

# VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

## CHAPTER 572

*An Act to amend and reenact §§ 2.2-203, 2.2-510, 2.2-2411, 2.2-2640, 2.2-2646, 2.2-2905, 2.2-3705, 2.2-5302, 37.1-42.1, 37.1-42.2, 51.5-1, 51.5-2, 51.5-40, 51.5-46, 63.1-182.1 and 63.1-314.8 of the Code of Virginia, to amend the Code of Virginia by adding in Title 51.5 a chapter numbered 8.1, consisting of sections numbered 51.5-39.1 through 51.5-39.12, and to repeal Chapter 8 (§§ 51.5-36 through 51.5-39) of Title 51.5 of the Code of Virginia, relating to persons with mental retardation, developmental disabilities or mental illness.*

[H 9]

Approved April 6, 2002

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

**1. That §§ 2.2-203, 2.2-510, 2.2-2411, 2.2-2640, 2.2-2646, 2.2-2905, 2.2-3705, 2.2-5302, 37.1-42.1, 37.1-42.2, 51.5-1, 51.5-2, 51.5-40, 51.5-46, 63.1-182.1 and 63.1-314.8 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 51.5 a chapter numbered 8.1, consisting of sections numbered 51.5-39.1 through 51.5-39.12, as follows:**

§ 2.2-203. Position established; agencies for which responsible.

The position of Secretary of Administration (the "Secretary") is created. The Secretary shall be responsible to the Governor for the following agencies and boards: Department of Human Resource Management, Department of General Services, ~~Department for the Rights of Virginians with Disabilities~~, Compensation Board, Secretary of the Commonwealth, Department of Employment Dispute Resolution, Department of Veterans' Affairs, Virginia Veterans Care Center Board of Trustees, Commission on Local Government, Charitable Gaming Commission, and Virginia Public Broadcasting Board. The Governor may, by executive order, assign any other state executive agency to the Secretary, or reassign any agency listed above to another Secretary.

§ 2.2-510. Employment of special counsel generally.

No special counsel shall be employed for or by the Governor or any state department, institution, division, commission, board, bureau, agency, entity, official, justice of the Supreme Court, or judge of any circuit court or district court except in the following cases:

1. Where because of the nature of the service to be performed, the Attorney General's office is unable to render such service, the Governor after issuing an exemption order stating with particularity the facts and reasons upon which he bases his conclusion that the Attorney General's office is unable to render such service, may employ special counsel to render such service as the Governor may deem necessary and proper.

2. In cases of legal services in civil matters to be performed for the Commonwealth, where it is impracticable or uneconomical for the Attorney General to render such service, he may employ special counsel whose compensation shall be paid out of the appropriation for the Attorney General's office.

3. In cases of legal services in civil matters to be performed for any state department, institution, division, commission, board, bureau, agency, entity, official, justice of the Supreme Court, or judge of any circuit court or district court where it is impracticable or uneconomical for the Attorney General's office to render such service, special counsel may be employed but only upon the written recommendation of the Attorney General, who shall approve all requisitions drawn upon the Comptroller for warrants as compensation for such special counsel before the Comptroller shall have authority to issue such warrants.

4. In cases where the Attorney General certifies to the Governor that it would be improper for the Attorney General's office to render legal services due to a conflict of interests, or that he is unable to render certain legal services, the Governor may employ special counsel or other assistance to render such services as may be necessary.

5. *In cases of legal services in civil matters to be performed by the Virginia Office for Protection and Advocacy pursuant to Chapter 8.1 (§ 51.5-39.1 et seq.) of Title 51.5.*

§ 2.2-2411. Public Guardian and Conservator Advisory Board; purpose; membership; terms.

A. The Public Guardian and Conservator Advisory Board (the "Board") is established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Board shall be to report to and advise the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services on the means for effectuating the purposes of this article and shall assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators pursuant to Chapter 4 (§ 37.1-128.01 et seq.) of Title 37.1.

B. The Board shall consist of no more than fifteen members who shall be appointed by the Governor as follows: one representative of the Virginia Guardianship Association; one representative of the Virginia Area Agencies on Aging, one representative of the Virginia State Bar, one active or retired

circuit court judge upon recommendation of the Chief Justice of the Supreme Court, one representative of the Association of Retarded Citizens, one representative of the Virginia Alliance for the Mentally Ill, one representative of the Virginia League of Social Service Executives, one representative of the Association of Community Service Boards, the Commissioner of the Department of Social Services or his designee, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services or his designee, the Director of the Virginia ~~Department for the Rights of Virginians with Disabilities~~ *Office for Protection and Advocacy* or his designee, and one person who is a member of the Commonwealth Council on Aging and such other individuals who may be qualified to assist in the duties of the Board.

C. The Commissioners of the Departments of Social Services and Mental Health, Mental Retardation and Substance Abuse Services or their designees, the Director of the Virginia ~~Department for the Rights of Virginians with Disabilities~~ *Office for Protection and Advocacy* or his designee, and the representative of the Commonwealth Council on Aging, shall serve terms coincident with their terms of office or in the case of designees, the term of the Commissioner or Director. Of the other members of the Board, five of the appointees shall serve for four-year terms and the remainder shall serve for three-year terms. No member shall serve more than two successive terms. A vacancy occurring other than by expiration of term shall be filled for the unexpired term.

D. Each year, the Board shall elect a chairman and a vice-chairman from among its members. Five members of the Board shall constitute a quorum.

E. Members shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2823.

§ 2.2-2640. Interagency Coordinating Council on Housing for the Disabled; membership; chairman.

