the community services board serving the county or city where the ~~facility~~ *state hospital or training center* is located, the county or city where the person resides, or the county or city where the person receives treatment, a hearing shall be held prior to the release date of any person who has been the subject of a temporary detention order and voluntarily admitted himself in accordance with subsection B of § 37.2-814 to determine whether such person should be ordered to mandatory outpatient treatment pursuant to subsection D of § 37.2-817 upon his release if such person, on at least two previous occasions within 36 months preceding the date of the hearing, has been (a) the subject of a temporary detention order and voluntarily admitted himself in accordance with subsection B of § 37.2-814 or (b) involuntarily admitted pursuant to § 37.2-817. A district court judge or special justice shall hold the hearing within 72 hours after receiving the motion for a mandatory outpatient treatment order; however, if the 72-hour period expires on a Saturday, Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday.

#### **§ 37.2-805.1. Admission of incapacitated persons pursuant to advance directives or by guardians.**

A. An agent for a person who has been determined to be incapable of making an informed decision may consent to the person's admission to a facility for no more than 10 calendar days if (i) prior to admission, a physician on the staff of or designated by the proposed admitting facility examines the person and states, in writing, that the person (a) has a mental illness, (b) is incapable of making an informed decision, as defined in § 54.1-2982, regarding admission, and (c) is in need of treatment in a facility; (ii) the proposed admitting facility is willing to admit the person; and (iii) the person has executed an advance directive in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) authorizing his agent to consent to his admission to a facility and, if the person protests the admission, he has included in his advance directive specific authorization for his agent to make health care decisions even in the event of his protest as provided in § 54.1-2986.2. In addition, for admission to a state ~~facility~~ *hospital or training center*, the person shall first be screened by the community services board that serves the city or county where the person resides or, if impractical, where the person is located.

B. A guardian who has been appointed for an incapacitated person pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 may consent to admission of that person to a facility for no more than 10 calendar days if (i) prior to admission, a physician on the staff of or designated by the proposed admitting facility examines the person and states, in writing, that the person (a) has a mental illness, (b)

2273 is incapable of making an informed decision, as defined in § 54.1-2982, regarding admission, and (c) is  
2274 in need of treatment in a facility; (ii) the proposed admitting facility is willing to admit the person; and  
2275 (iii) the guardianship order specifically authorizes the guardian to consent to the admission of such  
2276 person to a facility, pursuant to § 64.2-2009. In addition, for admission to a state ~~facility~~ *hospital or*  
2277 *training center*, the person shall first be screened by the community services board that serves the city  
2278 or county where the person resides or, if impractical, where the person is located.

2279 C. A person admitted to a facility pursuant to this section shall be discharged no later than 10  
2280 calendar days after admission unless, within that time, the person's continued admission is authorized  
2281 under other provisions of law.

2282 **§ 37.2-809. Involuntary temporary detention; issuance and execution of order.**

2283 A. For the purposes of this section:

2284 "Designee of the local community services board" means an examiner designated by the local  
2285 community services board who (i) is skilled in the assessment and treatment of mental illness, (ii) has  
2286 completed a certification program approved by the Department, (iii) is able to provide an independent  
2287 examination of the person, (iv) is not related by blood or marriage to the person being evaluated, (v) has  
2288 no financial interest in the admission or treatment of the person being evaluated, (vi) has no investment  
2289 interest in the facility detaining or admitting the person under this article, and (vii) except for employees  
2290 of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

2291 "Employee" means an employee of the local community services board who is skilled in the  
2292 assessment and treatment of mental illness and has completed a certification program approved by the  
2293 Department.

2294 "Investment interest" means the ownership or holding of an equity or debt security, including shares  
2295 of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or  
2296 debt instruments.

2297 B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or  
2298 upon his own motion and only after an evaluation conducted in-person or by means of a two-way  
2299 electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a  
2300 designee of the local community services board to determine whether the person meets the criteria for  
2301 temporary detention, a temporary detention order if it appears from all evidence readily available,  
2302 including any recommendation from a physician, clinical psychologist, or clinical social worker treating  
2303 the person, that the person (i) has a mental illness and that there exists a substantial likelihood that, as a  
2304 result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or  
2305 others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant  
2306 information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm  
2307 or to provide for his basic human needs; (ii) is in need of hospitalization or treatment; and (iii) is  
2308 unwilling to volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall  
2309 also consider, if available, (a) information provided by the person who initiated emergency custody and  
2310 (b) the recommendations of any treating or examining physician licensed in Virginia either verbally or  
2311 in writing prior to rendering a decision. Any temporary detention order entered pursuant to this section  
2312 shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not  
2313 preclude any other disclosures as required or permitted by law.

2314 C. When considering whether there is probable cause to issue a temporary detention order, the  
2315 magistrate may, in addition to the petition, consider (i) the recommendations of any treating or  
2316 examining physician, psychologist, or clinical social worker licensed in Virginia, if available, (ii) any  
2317 past actions of the person, (iii) any past mental health treatment of the person, (iv) any relevant hearsay  
2318 evidence, (v) any medical records available, (vi) any affidavits submitted, if the witness is unavailable  
2319 and it so states in the affidavit, and (vii) any other information available that the magistrate considers  
2320 relevant to the determination of whether probable cause exists to issue a temporary detention order.

2321 D. A magistrate may issue a temporary detention order without an emergency custody order  
2322 proceeding. A magistrate may issue a temporary detention order without a prior evaluation pursuant to  
2323 subsection B if (i) the person has been personally examined within the previous 72 hours by an  
2324 employee or a designee of the local community services board or (ii) there is a significant physical,  
2325 psychological, or medical risk to the person or to others associated with conducting such evaluation.

