

# VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

## CHAPTER 716

*An Act to amend and reenact §§ 2.2-2905, 2.2-3705.5, 8.01-2, 16.1-241, 16.1-278.11, 16.1-339, 16.1-346.1, 16.1-348, 18.2-254, 18.2-255.2, 19.2-169.6, 19.2-177.1, 19.2-182.3, 19.2-182.9, 22.1-281, 33.1-234, 53.1-40.1, 53.1-40.2, 53.1-40.8, 53.1-40.9, 53.1-77, 54.1-2400.1, 54.1-2986, 58.1-3607, 63.2-1602, 63.2-1801, and 63.2-1805 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 26 of Title 2.2 an article numbered 30 consisting of sections numbered 2.2-2690 and 2.2-2691; and by adding a title numbered 37.2, containing a chapter numbered 1, consisting of a section numbered 37.2-100, a chapter numbered 2, consisting of sections numbered 37.2-200 through 37.2-204, a chapter numbered 3, containing articles numbered 1 through 4, consisting of sections numbered 37.2-300 through 37.2-319, a chapter numbered 4, containing articles numbered 1 through 5, consisting of sections numbered 37.2-400 through 37.2-440, a chapter numbered 5, consisting of sections numbered 37.2-500 through 37.2-511, a chapter numbered 6, consisting of sections numbered 37.2-600 through 37.2-614, a chapter numbered 7, containing articles numbered 1 and 2, consisting of sections numbered 37.2-700 through 37.2-721, a chapter numbered 8, containing articles numbered 1 through 8, consisting of sections numbered 37.2-800 through 37.2-847, a chapter numbered 9, consisting of sections numbered 37.2-900 through 37.2-918, a chapter numbered 10, containing articles numbered 1 and 2, consisting of sections numbered 37.2-1000 through 37.2-1029, and a chapter numbered 11, consisting of sections numbered 37.2-1100 through 37.2-1108; and to repeal Title 37.1 (§§ 37.1-1 through 37.1-260) of the Code of Virginia, revising and recodifying law pertaining to persons with mental illness, mental retardation, or substance abuse.*

[S 1023]

Approved March 25, 2005

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

**1. That §§ 2.2-2905, 2.2-3705.5, 8.01-2, 16.1-241, 16.1-278.11, 16.1-339, 16.1-346.1, 16.1-348, 18.2-254, 18.2-255.2, 19.2-169.6, 19.2-177.1, 19.2-182.3, 19.2-182.9, 22.1-281, 33.1-234, 53.1-40.1, 53.1-40.2, 53.1-40.8, 53.1-40.9, 53.1-77, 54.1-2400.1, 54.1-2986, 58.1-3607, 63.2-1602, 63.2-1801, and 63.2-1805 of the Code of Virginia are amended and reenacted; and that the Code of Virginia is amended by adding in Chapter 26 of Title 2.2 an article numbered 30 consisting of sections numbered 2.2-2690 and 2.2-2691; and by adding a title numbered 37.2, containing a chapter numbered 1, consisting of a section numbered 37.2-100, a chapter numbered 2, consisting of sections numbered 37.2-200 through 37.2-204, a chapter numbered 3, containing articles numbered 1 through 4, consisting of sections numbered 37.2-300 through 37.2-319, a chapter numbered 4, containing articles numbered 1 through 5, consisting of sections numbered 37.2-400 through 37.2-440, a chapter numbered 5, consisting of sections numbered 37.2-500 through 37.2-511, a chapter numbered 6, consisting of sections numbered 37.2-600 through 37.2-614, a chapter numbered 7, containing articles numbered 1 and 2, consisting of sections numbered 37.2-700 through 37.2-721, a chapter numbered 8, containing articles numbered 1 through 8, consisting of sections numbered 37.2-800 through 37.2-847, a chapter numbered 9, consisting of sections numbered 37.2-900 through 37.2-918, a chapter numbered 10, containing articles numbered 1 and 2, consisting of sections numbered 37.2-1000 through 37.2-1029, and a chapter numbered 11, consisting of sections numbered 37.2-1100 through 37.2-1108, as follows:**

*Article 30.*

*Substance Abuse Services Council.*

**§ 2.2-2690. Substance Abuse Services Council.**

**A. The Substance Abuse Services Council (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council is to advise and make recommendations to the Governor, the General Assembly, and the State Mental Health, Mental Retardation and Substance Abuse Services Board on broad policies and goals and on the coordination of the Commonwealth's public and private efforts to control substance abuse, as defined in § 37.2-100.**