A. The Interagency Coordinating Council on Housing for the Disabled (the "Council") is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The Council shall consist of one representative, to be appointed by the agency executive, from each of the following: Department of Professional and Occupational Regulation, Department of Housing and Community Development, Virginia Housing Development Authority, ~~Department for Rights of Virginians With Disabilities~~ *Virginia Office for Protection and Advocacy*, Department for the Aging, Department for the Deaf and Hard-of-Hearing, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services, Department of Social Services and Department for the Blind and Vision Impaired. The Secretary of Commerce and Trade and Secretary of Health and Human Resources shall serve ex officio on the Council. The appropriate agency executive may appoint additional members as required.

B. The Council shall annually elect a chairman. Each agency shall contribute a pro rata share of the required support services.

§ 2.2-2646. Specialized Transportation Technical Advisory Committee.

In accordance with § 2.2-2645, the Specialized Transportation Technical Advisory Committee is created to assist the Council. The Committee shall be composed of representatives from the following agencies: the Department for the Aging, the Department for the Deaf and Hard-of-Hearing, the Department of Education, the Department of Medical Assistance Services, the Department of Mental Health, Mental Retardation and Substance Abuse Services, the ~~Department for Rights of Virginians with Disabilities~~ *Virginia Office for Protection and Advocacy*, the Department of Rehabilitative Services, the Department of Social Services, the Department of Rail and Public Transportation and the Department for the Blind and Vision Impaired and three representatives of public transportation providers or transportation district commissions to be appointed by the Council.

§ 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 and the naval militia;
10. Student employees in institutions of learning, 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 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 State Lottery Department;
17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs;
18. Employees of the Virginia Commonwealth University Health System Authority;
19. Employees of the University of Virginia Medical Center. Any changes in compensation plans for such employees shall be subject to the review and approval of the Board of Visitors of the University of Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);
20. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions shall be deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve in this exempt capacity;
21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);
22. Officers and employees of the Virginia Port Authority;
23. Employees of the Virginia College Savings Plan; and
24. Directors of state facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to § 37.1-42.2; and

25. *The Director of the Virginia Office for Protection and Advocacy.*

§ 2.2-3705. Exclusions to application of chapter.

A. The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records of all investigations of applications for licenses and permits, and all licensees and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, or the Charitable Gaming Commission.
2. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.
3. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of eighteen years. For scholastic records of students under the age of eighteen years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

4. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

5. Medical and mental records, except that such records may be personally reviewed by the subject person or a physician of the subject person's choice. However, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

Where the person who is the subject of medical records is confined in a state or local correctional

facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the medical records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Medical records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the medical records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any patient-identifying information. Where the person who is the subject of medical and mental records is under the age of eighteen, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. In instances where the person who is the subject thereof is an emancipated minor or a student in a public institution of higher education, the right of access may be asserted by the subject person.

6. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly or the Division of Legislative Services; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. However, no record which is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.

As used in this subdivision:

"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

7. Written advice of legal counsel to state, regional or local public bodies or public officials and any other records protected by the attorney-client privilege.

8. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § 2.2-3711.

9. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

10. Library records that can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

11. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body.

As used in this subdivision, "test or examination" shall include (i) any scoring key for any such test or examination and (ii) any other document that would jeopardize the security of the test or examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by law, or limit access to individual records as provided by law. However, the subject of such employment tests shall be entitled to review and inspect all records relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, the test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

12. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

13. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

15. Reports, documentary evidence and other information as specified in §§ 2.2-706 and 63.1-55.4.
16. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or § 62.1-134.1.
17. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.
18. Vendor proprietary information software that may be in the official records of a public body. For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.
19. Financial statements not publicly available filed with applications for industrial development financings.
20. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.
21. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.
22. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Department of Business Assistance, the Virginia Economic Development Partnership, the Virginia Tourism Authority, or local or regional industrial or economic development authorities or organizations, used by the Department, the Partnership, the Authority, or such entities for business, trade and tourism development; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by the Partnership, where competition or bargaining is involved and where, if such records are made public, the financial interest of the governmental unit would be adversely affected.
23. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.
24. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.
25. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.
26. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.
27. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.
28. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.
29. Records and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of formulating advisory opinions to members on standards of conduct, or both.
30. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service.
31. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-2638, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.
32. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1. However, nothing in this section shall prohibit disclosure of information from the records of completed

investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

33. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § 15.2-2304 or § 15.2-2305. However, access to one's own information shall not be denied.

34. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.

35. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

36. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

37. Records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

38. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection and copying upon completion of the study or investigation.

39. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit that would identify specific trade secrets or other information the disclosure of which would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

40. Records concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of this title, or by any county, city, or town.

41. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

42. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3.

43. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i) Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; or (iv) committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the

consent of the subject person.

44. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

45. Documentation or other information that describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

46. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

47. In the case of corporations organized by the Virginia Retirement System (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors and (ii) records concerning the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate, the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.

48. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

49. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

50. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

51. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

52. Information required to be provided pursuant to § 54.1-2506.1.

53. Confidential information designated as provided in subsection D of § 2.2-4342 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

54. All information and records acquired during a review of any child death by the State Child Fatality Review team established pursuant to § 32.1-283.1, during a review of any child death by a local or regional child fatality review team established pursuant to § 32.1-283.2, and all information and records acquired during a review of any death by a family violence fatality review team established pursuant to § 32.1-283.3.

55. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

56. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.), pursuant to a promise of confidentiality from the responsible public entity, used by the responsible public entity for purposes related to the development of a qualifying transportation facility; and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995, where, if such records were made public, the financial interest of the public or private entity involved with such proposal or the process of competition or bargaining would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this subdivision, the terms "public entity" and "private entity" shall be defined as they are defined in the Public-Private Transportation Act of 1995.

57. Records of law-enforcement agencies, to the extent that such records contain specific tactical

plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public; or records of emergency service agencies to the extent that such records contain specific tactical plans relating to antiterrorist activity.

58. All records of the University of Virginia or the University of Virginia Medical Center that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center, including its business development or marketing strategies and its activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the Medical Center.

59. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.

60. Records of the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; and the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.

61. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected, and, after June 30, 1997, where such information was provided pursuant to a promise of confidentiality.

62. Confidential proprietary records that are provided by a franchisee under § 15.2-2108 to its franchising authority pursuant to a promise of confidentiality from the franchising authority that relates to the franchisee's potential provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

63. Records of the Intervention Program Committee within the Department of Health Professions, to the extent such records may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § 54.1-2517.

64. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of Chapter 2 of Title 32.1, to the extent such records contain (i) medical or mental records, or other data identifying individual patients or (ii) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

65. Information that would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

66. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Charitable Gaming Commission pursuant to subsection E of § 18.2-340.34.

67. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about,



applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

68. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

69. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security or employee safety of (i) the Virginia Museum of Fine Arts or any of its warehouses; (ii) any government store or warehouse controlled by the Department of Alcoholic Beverage Control; (iii) any courthouse, jail, detention or law-enforcement facility; or (iv) any correctional or juvenile facility or institution under the supervision of the Department of Corrections or the Department of Juvenile Justice.

70. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ 3.1-622 and 3.1-624.

71. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

72. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

73. Records of the ~~Department for Rights of Virginians with Disabilities~~ *Virginia Office for Protection and Advocacy* consisting of documentary evidence received or maintained by the ~~Department Office~~ or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the ~~Department Office~~ and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the ~~Department Office~~ may not at any time release the identity of any complainant or person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

74. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

75. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1, submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

76. Records of the State Lottery Department pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations, and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

77. Records, information and statistical registries required to be kept confidential pursuant to §§ 63.1-53 and 63.1-209.

B. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of this title shall be construed as denying public access to (i) contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 4. of subsection A; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay

of public employees whose annual rate of pay is \$10,000 or less.

C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an incarcerated person from exercising his constitutionally protected rights, including, but not limited to, his rights to call for evidence in his favor in a criminal prosecution.

#### § 2.2-5302. Early intervention agencies committee.

An early intervention agencies committee shall be established to ensure the implementation of a comprehensive system for early intervention services. The committee shall be composed of the Commissioner of the Department of Health, the Director of the Department for the Deaf and Hard-of-Hearing, the Superintendent of Public Instruction, the Director of the Department of Medical Assistance Services, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Commissioner of the Department of Social Services, the Commissioner of the Department for the Blind and Vision Impaired, the Director of the ~~Department for Rights of Virginians with Disabilities~~ *Virginia Office for Protection and Advocacy*, and the Commissioner of the Bureau of Insurance within the State Corporation Commission. The committee shall meet at least twice each fiscal year and shall make annual recommendations to the Secretary of Health and Human Resources and the Secretary of Education on issues that require interagency planning, financing, and resolution. Each member of the committee shall appoint a representative from his agency to serve on the Virginia Interagency Coordinating Council.

#### § 37.1-42.1. Duties of Commissioner.

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

1. To supervise and manage the Department and its system of facilities.
2. To employ such personnel as may be required to carry out the purposes of this title.
3. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, including, but not limited to, contracts with the United States, other states, agencies and governmental subdivisions of this Commonwealth, consistent with policies, rules and regulations of the Board.
4. To accept, hold and enjoy gifts, donations and bequests on behalf of the Department from the United States government and agencies, and instrumentalities thereof and any other source, subject to the approval of the Governor. To these ends, the Commissioner shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable, consistent with policies, rules and regulations of the Board.
5. To accept, execute and administer any trust in which the Department may have an interest, under the terms of the instruments creating the trust, subject to the approval of the Governor.
6. To transfer between mental health and mental retardation facilities school-age residents who have been identified as appropriate to place in public school programs and to negotiate with other school divisions for placements in order to ameliorate the impact on those school divisions located in a jurisdiction in which mental health or mental retardation facilities are situated.
7. To provide to the Director of the ~~Department for Rights of Virginians with Disabilities~~ *Virginia Office for Protection and Advocacy*, pursuant to § ~~51.5-37.1~~ *51.5-39.12*, a written report setting forth the known facts of critical incidents or deaths of patients or residents of facilities within fifteen working days of the critical incident or death.

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

#### § 37.1-42.2. Employment and qualifications of directors of state facilities.

The Commissioner shall employ a director for each state facility who shall be skilled in hospital management and administration and meet such requirements as may be determined by the Commissioner, but need not be a physician.

Any director of a state facility employed or reemployed by the Commissioner after July 1, 1999, shall be employed under a contract that specifies the terms and conditions of employment, including, but not limited to, compensation, benefits, duties and responsibilities, performance standards, evaluation criteria and contract termination and renewal provisions. The length of such employment contracts shall be two years, with provisions for annual renewals thereafter, based on the performance of the incumbent. Any director of a state facility employed by the Commissioner before July 1, 1999, may elect to continue his current employment status subject to the provisions of the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, or he may choose to be employed under such a contract. Any director of a state facility employed under such an employment contract shall be exempt from the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. Personnel actions under this exemption shall be taken without regard to race, sex, color, national origin, religion, age, handicap or political affiliation.

Each director shall be responsible to the Commissioner or his designee for the safe, efficient, and

effective operation of his state facility. Each director shall notify the Director of the ~~Department for Rights of Virginians with Disabilities~~ *Virginia Office for Protection and Advocacy*, pursuant to ~~§ 51.5-37.1~~ *51.5-39.12*, in writing within forty-eight hours of critical incidents or deaths of patients or residents of facilities. Each director shall take any actions consistent with law necessary to ensure that his facility complies with all applicable federal and state statutes, regulations, policies and agreements. The Commissioner shall evaluate the performance of each director of a state facility at least annually.