2326 E. An employee or a designee of the local community services board shall determine the facility of  
2327 temporary detention in accordance with the provisions of § 37.2-809.1 for all individuals detained  
2328 pursuant to this section. An employee or designee of the local community services board may change  
2329 the facility of temporary detention and may designate an alternative facility for temporary detention at  
2330 any point during the period of temporary detention if it is determined that the alternative facility is a  
2331 more appropriate facility for temporary detention of the individual given the specific security, medical,  
2332 or behavioral health needs of the person. In cases in which the facility of temporary detention is  
2333 changed following transfer of custody to an initial facility of temporary custody, transportation of the  
2334 individual to the alternative facility of temporary detention shall be provided in accordance with the

provisions of § 37.2-810. The initial facility of temporary detention shall be identified on the preadmission screening report and indicated on the temporary detention order; however, if an employee or designee of the local community services board designates an alternative facility, that employee or designee shall provide written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of Virginia, to the clerk of the issuing court of the name and address of the alternative facility. Subject to the provisions of § 37.2-809.1, if a facility of temporary detention cannot be identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808, the individual shall be detained in a state ~~facility~~ hospital for the treatment of individuals with mental illness, and such ~~facility~~ hospital shall be indicated on the temporary detention order. Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses and shall remain in the custody of law enforcement until the person is either detained within a secure facility or custody has been accepted by the appropriate personnel designated by either the initial facility of temporary detention identified in the temporary detention order or by the alternative facility of temporary detention designated by the employee or designee of the local community services board pursuant to this subsection. The person detained or in custody pursuant to this section shall be given a written summary of the temporary detention procedures and the statutory protections associated with those procedures.

F. Any facility caring for a person placed with it pursuant to a temporary detention order is authorized to provide emergency medical and psychiatric services within its capabilities when the facility determines that the services are in the best interests of the person within its care. The costs incurred as a result of the hearings and by the facility in providing services during the period of temporary detention shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention.

G. The employee or the designee of the local community services board who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the person. Where coverage by a third party payor exists, the facility seeking reimbursement under this section shall first seek reimbursement from the third party payor. The Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances covered by the third party payor have been received.

H. The duration of temporary detention shall be sufficient to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the person may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The person may be released, pursuant to § 37.2-813, before the 72-hour period herein specified has run.

I. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the petition is filed. However, a magistrate must again obtain the advice of an employee or a designee of the local community services board prior to issuing a subsequent order upon the original petition. Any petition for which no temporary detention order or other process in connection therewith is served on the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the clerk of the issuing court.

J. The Executive Secretary of the Supreme Court of Virginia shall establish and require that a magistrate, as provided by this section, be available seven days a week, 24 hours a day, for the purpose of performing the duties established by this section. Each community services board shall provide to each general district court and magistrate's office within its service area a list of its employees and designees who are available to perform the evaluations required herein.

K. For purposes of this section, a health care provider or designee of a local community services board or behavioral health authority shall not be required to encrypt any email containing information or medical records provided to a magistrate unless there is reason to believe that a third party will attempt to intercept the email.

L. If the employee or designee of the community services board who is conducting the evaluation pursuant to this section recommends that the person should not be subject to a temporary detention order, such employee or designee shall (i) inform the petitioner, the person who initiated emergency



2396 custody if such person is present, and an onsite treating physician of his recommendation; (ii) promptly  
2397 inform such person who initiated emergency custody that the community services board will facilitate  
2398 communication between the person and the magistrate if the person disagrees with recommendations of  
2399 the employee or designee of the community services board who conducted the evaluation and the person  
2400 who initiated emergency custody so requests; and (iii) upon prompt request made by the person who  
2401 initiated emergency custody, arrange for such person who initiated emergency custody to communicate  
2402 with the magistrate as soon as is practicable and prior to the expiration of the period of emergency  
2403 custody. The magistrate shall consider any information provided by the person who initiated emergency  
2404 custody and any recommendations of the treating or examining physician and the employee or designee  
2405 of the community services board who conducted the evaluation and consider such information and  
2406 recommendations in accordance with subsection B in making his determination to issue a temporary  
2407 detention order. The individual who is the subject of emergency custody shall remain in the custody of  
2408 law enforcement or a designee of law enforcement and shall not be released from emergency custody  
2409 until communication with the magistrate pursuant to this subsection has concluded and the magistrate  
2410 has made a determination regarding issuance of a temporary detention order.

2411 M. For purposes of this section, "person who initiated emergency custody" means any person who  
2412 initiated the issuance of an emergency custody order pursuant to § 37.2-808 or a law-enforcement officer  
2413 who takes a person into custody pursuant to subsection G of § 37.2-808.

2414 **§ 37.2-809.1. Facility of temporary detention.**

2415 A. In each case in which an employee or designee of the local community services board as defined  
2416 in § 37.2-809 is required to make an evaluation of an individual pursuant to subsection B, G, or H of  
2417 § 37.2-808, an employee or designee of the local community services board shall, upon being notified of  
2418 the need for such evaluation, contact the state *facility hospital* for the area in which the community  
2419 services board is located and notify the state *facility hospital* that the individual will be transported to  
2420 the *facility state hospital* upon issuance of a temporary detention order if no other facility of temporary  
2421 detention can be identified by the time of the expiration of the period of emergency custody pursuant to  
2422 § 37.2-808. Upon completion of the evaluation, the employee or designee of the local community  
2423 services board shall convey to the state *facility hospital* information about the individual necessary to  
2424 allow the state *facility hospital* to determine the services the individual will require upon admission.

2425 B. A state *facility hospital* may, following the notice in accordance with subsection A, conduct a  
2426 search for an alternative facility that is able and willing to provide temporary detention and appropriate  
2427 care to the individual, which may include another state *facility hospital* if the state *facility hospital*  
2428 notified in accordance with subsection A is unable to provide temporary detention and appropriate care  
2429 for the individual. Under no circumstances shall a state *facility hospital* fail or refuse to admit an  
2430 individual who meets the criteria for temporary detention pursuant to § 37.2-809 unless an alternative  
2431 facility that is able to provide temporary detention and appropriate care agrees to accept the individual  
2432 for temporary detention and the individual shall not during the duration of the temporary detention order  
2433 be released from custody except for purposes of transporting the individual to the state *facility hospital*  
2434 or alternative facility in accordance with the provisions of § 37.2-810. If an alternative facility is  
2435 identified and agrees to accept the individual for temporary detention, the state *facility hospital* shall  
2436 notify the community services board, and an employee or designee of the community services board  
2437 shall designate the alternative facility on the prescreening report.