**B. The Council shall consist of 24 members. Four members of the House of Delegates shall be appointed by the Speaker of the House of Delegates, in accordance with the principles of proportional representation contained in the Rules of the House of Delegates, and two members of the Senate shall be appointed by the Senate Committee on Rules. The Governor shall appoint one member representing the Virginia Sheriffs' Association, one member representing the Substance Abuse Certification Alliance of Virginia, two members representing the Virginia Association of Community Services Boards, and two members representing statewide consumer and advocacy organizations. The Council shall also include**

the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services; the Commissioner of Health; the Superintendent of Public Instruction; the Directors of the Departments of Juvenile Justice, Corrections, Criminal Justice Services, and Social Services; the Executive Director of the Commission on the Virginia Alcohol Safety Action Program or his designee; and the chairs or their designees of the Virginia Association of Drug and Alcohol Programs, the Virginia Association of Alcoholism and Drug Abuse Counselors, and the Substance Abuse Council and the Prevention Task Force of the Virginia Association of Community Services Boards.

C. Appointments of legislative members and agency heads shall be for terms consistent with their terms of office. All other appointments of nonlegislative members shall be for terms of three years, except an appointment to fill a vacancy, which shall be for the unexpired term. The Governor shall appoint a chairman from among the members.

No person shall be eligible to serve more than two successive terms, provided that a person appointed to fill a vacancy may serve two full successive terms.

D. The Council shall meet at least four times annually and more often if deemed necessary or advisable by the chairman.

E. Members of the Council shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the cost of expenses shall be provided by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

F. The duties of the Council shall be:

1. To recommend policies and goals to the Governor, the General Assembly, and the State Mental Health, Mental Retardation and Substance Abuse Services Board;

2. To coordinate agency programs and activities, to prevent duplication of functions, and to combine all agency plans into a comprehensive interagency state plan for substance abuse services;

3. To review and comment on annual state agency budget requests regarding substance abuse and on all applications for state or federal funds or services to be used in substance abuse programs;

4. To define responsibilities among state agencies for various programs for persons with substance abuse and to encourage cooperation among agencies; and

5. To make investigations, issue annual reports to the Governor and the General Assembly, and make recommendations relevant to substance abuse upon the request of the Governor.

G. Staff assistance shall be provided to the Council by the Office of Substance Abuse Services of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

§ 2.2-2691. Review of state agency substance abuse treatment programs.

A. On or before December 1, 2005, the Council shall forward to the Governor and the General Assembly a Comprehensive Interagency State Plan identifying for each agency in state government (i) the substance abuse treatment program the agency administers; (ii) the program's objectives, including outcome measures for each program objective; (iii) program actions to achieve the objectives; (iv) the costs necessary to implement the program actions; and (v) an estimate of the extent these programs have met demand for substance abuse treatment services in the Commonwealth. The Council shall develop specific criteria for outcome data collection for all affected agencies, including a comparison of the extent to which the existing outcome measures address applicable federally mandated outcome measures and an identification of common outcome measures across agencies and programs. The plan shall also include an assessment of each agency's capacity to collect, analyze, and report the information required by subsection B.

B. Beginning in 2006, the Comprehensive Interagency State Plan shall include the following analysis for each agency-administered substance abuse treatment program: (i) the amount of funding expended under the program for the prior fiscal year; (ii) the number of individuals served by the program using that funding; (iii) the extent to which program objectives have been accomplished as reflected by an evaluation of outcome measures; (iv) identifying the most effective substance abuse treatment, based on a combination of per person costs and success in meeting program objectives; (v) how effectiveness could be improved; (vi) an estimate of the cost effectiveness of these programs; and (vii) recommendations on the funding of programs based on these analyses.

C. All agencies identified in the Comprehensive Interagency State Plan as administering a substance abuse treatment program shall provide the information and staff support necessary for the Council to complete the Plan. In addition, any agency that captures outcome-related information concerning substance abuse programs identified in subsection B shall make this information available for analysis upon request.

§ 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;
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~~ 37.2-707. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);
25. The Director of the Virginia Office for Protection and Advocacy; and
26. Employees of the Virginia Tobacco Settlement Foundation. Such employees shall be treated as state employees for purposes of participation in the Virginia Retirement System, health insurance, and all other employee benefits offered by the Commonwealth to its classified employees.

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

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. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

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.

Where the person who is the subject of medical and mental records is under the age of 18, 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.