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

#### § 51.5-1. Declaration of policy.

It is the policy of this Commonwealth to encourage and enable persons with disabilities to participate fully and equally in the social and economic life of the Commonwealth and to engage in remunerative employment. To these ends, the General Assembly directs the Governor, ~~Department for Rights of Virginians with Disabilities~~ *Virginia Office for Protection and Advocacy*, Department for the Aging, Department for the Deaf and Hard-of-Hearing, Department of Education, Department of Health, Department of Housing and Community Development, Department of Mental Health, Mental Retardation and Substance Abuse Services, Board for Rights of Virginians with Disabilities, Department of Rehabilitative Services, Department of Social Services, Department for the Blind and Vision Impaired, and such other agencies as the Governor deems appropriate, to provide, in a comprehensive and coordinated manner which makes the best use of available resources, those services necessary to assure equal opportunity to persons with disabilities in the Commonwealth.

The provisions of this title shall be known and may be cited as "The Virginians With Disabilities Act."

#### § 51.5-2. Plan of cooperation.

The ~~Department for Rights of Virginians with Disabilities~~ *Virginia Office for Protection and Advocacy*, Department for the Aging, Department for the Deaf and Hard-of-Hearing, Department of Education, Department of Health, Department of Housing and Community Development, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services, Department of Social Services, Department for the Blind and Vision Impaired and such other agencies as are designated by the Governor which serve persons with disabilities shall formulate a plan of cooperation in accordance with the provisions of this title and the federal Rehabilitation Act. The goal of this plan shall be to promote the fair and efficient provision of rehabilitative and other services to persons with disabilities and to protect the rights of persons with disabilities.

The plan of cooperation shall include an annual update of budgetary commitment under the plan, specifying how many persons with disabilities, by type of impairment, will be served under the plan. The plan of cooperation shall include consideration of first pay provisions for entitlement programs of a cooperating agency. If entitlement services are part of a client's individualized written rehabilitation program or equivalent plan for services, funds shall be paid from the entitlement program when possible. The plan and budgetary commitments shall be reviewed by the respective boards of the cooperating agencies, reviewed by the Virginia Board for People with Disabilities and submitted for approval to the appropriate secretaries within the Governor's Office before implementation.

### CHAPTER 8.1.

#### PROTECTION AND ADVOCACY SERVICES.

##### § 51.5-39.1. Definitions.

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

*"Abuse" means any act or failure to act which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with a disability and includes such acts as: verbal, nonverbal, mental and emotional harassment; rape or sexual assault; striking; the use of excessive force when placing such an individual in bodily restraints; the use of bodily or chemical restraints which is not in compliance with federal and state laws and regulations; and any other practice which is likely to cause immediate physical or psychological harm or result in long term harm if such practices continue.*

*"Board" means the Board for Protection and Advocacy.*

*"Disabilities" means mental, cognitive, sensory, physical, or other disabilities covered by the federal Protection and Advocacy for Individuals with Mental Illness Act, the federal Developmental Disabilities Assistance and Bill of Rights Act, the federal Rehabilitation Act of 1973, as amended, and such other related federal and state programs as may be established by federal and state law.*

*"Investigation" means, when authorized under this chapter and when used in relation to (i) private elementary or secondary schools or (ii) public educational institutions which are subject to the requirements of § 22.1-215, access to facilities, clients, and records necessary to make a determination about whether alleged or suspected instances of abuse or neglect are taking place or have taken place. Investigations may be conducted independently or in cooperation with other agencies authorized to conduct similar investigations.*

*"Neglect" means failure by an individual, program or facility responsible for providing services to*

*provide nourishment, treatment, care, goods, or services necessary to the health, safety or welfare of a person receiving care or treatment for mental, cognitive, sensory, physical or other disabilities.*

*"Office" means the Virginia Office for Protection and Advocacy.*

*§ 51.5-39.2. The Virginia Office for Protection and Advocacy established; governing board; terms.*

*A. The Department for Rights of Virginians with Disabilities is hereby reestablished as an independent state agency, the Virginia Office for Protection and Advocacy. The Office is designated as the agency to protect and advocate for the rights of persons with mental, cognitive, sensory, physical or other disabilities and to receive federal funds on behalf of the Commonwealth of Virginia to implement the federal Protection and Advocacy for Individuals with Mental Illness Act, the federal Developmental Disabilities Assistance and Bill of Rights Act, the federal Rehabilitation Act, the Virginians with Disabilities Act and such other related programs as may be established by state and federal law. Notwithstanding any other provision of law, the Office shall be independent of the Office of the Attorney General and shall have the authority, pursuant to subdivision 5 of § 2.2-510, to employ and contract with legal counsel to carry out the purposes of this chapter and to employ and contract with legal counsel to advise and represent the Office, to initiate actions on behalf of the Office, and to defend the Office and its officers, agents and employees in the course and scope of their employment or authorization, in any matter, including state, federal and administrative proceedings. Compensation for legal counsel shall be paid out of the funds appropriated for the administration of the Office. However, in the event defense is provided under Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of Title 2.2, counsel shall be appointed pursuant to subdivision 4 of § 2.2-510. The Office shall provide ombudsman, advocacy and legal services to persons with disabilities who may be represented by the Office. The Office is authorized to receive and act upon complaints concerning discrimination on the basis of disability, abuse and neglect or other denial of rights, and practices and conditions in institutions, hospitals, and programs for persons with disabilities, and to investigate complaints relating to abuse and neglect or other violation of the rights of persons with disabilities in proceedings under state or federal law, and to initiate any proceedings to secure the rights of such persons.*

*B. The Office shall be governed by an eleven-member board. The Board shall be composed of members who broadly represent or are knowledgeable about the needs of persons with disabilities served by the Office. Two or more members shall have experience in the fields of developmental disabilities and mental health. Persons with mental, cognitive, sensory or physical disabilities or family members, guardians, advocates, or authorized representatives of such persons shall be included. No elected official shall serve on the Board. No current employee of the Departments of Mental Health, Mental Retardation and Substance Abuse Services, Health, Rehabilitative Services or for the Blind and Vision Impaired or a community services board, behavioral health authority, or local government department with a policy-advisory community services board shall serve as a member. In appointing the members of the Board, consideration shall be given to persons nominated by statewide groups that advocate for the physically, developmentally and mentally disabled. The Governor and General Assembly shall not be limited in their appointments to persons so nominated; however, the Governor and General Assembly shall seriously consider the persons nominated and appoint such persons whenever feasible.*