2438 C. The facility of temporary detention designated in accordance with this section shall be one that  
2439 has been approved pursuant to regulations of the Board.

2440 **§ 37.2-824. Periodic review of all persons for purposes of retention.**

2441 The director of a state *facility hospital* shall conduct a review of the progress of each person  
2442 admitted to the *facility state hospital* at intervals of 30, 60, and 90 days after admission of the person,  
2443 and every six months thereafter to determine whether the person should be retained at the state *facility*  
2444 *hospital*. A record shall be kept of the findings of each review in the state *facility's hospital's* file on the  
2445 person.

2446 **§ 37.2-826. Disposition of nonresidents.**

2447 If it appears that the person examined has a mental illness and is not a resident of the  
2448 Commonwealth, the same proceedings shall be had with regard to him as if he were a resident of the  
2449 Commonwealth, and, if he is admitted to a state *facility hospital* under these proceedings, a statement of  
2450 the fact of his nonresidence and of the place of his domicile or residence or from where he came, as far  
2451 as known, shall accompany any petition respecting him. The Commissioner shall, as soon as practicable,  
2452 cause him to be returned to his family or friends, if known, or the proper authorities of the state or  
2453 country from which he came, if ascertained and such return is deemed expedient by the Commissioner.

2454 **§ 37.2-828. Receiving and maintaining federal prisoners in state hospitals.**

2455 The Commissioner is authorized to enter into a contract with the United States, through the Director  
2456 of the United States Bureau of Prisons or other authorized agent of the United States, for the reception,  
2457 maintenance, care, and observation in state *facilities hospitals*, or in those designated by the



Commissioner for the purpose, of any persons charged with a crime in the courts of the United States sitting in Virginia and committed by the courts to the state ~~facilities~~ *hospitals* for those purposes. All persons so admitted shall remain subject to the jurisdiction of the court by whom they were committed, and they may be returned to that court at any time for hearing or trial.

Any such contract shall require that the United States remit to the State Treasurer for each prisoner admitted specified per diem or other payments, or both, with such payments fixed by the contract.

The director of any state ~~facility~~ *hospital* to which a prisoner of the United States is admitted shall observe the person and, as soon as possible, report in writing to the court by which he is certified or committed as to his mental condition or other matters as the court may direct.

No contract made pursuant to this section shall obligate the Commonwealth or the Commissioner to receive a federal prisoner into any state ~~facility~~ *hospital* in which all available beds are needed for persons otherwise admitted, or in any other case where, in the opinion of the director, the admission of the prisoner would interfere with the care and treatment of other persons admitted or with the proper administration of the state ~~facility~~ *hospital*.

**§ 37.2-834. Arrest of certain persons involuntarily admitted.**

If a person involuntarily admitted to a ~~facility~~ *state hospital* escapes, the director may forthwith issue a warrant directed to any officer authorized to make arrests, who shall arrest the person and carry him back to the ~~facility~~ *state hospital* or to an appropriate state ~~facility~~ *hospital* that is in close proximity to the jurisdictions served by the arresting officer. The officer to whom the warrant is directed may execute the same in any part of the Commonwealth.

**§ 37.2-837. Discharge from state hospitals or training centers, conditional release, and trial or home visits for individuals.**

A. Except for an individual receiving services in a state hospital who is held upon an order of a court for a criminal proceeding, the director of a state hospital or training center may discharge, after the preparation of a discharge plan:

1. Any individual in a state hospital who, in his judgment, (a) is recovered, (b) does not have a mental illness, or (c) is impaired or not recovered but whose discharge will not be detrimental to the public welfare or injurious to the individual;

2. Any individual in a state hospital who is not a proper case for treatment within the purview of this chapter; or

3. Any individual in a training center who chooses to be discharged or, if the individual lacks the mental capacity to choose, whose legally authorized representative chooses for him to be discharged. Pursuant to regulations of the Centers for Medicare & Medicaid Services and the Department of Medical Assistance Services, no individual at a training center who is enrolled in Medicaid shall be discharged if the individual or his legally authorized representative on his behalf chooses to continue receiving services in a training center.

For all individuals discharged, the discharge plan shall be formulated in accordance with the provisions of § 37.2-505 by the community services board or behavioral health authority that serves the city or county where the individual resided prior to admission or by the board or authority that serves the city or county where the individual or his legally authorized representative on his behalf chooses to reside immediately following the discharge. The discharge plan shall be contained in a uniform discharge document developed by the Department and used by all state hospitals, training centers, and community services boards or behavioral health authorities, and shall identify (i) the services, including mental health, developmental, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the individual will require upon discharge into the community and (ii) the public or private agencies that have agreed to provide these services. If the individual will be housed in an assisted living facility, as defined in § 63.2-100, the discharge plan shall identify the facility, document its appropriateness for housing and capacity to care for the individual, contain evidence of the facility's agreement to admit and care for the individual, and describe how the community services board or behavioral health authority will monitor the individual's care in the facility. Prior to discharging an individual pursuant to subdivision A 1 or 2 who has not executed an advance directive, the director of a state hospital or his designee shall give to the individual a written explanation of the procedures for executing an advance directive in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) and an advance directive form, which may be the form set forth in § 54.1-2984.

B. The director may grant a trial or home visit to an individual receiving services in accordance with regulations adopted by the Board. The state ~~facility~~ *hospital* granting a trial or home visit to an individual shall not be liable for his expenses during the period of that visit. Such liability shall devolve upon the relative, conservator, person to whose care the individual is entrusted while on the trial or home visit, or the appropriate local department of social services of the county or city in which the individual resided at the time of admission pursuant to regulations adopted by the State Board of Social Services.

C. Any individual who is discharged pursuant to subdivision A 2 shall, if necessary for his welfare, be received and cared for by the appropriate local department of social services. The provision of public assistance or social services to the individual shall be the responsibility of the appropriate local department of social services as determined by regulations adopted by the State Board of Social Services. Expenses incurred for the provision of public assistance to the individual who is receiving 24-hour care while in an assisted living facility licensed pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2 shall be the responsibility of the appropriate local department of social services of the county or city in which the individual resided at the time of admission.

**§ 37.2-840. Transfer of individuals receiving services.**

A. The Commissioner may order the transfer of an individual receiving services from one state hospital to another or from one training center to another, and the Chief Executive Officer of the Behavioral Health Hospital Authority may order the transfer of an individual receiving services from one state hospital to another. When so transferred, in accordance with appropriate admission, certification, or involuntary admission criteria as provided in this chapter, the individual is hereby declared to be lawfully admitted to the state facility or training center to which he is transferred.

B. If the guardian, conservator, or relative of an individual receiving services in a licensed hospital refuses or is otherwise unable to provide properly for his care and treatment, the person in charge of the licensed hospital may:

1. Apply to the ~~Commissioner~~ Chief Executive Officer of the Behavioral Health Hospital Authority for the transfer of the individual to a state hospital; or

2. Apply to the Director of the United States Veterans Affairs Medical Center for the transfer of the individual to the center.

Upon the transfer, the state hospital or Veterans Affairs Medical Center may admit the individual under the authority of the admission or order applicable to the licensed hospital from which the individual was transferred. The transfer shall not alter any right of an individual under the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 nor shall the transfer divest a judge or special justice before whom a hearing or request therefor is pending of jurisdiction to conduct a hearing. Prior to accepting the transfer of any individual from a licensed hospital, the Commissioner or the Chief Executive Officer of the Behavioral Health Hospital Authority shall receive from that hospital a report that indicates that the individual is in need of further hospitalization. Upon admission of an individual to a state hospital pursuant to this section, the director of the state hospital shall notify the community services board or behavioral health authority that serves the city or county where the admitted individual resides of the individual's name and local address and of the location of the state hospital to which the individual has been admitted, provided that the individual or his guardian has authorized the release of the information.

C. Whenever an individual is admitted by a state hospital or training center, the Chief Executive Officer of the Behavioral Health Hospital Authority or the Commissioner, as appropriate, upon a recommendation by the community services board or behavioral health authority serving the individual's county or city of residence prior to his admission to the hospital or training center, may order the transfer of the individual to any other hospital, training center, or Veterans Affairs hospital, center, or other facility or installation. Such other hospital, training center, or Veterans Affairs hospital, center, or other facility or installation may admit the individual under the authority of the admission or order applicable to the hospital or training center from which the individual was transferred. The transfer shall not alter any right of the individual under the provisions of this chapter nor shall the transfer divest a judge or special justice before whom a hearing or request therefor is pending of jurisdiction to conduct such hearing.

**§ 37.2-841. Admission of veteran to, or transfer to or from, a Veterans Affairs hospital, center, or other facility or installation.**

Whenever it appears that a person with mental illness is a veteran eligible for treatment in a Veterans' Affairs hospital, center, or other facility or installation, the district court judge or special justice may, upon receipt of a certificate of eligibility from that hospital, center, or other facility or installation, order the person to that hospital, center, or other facility or installation, regardless of whether the person resides in Virginia. Any veteran who has been or is in a state hospital and is eligible for treatment in a Veterans Affairs hospital, center, or other facility or installation may be transferred to a Veterans Affairs hospital, center, or other facility or installation with the written consent of its manager. Any veteran admitted to a Veterans Affairs hospital, center, or other facility or installation, if he resided in Virginia prior to his admission and meets the criteria for admission to a state hospital, may be transferred to a state hospital with the written authorization of the ~~Commissioner~~ Chief Executive Officer of the Behavioral Health Hospital Authority.

**CHAPTER 12.**

**BEHAVIORAL HEALTH HOSPITAL AUTHORITY.**

**§ 37.2-1200. Definitions.**

"Authority" means the Behavioral Health Hospital Authority.

"Board" means the Board of Directors of the Behavioral Health Hospital Authority.

**§ 37.2-1201. Behavioral Health Hospital Authority created; purpose.**

A. The Behavioral Health Hospital Authority is created as an independent political subdivision of the Commonwealth, to control the delivery, financing, utilization, and health outcomes of public acute inpatient psychiatric services in the Commonwealth. Creation of the Authority for this purpose is in the public interest, serves a public purpose, and will promote the health, safety, and welfare of the people of the Commonwealth. The Authority's exercise of powers conferred by this chapter shall be deemed to be the performance of an essential governmental function and matters of public necessity for which public moneys may be spent and private property acquired.

B. The Authority shall consist of a Board of Directors, a Chief Executive Officer, and the agents and employees of the Authority.

C. The Board of Directors of the Authority is vested with the power to prepare, carry out, and operate behavioral health hospital projects and to establish facilities to provide goods and services relating to inpatient health care. The Board is vested with the responsibility to manage the statewide system of public psychiatric inpatient beds, with plenary power to prescribe and enforce regulations and conditions under which psychiatric care is provided and to promote the health, safety, and wellness of the people of the Commonwealth. The exercise of the power granted by this chapter shall be in all respects for the benefit of the citizens of the Commonwealth and for the promotion of their health, safety, and wellness. No part of the assets or net earnings of the Authority shall inure to the benefit of, or be distributable to, any private individual, except that reasonable compensation may be paid for services rendered to or for the Authority affecting on one or more of its purposes, and benefits may be conferred that are in conformity with said purposes, and no private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Authority. Nothing contained in this chapter shall be construed as a restriction or limitation upon any powers that the Board might otherwise have under any other law of the Commonwealth.

D. The Authority shall be the successor in interest to the Department of Behavioral Health and Developmental Services with regard to matters related to the establishment and operation of state hospitals. As such, the Authority stands in the place and stead of and assumes all rights and duties formerly of the Department of Behavioral Health and Developmental Services with regard to the establishment and operation of state hospitals, including all leases, contracts, grants-in-aid, and all other agreements of whatsoever nature; holds title to all realty and personalty formerly held by the Department of Behavioral Health and Developmental Services related to state hospitals; and may exercise all powers that might at any time past have been exercised by the Department of Behavioral Health and Developmental Services related to state hospitals.