*C. The Governor shall appoint three members of the Board who shall be confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. The Speaker of the House of Delegates shall appoint five members, and the Senate Committee on Privileges and Elections shall appoint three members of the Board. No such appointments shall be members of the General Assembly. The Board appointments shall be made to give representation insofar as feasible to various geographic areas of the Commonwealth.*

*D. The terms of the initial members of the Board shall be as follows:*

- 1. Two legislative appointees shall be appointed for a term of one year each;*
- 2. One gubernatorial and two legislative appointees shall be appointed for a term of two years each;*
- 3. One gubernatorial and two legislative appointees shall be appointed for a term of three years each; and*
- 4. One gubernatorial and two legislative appointees shall be appointed for a term of four years each.*

*Thereafter, members shall be appointed for four-year terms.*

*E. Appointments to fill vacancies shall be for the unexpired terms. A vacancy of a legislatively appointed member shall be filled by either the Speaker of the House of Delegates or the Senate Committee on Privileges and Elections, and any such appointee shall enter upon and continue in office, subject to confirmation at the next session of the General Assembly. If the General Assembly fails to confirm his appointment, such person shall not be eligible for reappointment. Members shall continue to serve until such time as their successors have been appointed and duly qualified to serve.*

*F. A member who has been appointed to a four-year term shall not be eligible for reappointment during the two-year period beginning on the date on which such four-year term expired. However, upon the expiration of an appointment to an unexpired term, or an appointment described in subdivision D 1, D 2, or D 3, a member may be reappointed to a four-year term.*

*G. The Board shall elect a chairman and a vice-chairman from its members and appoint a secretary*

who may or may not be a member of the Board. A majority of the members of the Board shall constitute a quorum. The chairman shall preside over meetings of the Board and perform additional duties as may be set by resolution of the Board.

H. The Board shall meet at least four times each year. Members shall be reimbursed for their necessary and actual expenses incurred in the performance of their official duties.

I. Members of the Board shall be subject to removal from office only as set forth in Article 7 (§ 24.2-230 et seq.) of Chapter 2 of Title 24.2. The Circuit Court of the City of Richmond shall have exclusive jurisdiction over all proceedings for such removal.

§ 51.5-39.3. Application of State and Local Government Conflict of Interests Act.

The provisions of the State and Local Government Conflicts of Interests Act (§ 2.2-3100 et seq.) shall apply to the members of the Board and employees of the Office.

§ 51.5-39.4. Powers and duties of the Office.

The Office shall have the following powers and duties:

1. To monitor the implementation of Chapter 9 (§ 51.5-40 et seq.) of this title and to render assistance to persons with disabilities in the protection of their rights under the laws of the Commonwealth and of the United States.

2. To exhaust in a timely manner all appropriate administrative remedies to resolve complaints concerning violations of rights of persons with disabilities, when those rights are related to such disabilities. When such procedures fail or if, in pursuing administrative remedies, the Office determines that any matter with respect to an individual with a disability will not be resolved in a reasonable time, the Office shall have the authority to pursue legal and other alternative remedies to protect the rights of such persons.

3. To access facilities, institutions, and providers, as defined in §§ 37.1-1 and 37.1-179, and all other facilities and institutions that provide care or treatment to individuals with disabilities. Reasonable access shall be granted for the purposes of conducting investigations of allegations of abuse and neglect, and performing such other activities as necessary to monitor the care and treatment provided to, and to protect the rights of, individuals with disabilities.

4. To access records of facilities, institutions, and providers, as defined in §§ 37.1-1 and 37.1-179, and all other facilities and institutions that provide care or treatment to individuals with disabilities regarding the commitment, care, treatment, and habilitation of such individuals, unless the disclosure of such records is specifically prohibited by federal law. Records that are confidential under federal or state law shall be maintained as confidential by the Office and shall not be further disclosed, except as permitted by law. However, there shall be no right of access to privileged communications pursuant to § 8.01-581.17.

5. To access, for the purposes of inspection and copying, the records of an individual with a disability (a) who by reason of his mental or physical condition is unable to authorize the Office to have such access; (b) who does not have a legal guardian or for whom the Commonwealth, or designee of the Commonwealth, is the legal guardian; and (c) with respect to whom a complaint has been received by the Office or with respect to whom there is probable cause to believe that such person has been subjected to abuse or neglect. The director of the facility or institution shall disclose the name, address, and telephone number of any legal guardian or authorized representative.

§ 51.5-39.5. Powers and duties of the Board; Protection and Advocacy Fund.

A. The Virginia Office for Protection and Advocacy shall be administered by the Board, whose powers and duties include, but are not limited to:

1. Appointing and annually evaluating the performance of a director who shall not be a member of the Board, to serve as the chief executive officer of the Office at the pleasure of the Board. The Director shall be an attorney in good standing, licensed to practice law in Virginia, and a person qualified by knowledge, skills, and abilities to administer and direct the provision of protection and advocacy services regarding the rights of persons with disabilities;

2. Preparing and submitting a budget to the General Assembly for the operation of the Office and the Board;

3. Establishing general policies for the Office and advising and assisting the Director in developing annual program priorities;

4. Establishing annual program priorities for the Office;

5. Adopting regulations, policies and procedures and making determinations necessary to carry out the provisions of this chapter and Chapter 9 (§ 51.5-40 et seq.) of this title. The adoption of such regulations shall be consistent with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act;

6. Monitoring and evaluating the operations of the Office;

7. Maintaining records of its proceedings and making such records available for inspection by the public; and

8. Performing any other acts necessary to carry out the provisions of this chapter.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Protection and Advocacy Fund, hereinafter referred to as "the Fund," to be administered by the Board.