**§ 37.2-1202. Powers of the Authority.**

The Authority is granted all powers necessary or convenient for the carrying out of its statutory purposes, including the power to:

1. Sue and be sued, implead and be impleaded, complain and defend in all courts;
2. Adopt, use, and alter at will a common seal;
3. Acquire, purchase, hold, use, lease or otherwise dispose of any property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority, and to lease as lessee, any property, real, personal or mixed, tangible or intangible, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the Board and to lease as lessor to any person, any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed, at such annual rental and on such terms and conditions as may be determined by the Board and to sell, transfer or convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the Board, provided that the terms of any conveyance or lease of real property shall be subject to the prior written approval of the Governor;
4. Fix, alter, charge and collect rates, rentals, fees, and other charges for the use of property of, the sale of products of, or services rendered by the Authority at rates to be determined by it for the purpose of providing for the payment of the expenses of the Authority;
5. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this chapter, including agreements with any person or federal agency;
6. Employ, at its discretion, consultants, researchers, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and agents as may be necessary, and to fix their compensation to be payable from funds made available to the Authority;
7. Receive and accept from any federal or private agency, foundation, corporation, association or

2642 person, grants or other aid to be expended in accomplishing the objectives of the Authority, and receive  
2643 and accept from the Commonwealth or any state, and any municipality, county or other political  
2644 subdivision thereof or from any other source, aid or contributions of either money, property, or other  
2645 things of value, to be held, used, and applied only for the purposes for which such grants and  
2646 contributions may be made. All federal moneys accepted under this section shall be accepted and  
2647 expended by the Authority upon such terms and conditions as are prescribed by the United States and  
2648 as are consistent with state law, and all state moneys accepted under this section shall be expended by  
2649 the Authority upon such terms and conditions as are prescribed by the Commonwealth;

2650 8. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business  
2651 shall be transacted and the manner in which the powers of the Authority shall be exercised and its  
2652 duties performed; and

2653 9. Do all acts and things necessary or convenient to carry out the powers granted to it by law, and  
2654 perform any act or carry out any function not inconsistent with state law that may be useful in carrying  
2655 out the provisions of this chapter.

2656 **§ 37.2-1203. Board of Directors; appointment; terms; chairman and vice-chairman; meetings;**  
2657 **compensation.**

2658 A. The Authority shall be governed by a Board of Directors, which shall consist of five nonlegislative  
2659 citizen members appointed by the Governor and confirmed by the majority vote of those voting in each  
2660 house of the General Assembly.

2661 B. After the initial staggering of terms, nonlegislative citizen members shall be appointed for terms of  
2662 four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired  
2663 term and shall be made in the same manner as the original appointment. Members may be reappointed.

2664 C. The Board shall elect a chairman and vice-chairman annually from among its members. A  
2665 majority of the members of the Board shall constitute a quorum for the transaction of the Authority's  
2666 business, and no vacancy in the membership shall impair the right of a quorum to exercise the rights  
2667 and perform all the duties of the Authority.

2668 D. The Board shall meet at least quarterly for the transaction of its business. Additional meetings  
2669 may be held at any time upon the call of the chairman or the Chief Executive Officer or upon the  
2670 written request of a majority of the members of the Board.

2671 E. The Board shall have the power and duty:

2672 1. To adopt such regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)  
2673 as may be necessary to carry out the provisions of this chapter;

2674 2. To develop and establish programmatic and fiscal policies governing the operation of state  
2675 hospitals;

2676 3. To review and comment on all budgets and requests for appropriations of the Authority prior to  
2677 their submission to the Governor and on all applications for federal funds;

2678 4. To monitor activities of the Authority and its effectiveness in implementing the policies of the  
2679 Board;

2680 5. To advise the Governor, Chief Executive Officer, and General Assembly on matters relating to the  
2681 establishment and operation of state hospitals;

2682 6. To ensure the provision of education and training for school-aged individuals receiving services in  
2683 state hospitals; and

2684 7. To change the names of state hospitals.

2685 F. Members of the Board shall receive annually such salary, compensation, and reimbursement of  
2686 expenses for the performance of their official duties as set forth in the general appropriation act for  
2687 members of the House of Delegates when the General Assembly is not in session, except that the  
2688 chairman of the Board shall receive annually such salary, compensation, and reimbursement of expenses  
2689 for the performance of his official duties as set forth in the general appropriation act for members of  
2690 the Senate when the General Assembly is not in session.

2691 G. No member of the board or his spouse or any member of his immediate family shall make any  
2692 contribution to a candidate for office or officeholder at the local or state level or cause such a  
2693 contribution to be made on his behalf.

2694 H. The provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.)  
2695 shall apply to members of the Board.

2696 **§ 37.2-1204. Chief Executive Officer; appointment; powers and duties.**

2697 A. The Chief Executive Officer of the Authority shall be appointed by the Governor and confirmed by  
2698 the affirmative vote of a majority of those voting in each house of the General Assembly. The Chief  
2699 Executive Officer shall not be a member of the Board. The Chief Executive Officer shall hold, at  
2700 minimum, a baccalaureate degree in business or a related field of study and shall have demonstrated  
2701 experience or expertise in the direct management, supervision, or control of a business or legal affairs.

2702 B. The Chief Executive Officer shall receive such compensation as may be determined by the Board  
2703 and approved by the Governor, including any performance bonuses or incentives as the Board may

2704 deem advisable.

2705 C. The Chief Executive Officer shall carry out the powers and duties conferred upon him by the  
2706 board or imposed upon him by law, and shall meet the performance measures or targets set by the  
2707 Board and approved by the Governor. The Chief Executive Officer may be removed from office by the  
2708 Governor for cause, including malfeasance, misfeasance, incompetence, misconduct, neglect of duty,  
2709 absenteeism, conflict of interest, failure to meet performance measures or targets, failure to carry out  
2710 the policies of the Commonwealth as established in the Constitution or by the General Assembly, or  
2711 refusal to carry out a lawful directive of the Governor. The Chief Executive Officer shall devote his full  
2712 time to the performance of his official duties and shall not be engaged in any other profession or  
2713 occupation.

2714 D. The Chief Executive Officer shall have the power and duty to:

2715 1. Serve as the secretary to the Board and keep true and full record of all proceedings of the  
2716 Authority and preserve at the Authority's general office all books, documents, and papers of the  
2717 Authority;

2718 2. Exercise such powers and perform such duties as may be delegated to him by the Board or as  
2719 may be conferred or imposed upon him by law;

2720 3. Supervise and manage the Authority and state hospitals operated by the Authority;

2721 4. Employ or retain such employees subordinate to the Chief Executive Officer as maybe necessary  
2722 to fulfill the duties of the Authority conferred upon the Chief Executive Officer, subject to the approval  
2723 of the Board;

2724 5. Make and enter into all contracts and agreements necessary or incidental to the performance of  
2725 the Authority's duties and execution of its powers under this chapter, including contracts with the United  
2726 States, other states, and agencies and governmental subdivisions of the Commonwealth, consistent with  
2727 policies and regulations of the Board and federal and state law;

2728 6. Accept, hold, and enjoy gifts, donations, and bequests on behalf of the Authority from the United  
2729 States government, agencies and instrumentalities thereof, and any other source, subject to the approval  
2730 of the Governor. To these ends, the Chief Executive Officer shall have the power to comply with  
2731 conditions and execute agreements that may be necessary, convenient, or desirable, consistent with  
2732 policies and regulations of the Board;

2733 7. Accept, execute, and administer any trust in which the Authority may have an interest, under the  
2734 terms of the instruments creating the trust, subject to the approval of the Governor;

2735 8. Transfer between state hospitals school-age individuals who have been identified as appropriate to  
2736 be placed in public school programs and to negotiate with other school divisions for placements in  
2737 order to ameliorate the impact on those school divisions located in a jurisdiction in which a state  
2738 hospital is located;

2739 9. Provide to the Director of the Commonwealth's designated protection and advocacy system,  
2740 established pursuant to § 51.5-39.13, a written report setting forth the known facts of (i) critical  
2741 incidents, as that term is defined in § 37.2-709.1, or deaths of individuals receiving services in state  
2742 hospitals, within 15 working days of such critical incident or death;

2743 10. Work with the appropriate state and federal entities to ensure that any individual who has  
2744 received services in a state hospital for more than one year has possession of or receives prior to  
2745 discharge any of the following documents, when they are needed to obtain the services contained in his  
2746 discharge plan: a Department of Motor Vehicles-approved identification card that will expire 90 days  
2747 from issuance, a copy of his birth certificate if the individual was born in the Commonwealth, or a  
2748 social security card from the Social Security Administration. State hospital directors, as part of their  
2749 responsibilities pursuant to § 37.2-837, shall implement this provision when discharging individuals; and

2750 11. Make recommendations to the Board for legislative and regulatory changes necessary to carry  
2751 out the powers and duties established by this chapter.

2752 E. Neither the Chief Executive Officer nor his spouse nor any member of his immediate family shall  
2753 make any contribution to a candidate for office or officeholder at the local or state level or cause such  
2754 a contribution to be made on his behalf.

2755 F. The provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.)  
2756 shall apply to the Chief Executive Officer.

2757 **§ 37.2-1205. Employees of the Authority.**

2758 A. Employees of the Authority shall be considered employees of the Commonwealth. Employees of the  
2759 Authority shall be eligible for membership in the Virginia Retirement System or other retirement plan  
2760 authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1 and participation in all health  
2761 and related insurance and other benefits, including premium conversion and flexible benefits, available  
2762 to state employees as provided by law. Employees of the Authority shall be employed on such terms and  
2763 conditions as established by the Board. The Board shall develop and adopt policies and procedures that  
2764 afford its employees grievance rights, ensure that employment decisions shall be based upon the merit

2765 and fitness of applicants, and prohibit discrimination because of race, color, religion, national origin,  
2766 sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender  
2767 identity, or disability. Notwithstanding any other provision of law, the Board shall develop, implement,  
2768 and administer a paid leave program, which may include annual, personal, and sick leave or any  
2769 combination thereof. All other leave benefits shall be administered in accordance with Chapter 11  
2770 (§ 51.1-1100 et seq.) of Title 51.1, except as otherwise provided by this section.

2771 B. Notwithstanding any other provision of law, the Authority shall give preference in hiring to  
2772 special agents and employees of the Department of Behavioral Health and Developmental Services.

2773 C. The Authority shall issue a written notice to all persons whose employment under Chapter 7  
2774 (§ 37.2-700 et seq.) shall be transferred to the Authority. Each person whose employment shall be  
2775 transferred to the Authority may, by written request made within 180 days of the date on which such  
2776 notice was provided, elect not to become employed by the Authority.

2777 D. In order to facilitate an orderly and efficient transition and ensure the contention of operations  
2778 during the transition of responsibility for the public behavioral health system from the Department of  
2779 Behavioral Health and Developmental Services to the Authority, the Authority shall have discretion to  
2780 determine the date upon which a person's employment shall be transferred from the Department of  
2781 Behavioral Health and Developmental Services to the Authority, provided that such transition shall not  
2782 occur prior to July 1, 2023, unless the person and the Authority agree to an earlier transfer, nor after  
2783 December 1, 2023.

2784 E. Any employee of the Department of Behavioral Health and Developmental Services who (i) is not  
2785 offered the opportunity to transfer to employment by the Authority, (ii) is not offered a position with the  
2786 Authority for which the employee is qualified, or (iii) is offered a position with the Authority that  
2787 requires relocation or a reduction in salary shall be eligible for the severance benefits conferred by the  
2788 provisions of the Workforce Transition Act (§ 2.2-3200 et seq.). Any employee who accepts employment  
2789 with the Authority shall not be considered to be involuntarily separated from state employment and shall  
2790 not be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act  
2791 (§ 2.2-3200 et seq.).

2792 F. Notwithstanding any other provision of law to the contrary, any person whose employment is  
2793 transferred from the Department of Behavioral Health and Developmental Services to the Authority  
2794 pursuant to this section:

2795 1. Who is a member of any plan for providing health insurance coverage pursuant to Chapter 28  
2796 (§ 2.2-2800 et seq.) of Title 2.2 shall continue to be a member of such health insurance plan under the  
2797 same terms and conditions as if no transition of employment had occurred.

2798 2. Who is a member of the Virginia Retirement System or other retirement plan authorized by Article  
2799 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1 shall continue to be a member of the Virginia  
2800 Retirement System or such other authorized retirement plan under the same terms and conditions as if  
2801 no transfer of employment had occurred.