*The Fund shall be established on the books of the Comptroller. The Fund shall consist of (i) gifts, donations, grants, and bequests on behalf of the Office from the United States government and agencies and instrumentalities thereof; (ii) such other funds as may be appropriated by the General Assembly from time to time and designated for this Fund; (iii) funds from any other source; and (iv) all interest, dividends and appreciation that may accrue thereto. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in this chapter. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Office or his designee. The total costs for the operation and administration of the Office shall be funded from the Fund and shall be in such amount as provided in the general appropriation act.*

*The Board shall have the authority to apply for and accept, gifts, donations, grants, and bequests on behalf of the Office from the United States government and agencies and instrumentalities thereof and from any other source and to deposit all moneys received in the Protection and Advocacy Fund created pursuant to this subsection. To these ends, the Board shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable, consistent with policies, rules, and regulations of the Board.*

*§ 51.5-39.6. Powers and duties of the Director.*

*The Director shall have the following powers and duties:*

- 1. To supervise and manage the daily operations of the Office and to carry out such duties as provided in this section;*
- 2. To employ such qualified staff, including ombudsmen, advocates and legal counsel, as shall be necessary for carrying out the purposes of this chapter and Chapter 9 (§ 51.5-40 et seq.) of this title;*
- 3. To make and enter into all contracts and agreements, subject to ratification by the Board, necessary or incidental to the performance of the Office's duties and the execution of its powers under this chapter, including but not limited to contracts with the United States, other states, and agencies and political subdivisions of the Commonwealth, consistent with policies and regulations of the Board;*
- 4. To advise and assist the Board in developing a budget;*
- 5. To annually prepare a report of activities of the Board and Office and submit copies of the report to the Governor, chairs of the Senate Committee on Education and Health, the House Committee on Health, Welfare and Institutions, and the House Appropriations and Senate Finance Committees and make the report available to the public; and*
- 6. To exercise such powers and perform such duties as are assigned to him by the Board.*

*§ 51.5-39.7. Ombudsman services for persons with disabilities.*

*A. There is hereby created within the Office an ombudsman section. The Director shall establish procedures for receiving complaints and conducting investigations for the purposes of resolving and mediating complaints regarding any activity, practice, policy, or procedure of any hospital, facility or program operated, funded or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Department of Rehabilitative Services, the Department of Social Services, or any other state or local agency, that is adversely affecting the health, safety, welfare or civil or human rights of any person with mental, cognitive, sensory or physical disabilities. After initial investigation, the section may decline to accept any complaint it determines is frivolous or not made in good faith. The ombudsman section shall attempt to resolve the complaint at the lowest appropriate level, unless otherwise provided by law. The procedures shall require the section to:*

- 1. Acknowledge the receipt of a complaint by sending written notice to the complainant within seven days after receiving the complaint;*
- 2. When appropriate, provide written notice of a complaint to the Department of Mental Health, Mental Retardation and Substance Abuse Services or any other appropriate agency within seven days after receiving the complaint. The Department or agency shall report its findings and actions no later than fourteen days after receiving the complaint;*
- 3. Immediately refer a complaint made under this section to the Department of Mental Health, Mental Retardation and Substance Abuse Services or any other appropriate governmental agency whenever the complaint involves an immediate and substantial threat to the health or safety of a person with mental retardation, developmental disabilities, mental illness, or other disability. The Department or agency receiving the complaint shall report its findings and actions no later than forty-eight hours following its receipt of the complaint;*
- 4. Within seven days after identifying a deficiency in the treatment of a person with a disability that is in violation of state or federal law or regulation, refer the matter in writing to the appropriate state agency. The state agency shall report on its findings and actions within seven days of receiving notice of the matter;*
- 5. Advise the complainant and any person with a disability affected by the complaint, no more than thirty days after it receives the complaint, of any action it has taken and of any opinions and recommendations it has with respect to the complaint. The ombudsman section may request any party affected by the opinions or recommendations to notify the section, within a time period specified by the*

section, of any action the party has taken on its recommendation; and

6. Refer any complaint not resolved through negotiation, mediation, or conciliation to the Director or the Director's designee to determine whether further protection and advocacy services shall be provided by the Office.

B. The ombudsman section may make public any of its opinions or recommendations concerning a complaint, the responses of persons and governmental agencies to its opinions or recommendations, and any act, practice, policy, or procedure that adversely affects or may adversely affect the health, safety, welfare, or civil or human rights of a person with a disability, subject to the provisions of § 51.5-39.8.

C. The Office shall publicize its existence, functions, and activities, and the procedures for filing a complaint under this section, and send this information in written form to each provider of services to persons with disabilities, with instructions that the information is to be posted in a conspicuous place accessible to patients, residents, consumers, clients, visitors, and employees. The Office shall establish, maintain and publicize a toll-free number for receiving complaints.

**§ 51.5-39.8. Confidentiality of information.**

A. All documentary and other evidence received or maintained by the Office or its agents in connection with specific complaints or investigations shall be confidential and not subject to the provisions concerning disclosure of public records under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However, access to one's own records shall not be denied unless otherwise prohibited by state or federal law. Records concerning closed cases shall be subject to the disclosure requirements of the Virginia Freedom of Information Act, but in a manner that does not identify any complainant or any person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

B. Communications between employees and agents of the Office and its clients or prospective clients concerning specific complaints, investigations or cases shall be confidential.

C. Notwithstanding the provisions of this section, the Office shall be permitted to:

1. Issue a public report of the results of an investigation of a founded complaint that does not release the identity of any complainant or any person with mental illness, mental retardation, developmental disabilities or other disability, unless (a) such complainant or person or his legal representative consents in writing to such disclosure or (b) such disclosure is required by court order; and

2. Report the results of an investigation to responsible investigative or enforcement agencies should an investigation reveal information concerning any hospital, facility or other entity, its staff or employees, warranting possible sanctions or corrective action. This information may be reported to agencies responsible for licensing or accreditation, employee discipline, employee licensing or certification or criminal prosecution.