2802 **§ 37.2-1206. Financial interests of the Board, employees, and family members prohibited.**

2803 No Board member or employee of the Authority shall (i) be a principal stockholder or (ii) otherwise  
2804 have any financial interest, direct or indirect, in any entity subject to the provisions of this chapter.

2805 **§ 37.2-1207. Moneys of the Authority.**

2806 A. All moneys of the Authority, from whatever source derived, shall be paid directly and promptly to  
2807 the state treasury or shall be deposited to the credit of the State Treasurer in a state depository, without  
2808 any deductions on account of salaries, fees, costs, charges, expenses, refunds, or claims of any  
2809 description whatsoever, as required by § 2.2-1802. All moneys paid into the state treasury shall be set  
2810 aside as and constitute an Enterprise Fund, subject to appropriation, for the payment of (i) salaries and  
2811 remuneration of the members, agents, and employees of the Board and (ii) all costs and expenses  
2812 incurred in the administration of this chapter.

2813 B. The accounts and records of the Authority showing the receipt and disbursement of funds from  
2814 whatever source derived shall be in a form prescribed by the Auditor of Public Accounts. The Auditor of  
2815 Public Accounts or his legally authorized representative shall annually examine the accounts and books  
2816 of the Authority. The Authority shall submit an annual report to the Governor and the General Assembly  
2817 on or before December 1 of each year. Such report shall contain the audited annual financial  
2818 statements of the Authority for the year ending the previous June 30. The Authority shall also submit a  
2819 six-year plan detailing its assumed revenue forecast, assumed operating costs, capital costs including  
2820 lease payments, major acquisitions of services and tangible or intangible property, and any material  
2821 changes to the policies and procedures issued by the Authority related to procurement or personnel.

2822 **§ 37.2-1208. Lease and purchase of property by the Board.**

2823 The Authority shall be exempt from the provisions of § 2.2-1149 and any rules, regulations, and  
2824 guidelines of the Division of Engineering and Buildings in relation to leases of real property into which  
2825 it enters.

2826 **§ 37.2-1209. Exemption of Authority from personnel and procurement procedures; information**

systems; etc.

A. The provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.), the Virginia Public Procurement Act (§ 2.2-4300 et seq.), Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2, and Article 2 (§ 51.1-1104 et seq.) of Chapter 11 of Title 51.1 shall not apply to the Authority in the exercise of any power conferred under this chapter.

B. To effect its implementation, the procurement of goods, services, insurance, and construction and disposition of surplus materials by the Authority shall be exempt from:

1. State agency requirements regarding disposition of surplus materials and distribution of proceeds from the sale or recycling of surplus materials under §§ 2.2-1124 and 2.2-1125;

2. The requirement of purchasing from the Department for the Blind and Vision Impaired pursuant to § 2.2-1117; and

3. Any other state law, regulation, or requirement relating to the procurement of goods, services, insurance, and construction, including Article 3 (§ 2.2-1109 et seq.) of Chapter 11 of Title 2.2, regarding duties, responsibilities, and authorities of the Division of Purchases and Supply of the Department of General Services, and Article 4 (§ 2.2-1129 et seq.) of Chapter 11 of Title 2.2, regarding the review and oversight of the Division of Engineering and Buildings of the Department of General Services of contracts for the construction of the Authority's capital projects and construction-related professional services under § 2.2-1132.

C. The Authority (i) may purchase from and participate in all statewide contracts for goods and services, including information technology goods and services; (ii) shall use directly or by integration or interface the Commonwealth's electronic procurement system subject to the terms and conditions agreed upon between the Authority and the Department of General Services; and (iii) shall post on the Department of General Services central electronic procurement website all Invitations to Bid, Requests for Proposals, sole source award notices, and emergency award notices to ensure visibility and access to the Authority's procurement opportunities on one website.

#### **§ 40.1-28.9. Definitions; determining wage of tipped employee.**

A. As used in this article:

"Adjusted state hourly minimum wage" means the amount established by the Commissioner pursuant to subsection H of § 40.1-28.10.

"Domestic service" means services related to the care of an individual in a private home or the maintenance of a private home or its premises, on a permanent or temporary basis, including services performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs.

"Employee" includes any individual employed by an employer. "Employee" includes a home care provider. "Employee" does not include the following:

1. Any person employed as a farm laborer or farm employee;

2. Any person engaged in the activities of an educational, charitable, religious, or nonprofit organization where the relationship of employer-employee does not, in fact, exist or where the services rendered to such organization are on a voluntary basis;

3. Caddies on golf courses;

4. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and operators;

5. Any person under the age of 18 in the employ of his parent or legal guardian;

6. Any person confined in any penal or corrective institution of the Commonwealth or any of its political subdivisions or admitted to a state hospital operated by the Behavioral Health Hospital Authority or training center operated by the Department of Behavioral Health and Developmental Services;

7. Any person employed by a summer camp for boys, girls, or both boys and girls;

8. Any person under the age of 16, regardless of by whom employed;

9. Any person who is paid pursuant to 29 U.S.C. § 214(c) of the Fair Labor Standards Act of 1938, as amended;

10. Students participating in a bona fide educational program;

11. Any person who is less than 18 years of age and who is currently enrolled on a full-time basis in any secondary school, institution of higher education, or trade school, provided that the person is not employed more than 20 hours per week;

12. Any person of any age who is currently enrolled on a full-time basis in any secondary school, institution of higher education, or trade school and is in a work-study program or its equivalent at the institution at which he is enrolled as a student;

13. Any person who works as a babysitter for fewer than 10 hours per week;

14. Any person participating as an au pair in the U.S. Department of State's Exchange Visitor Program governed by 22 C.F.R. § 62.31;

15. Any individual employed as a temporary foreign worker as governed by 20 C.F.R. Part 655; and



16. Any person who is exempt from the federal minimum wage pursuant to 29 U.S.C. § 213(a)(3).

"Employer" includes any individual, partnership, association, corporation, or business trust or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee. "Employer" includes the Commonwealth, any of its agencies, institutions, or political subdivisions, and any public body.

"Federal minimum wage" means the minimum wage or, if applicable, the federal training wage prescribed by the U.S. Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

"Home care provider" means an individual who provides (i) home health services, including services provided by or under the direct supervision of any health care professional under a medical plan of care in a patient's residence on a visit or hourly basis to patients who have or are at risk of injury, illness, or a disabling condition and require short-term or long-term interventions, or (ii) personal care services, including assistance in personal care to include activities of a daily living provided in an individual's residence on a visit or hourly basis to individuals who have or are at risk of an illness, injury, or disabling condition.

"Tipped employee" means an employee who in the course of employment customarily and regularly receives tips totaling more than \$30 each month from persons other than the employee's employer.

"Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash on demand or upon acceptance at full value. "Wages" includes the reasonable cost to the employer of furnishing meals and lodging to an employee if such board or lodging is customarily furnished by the employer and used by the employee.

B. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, except in the case of an employee who establishes by clear and convincing evidence that the actual amount of tips received by him was less than the amount determined by the employer. In such case, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount. An employer shall not classify an individual as a tipped employee if the individual is prohibited by applicable federal or state law or regulation from soliciting tips.

#### **§ 46.2-1229. Enforcement of parking regulations of State Board of Behavioral Health and Developmental Services.**

Any regulations of the State Board of Behavioral Health and Developmental Services pursuant to the provisions of § 37.2-203 relating to parking on property owned or controlled by the Department of Behavioral Health and Developmental Services shall provide:

1. That uncontested citations issued thereunder shall be paid to the administrative official or officials appointed under the provisions of this section in the locality in which the part of the ~~state facility~~ *training center* lies, who shall promptly deposit the sums into the state treasury as a special revenue of the Department of Behavioral Health and Developmental Services; and

2. That contested or delinquent citations shall be certified or complaint, summons, or warrant shall be issued as provided in § 46.2-1225 to the general district court in whose jurisdiction the ~~state facility~~ *training center* lies. Any sum collected by the court, minus court costs, shall be promptly deposited by the clerk into the state treasury as a special revenue of the Department of Behavioral Health and Developmental Services.

#### **§ 64.2-2000. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Advance directive" shall have the same meaning as provided in § 54.1-2982.

"Annual report" means the report required to be filed by a guardian pursuant to § 64.2-2020.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." "Conservator" includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals.

"Estate" includes both real and personal property.

"Facility" means a state or licensed hospital, training center, psychiatric hospital, or other type of residential or outpatient mental health or mental retardation facility. ~~When modified by the word "state," "facility" means a state hospital or training center operated by the Department of Behavioral Health and Developmental Services, including the buildings and land associated with it.~~

"Guardian" means a person appointed by the court who has the powers and duties set out in § 64.2-2019, or § 63.2-1609 if applicable, and who is responsible for the personal affairs of an



incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public guardian, it may also serve as a guardian for other individuals.

"Guardian ad litem" means an attorney appointed by the court to represent the interests of the respondent and whose duties include evaluation of the petition for guardianship or conservatorship and filing a report with the court pursuant to § 64.2-2003.

"Incapacitated person" means an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment alone shall not be considered sufficient evidence that the individual is an incapacitated person within the meaning of this definition. A finding that a person is incapacitated shall be construed as a finding that the person is "mentally incompetent" as that term is used in Article II, Section 1 of the Constitution of Virginia and Title 24.2 unless the court order entered pursuant to this chapter specifically provides otherwise.

"Individualized education plan" or "IEP" means a plan or program developed annually to ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational institution receives specialized instruction and related services as provided by 20 U.S.C. § 1414.

"Individual receiving services" or "individual" means a current direct recipient of public or private mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and includes the terms "consumer," "patient," "resident," "recipient," or "client."

"Limited conservator" means a person appointed by the court who has only those responsibilities for managing the estate and financial affairs of an incapacitated person as specified in the order of appointment.

"Limited guardian" means a person appointed by the court who has only those responsibilities for the personal affairs of an incapacitated person as specified in the order of appointment.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Petition" means the document filed with a circuit court to initiate a proceeding to appoint a guardian or conservator.

"Power of attorney" has the same meaning ascribed to it in § 64.2-1600.

"Property" includes both real and personal property.

"Respondent" means an allegedly incapacitated person for whom a petition for guardianship or conservatorship has been filed.

"Supported decision-making agreement" has the same meaning ascribed to it in § 37.2-314.3.

"Temporary conservator" means a person appointed by a court for a limited duration of time as specified in the order of appointment.

"Temporary guardian" means a person appointed by a court for a limited duration of time as specified in the order of appointment.

"Transition plan" means the plan that is required as part of the IEP used to help students and families prepare for the future after the student reaches the age of majority.

**§ 64.2-2028. Behavioral Health Hospital Authority or Department of Behavioral Health and Developmental Services to be notified in certain cases.**

In any suit or action for the appointment of a fiduciary who is to have the management and control of funds belonging to any person who has been admitted to any state facility, hospital, the Behavioral Health Hospital Authority shall receive notice of the suit or action, and the clerk of any court in which the suit or action is pending shall notify the Chief Executive Officer of the Behavioral Health Hospital Authority of that fact.

**3011**     *In any suit or action for the appointment of a fiduciary who is to have the management and control*  
**3012**     *of funds belonging to any person who has been admitted to any training center, the Department of*  
**3013**     Behavioral Health and Developmental Services shall receive notice of the suit or action, and the clerk of  
**3014**     any court in which the suit or action is pending shall notify the Commissioner of Behavioral Health and  
**3015**     Developmental Services of that fact.  
**3016**     **2. That § 37.2-316 of the Code of Virginia is repealed.**  
**3017**     **3. That the initial appointments of nonlegislative citizen members of the Behavioral Health**  
**3018**     **Hospital Authority, as created by this act, shall be staggered as follows: two members appointed**  
**3019**     **by the Governor for a term of two years; two members appointed by the Governor for a term of**  
**3020**     **three years; and one member appointed by the Governor for a term of four years.**  
**3021**     **4. That the Board of Directors of the Behavioral Health Hospital Authority, as created by this act,**  
**3022**     **shall adopt regulations to implement the provisions of this act.**