**§ 51.5-39.9. Cooperative agreements with state agencies regarding advocacy services for their clients.**

Notwithstanding the foregoing, state agencies providing services to persons with disabilities may develop and maintain advocacy, client assistance or ombudsman services for their clients, which services may be within the agency and independent of the Office. The Office may enter into cooperative agreements with any state agency providing advocacy, client assistance, or ombudsman services for the agency's clients, in order to ensure the protection of and advocacy for persons with disabilities, provided that such agreements do not restrict such authority as the Office may otherwise have to pursue any legal or administrative remedy on behalf of persons with disabilities.

**§ 51.5-39.10. Immunity.**

Any person who in good faith complains to the Office on behalf of a person with a disability, or who provides information or participates in the investigation of any such complaint, shall have immunity from any civil liability and shall not be subject to any penalties, sanctions, restrictions or retaliation as a consequence of making such complaint, providing such information or participating in such investigation.

**§ 51.5-39.11. Employees of the Virginia Office for Protection and Advocacy.**

Except as otherwise provided by law, the employees of the Virginia Office for Protection and Advocacy shall be subject to the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.).

**§ 51.5-39.12. Notification of critical incidents and deaths in state facilities.**

Notwithstanding any other provision of law, the directors of the state facilities as defined in § 37.1-1 shall notify the Director of the Office in writing within forty-eight hours of critical incidents or deaths of patients or residents in state facilities. For purposes of this section, a critical incident shall be defined as serious bodily injury or loss of consciousness requiring medical treatment. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall provide to the Director of the Office a written report setting forth the known facts of critical incidents or deaths of patients or residents of facilities within fifteen working days of the critical incident or death.

**§ 51.5-40. Nondiscrimination under state grants and programs.**

No otherwise qualified person with a disability shall, on the basis of disability, be excluded from

participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving state financial assistance or under any program or activity conducted by or on behalf of any state agency. The ~~Department for Rights of Virginians with Disabilities~~ *Virginia Office for Protection and Advocacy* shall promulgate such regulations as may be necessary to implement this section. Such regulations shall be consistent, whenever applicable, with regulations imposed under the federal Rehabilitation Act of 1973, as amended, and the federal Americans with Disabilities Act of 1990.

§ 51.5-46. Remedies.

A. Any circuit court having chancery jurisdiction and venue pursuant to Title 8.01, on the petition of any person with a disability, shall have the right to enjoin the abridgement of rights set forth in this chapter and to order such affirmative equitable relief as is appropriate and to award compensatory damages and to award to a prevailing party reasonable attorneys' fees, except that a defendant shall not be entitled to an award of attorneys' fees unless the court finds that the claim was frivolous, unreasonable or groundless, or brought in bad faith. Compensatory damages shall not include damages for pain and suffering. Punitive or exemplary damages shall not be awarded.

B. An action may be commenced pursuant to this section any time within one year of the occurrence of any violation of rights under this chapter. However, such action shall be forever barred unless such claimant or his agent, attorney or representative has commenced such action or has filed by registered mail a written statement of the nature of the claim with the potential defendant or defendants within 180 days of the occurrence of the alleged violation. Any liability for back pay shall not accrue from a date more than 180 days prior to the filing of the notice or bill of complaint and shall be limited to a total of 180 days, reduced by the amount of other earnings over the same period. The petitioner shall have a duty to mitigate damages.

C. The relief available for violations of this chapter shall be limited to the relief set forth in this section.

D. In any action in which the petitioner is represented by the ~~Department for Rights of Virginians With Disabilities~~ *Virginia Office for Protection and Advocacy*, no attorneys' fees shall be awarded, nor shall the ~~Department for Rights of Virginians With Disabilities~~ *Virginia Office for Protection and Advocacy* have the authority to institute any class action under this chapter.

§ 63.1-182.1. Rights and responsibilities of residents of assisted living facilities; certification of licensure.

A. Any resident of an assisted living facility has the rights and responsibilities enumerated in this section. The operator or administrator of an assisted living facility shall establish written policies and procedures to ensure that, at the minimum, each person who becomes a resident of the assisted living facility:

1. Is fully informed, prior to or at the time of admission and during the resident's stay, of his rights and of all rules and expectations governing the resident's conduct, responsibilities, and the terms of the admission agreement; evidence of this shall be the resident's written acknowledgment of having been so informed, which shall be filed in his record;

2. Is fully informed, prior to or at the time of admission and during the resident's stay, of services available in the residence and of any related charges; this shall be reflected by the resident's signature on a current resident's agreement retained in the resident's file;

3. Unless a committee or conservator has been appointed, is free to manage his personal finances and funds regardless of source; is entitled to access to personal account statements reflecting financial transactions made on his behalf by the residence; and is given at least a quarterly accounting of financial transactions made on his behalf when a written delegation of responsibility to manage his financial affairs is made to the residence for any period of time in conformance with state law;

4. Is afforded confidential treatment of his personal affairs and records and may approve or refuse their release to any individual outside the residence except as otherwise provided in law and except in case of his transfer to another care-giving facility;

5. Is transferred or discharged only when provided with a statement of reasons, or for nonpayment for his stay, and is given reasonable advance notice; upon notice of discharge or upon giving reasonable advance notice of his desire to move, shall be afforded reasonable assistance to ensure an orderly transfer or discharge; such actions shall be documented in his record;

6. In the event a medical condition should arise while he is residing in the residence, is afforded the opportunity to participate in the planning of his program of care and medical treatment at the residence and the right to refuse treatment;

7. Is not required to perform services for the residence except as voluntarily contracted pursuant to a voluntary agreement for services which states the terms of consideration or remuneration and is documented in writing and retained in his record;

8. Is free to select health care services from reasonably available resources;

9. Is free to refuse to participate in human subject experimentation or to be party to research in which his identity may be ascertained;

10. Is free from mental, emotional, physical, sexual, and economic abuse or exploitation; is free from



forced isolation, threats or other degrading or demeaning acts against him; and his known needs are not neglected or ignored by personnel of the residence;

11. Is treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity;

12. Is encouraged, and informed of appropriate means as necessary, throughout the period of stay to exercise his rights as a resident and as a citizen; to this end, he is free to voice grievances and recommend changes in policies and services, free of coercion, discrimination, threats or reprisal;

13. Is permitted to retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other residents;

14. Is encouraged to function at his highest mental, emotional, physical and social potential;

15. Is free of physical or mechanical restraint except in the following situations and with appropriate safeguards:

a. As necessary for the residence to respond to unmanageable behavior in an emergency situation which threatens the immediate safety of the resident or others;

b. As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened resident;

16. Is free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician;

17. Is accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:

a. In the care of his personal needs except as assistance may be needed;

b. In any medical examination or health related consultations the resident may have at the residence;

c. In communications, in writing or by telephone;

d. During visitations with other persons;

e. In the resident's room or portion thereof; residents shall be permitted to have guests or other residents in their rooms unless to do so would infringe upon the rights of other residents; staff may not enter a resident's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in regulations of the State Board of Social Services;

f. In visits with his spouse; if both are residents of the residence they are permitted but not required to share a room unless otherwise provided in the residents' agreements;

18. Is permitted to meet with and participate in activities of social, religious, and community groups at his discretion unless medically contraindicated as documented by his physician in his medical record.

B. If the resident is unable to fully understand and exercise the rights and responsibilities contained in this section, the residence shall require that a responsible individual, of the resident's choice when possible, designated in writing in the resident's record, be made aware of each item in this section and the decisions which affect the resident or relate to specific items in this section; a resident shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the resident's record.

C. All established policies and procedures regarding the rights and responsibilities of residents shall be printed in at least twelve point type and posted conspicuously in a public place in all assisted living facilities. The residence shall include in them the name and telephone number of the regional licensing supervisor of the Department of Social Services, the Adult Protective Services' toll-free telephone number, as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program, any sub-state ombudsman program serving the area, and the toll-free number of the ~~Department for the Rights of Virginians With Disabilities~~ *Virginia Office for Protection and Advocacy*.

D. The residence shall make its policies and procedures for implementing this section available and accessible to residents, relatives, agencies, and the general public.

E. The provisions of this section shall not be construed to restrict or abridge any right which any resident has under law.

F. Each residence shall provide appropriate staff training to implement each resident's rights included in this section.

G. The State Board of Social Services shall promulgate regulations as necessary to carry out the full intent of this section.

H. It shall be the responsibility of the Commissioner of Social Services to ensure that the provisions of this section are observed and implemented by assisted living facilities as a condition to the issuance, renewal, or continuation of the license required by this article.

§ 63.1-314.8. Technical Assistance Committee created; duties; membership.

A. There is hereby created a Technical Assistance Committee, which shall provide technical and support services on the operations of the information and referral system as the Council may deem appropriate and shall advise the Council in performing its powers and duties.

B. The membership of the Technical Assistance Committee shall include but not be limited to:

1. Two directors of local departments of public welfare or social services, one serving a rural and one an urban locality, to be appointed by the Commissioner of Social Services; and

2. The Commissioners or Directors, or their designees, of the Department of Medical Assistance Services; Department of Health; Department of Mental Health, Mental Retardation and Substance Abuse

Services; Department of Rehabilitative Services; Department for the Aging; Department for the Blind and Vision Impaired; ~~Department for Rights of Virginians With Disabilities~~ *Virginia Office for Protection and Advocacy*; Department of Information Technology; Department for the Deaf and Hard-of-Hearing; Department of Health Professions; Department of Corrections; Department of Education; Department of Juvenile Justice; and the Virginia Employment Commission.

**2. That Chapter 8 (§§ 51.5-36 through 51.5-39) of Title 51.5 of the Code of Virginia is repealed.**

**3. That the Governor is hereby requested to designate the Virginia Office for Protection and Advocacy as the agency accountable for the proper use of funds for protection of and advocacy for persons with mental, cognitive, sensory, physical, or other disabilities as determined by federal and state law and as the state protection and advocacy agency to administer the Protection and Advocacy for Individuals with Mental Illness Program, the Developmental Disabilities Program, the Client Assistance Program, the Assistive Technology Program, and other federal and state programs for the protection and advocacy of the aforementioned persons.**

**4. That the provisions of this act shall not become effective until the Governor, pursuant to the applicable federal statutes and regulations, completes the process for redesignation of the Virginia Office for Protection and Advocacy.**

**5. That the regulations of the Department for Rights of Virginians with Disabilities in effect on the effective date of this act shall continue in effect until such time as amended or repealed by the Virginia Office for Protection and Advocacy.**

**6. That the Governor may transfer an appropriation or any portion thereof or any employees within an agency established, abolished or altered by the provisions of this act, or from one such agency to another, to support the changes in organization or responsibility resulting from or required by the provisions of this act.**

**7. That, as of the effective date of this act, the Virginia Office for Protection and Advocacy shall be deemed the successor in interest to the Department for Rights of Virginians with Disabilities to the extent that this act transfers powers and duties. All rights, title and interest in and to any real or tangible personal property vested in the Department for Rights of Virginians with Disabilities to the extent that this act transfers powers and duties as of the effective date of this act shall be transferred to and taken as standing in the name of the Virginia Office for Protection and Advocacy.**

**8. That the provisions of § 51.5-39.7 shall become effective July 1, 2004.**