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.

2. 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.

3. Reports, documentary evidence and other information as specified in §§ 2.2-706 and 63.2-104.

4. 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 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2. 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.

5. 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.

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to ~~§ 37.1-67.3~~ 37.2-818.

7. 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.

8. Information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1.

9. 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.

10. 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.

11. 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.

12. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of Title 51.5, 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.

13. 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.

14. Records, information and statistical registries required to be kept confidential pursuant to §§ 63.2-102 and 63.2-104.

15. (For effective date - See note) All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § 38.2-5002.2.

17. Records of the State Health Commissioner relating to the health of any person or persons subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of statistical summaries, abstracts or other information in aggregate form.

18. Records containing the names and addresses or other contact information of persons receiving

transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § 63.2-600.

§ 8.01-2. General definitions for this title.

As used in this title, unless the context otherwise requires, the term:

1. "Action" and "suit" may be used interchangeably and shall include all civil proceedings whether at law, in equity, or statutory in nature and whether in circuit courts or district courts;
2. "Decree" and "judgment" may be used interchangeably and shall include orders or awards;
3. "Fiduciary" shall include any one or more of the following:
  - a. guardian,
  - b. committee,
  - c. trustee,
  - d. executor,
  - e. administrator, and administrator with the will annexed,
  - f. curator of the will of any decedent, or
  - g. conservator;
4. "Rendition of a judgment" means the time at which the judgment is signed and dated;
5. "Person" shall include individuals, a trust, an estate, a partnership, an association, an order, a corporation, or any other legal or commercial entity;
6. "Person under a disability" shall include:
  - a. a person convicted of a felony during the period he is confined;
  - b. an infant;
  - c. ~~a drug addict or an alcoholic as defined in § 37.1-14;~~
  - ~~d. an incapacitated person as defined in § 37.1-134.6 37.2-1000;~~
  - e ~~d.~~ an incapacitated ex-service person under § ~~37.1-134.20 37.2-1016~~; or
  - f ~~e.~~ any other person who, upon motion to the court by any party to an action or suit or by any person in interest, is determined to be (i) incapable of taking proper care of his person, or (ii) incapable of properly handling and managing his estate, or (iii) otherwise unable to defend his property or legal rights either because of age or temporary or permanent impairment, whether physical, mental, or both. *Such impairment may also include substance abuse as defined in § 37.2-100;*
7. "Sheriff" shall include deputy sheriffs and such other persons designated in § 15.2-1603;
8. "Summons" and "subpoena" may be used interchangeably and shall include a subpoena duces tecum for the production of documents and tangible things.

§ 16.1-241. Jurisdiction; consent for abortion.

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

- A. The custody, visitation, support, control or disposition of a child:
  1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;
  2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;
  - 2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;
  3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § 16.1-244;
  4. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or § 63.2-1817 or whose parent or parents for good cause desire to be relieved of his care and custody;
  5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244; and
  6. Who is charged with a traffic infraction as defined in § 46.2-100.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of

§ 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from or through a person whose parental rights have been terminated by court order, either voluntarily or involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted, except where a final order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such violation. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the ~~commitment of a mentally ill~~ *involuntary admission of a person with mental illness* or judicial certification of eligibility for admission to a ~~treatment facility of a mentally retarded person training center for persons with mental retardation~~ in accordance with the provisions of Chapters 1 (~~§ 37.1-1 et seq.~~) and 2 (~~§ 37.1-63 et seq.~~) of Title 37.1 (~~§ 37.2-100 et seq.~~) and 8 (~~§ 37.2-800 et seq.~~) of Title 37.2. Jurisdiction of the ~~commitment involuntary admission~~ and certification of adults shall be concurrent with the general district court.

C. Except as provided in subsections D and H hereof, judicial consent to such activities as may require parental consent may be given for a child who has been separated from his parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person standing in loco parentis (i) is not a resident of the Commonwealth, (ii) has his whereabouts unknown, (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law.

F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

1. Who has been abused or neglected;
2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or § 63.2-1817 or is otherwise before the court pursuant to subdivision A 4 of this section; or
3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court finds that such person has by overt act or omission induced, caused, encouraged or contributed to the conduct of the child complained of in the petition.

G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services that are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

H. Judicial consent to apply for a work permit for a child when such child is separated from his parents, legal guardian or other person standing in loco parentis.

I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or neglect of children or with any violation of law that causes or tends to cause a child to come within the

purview of this law, or with any other offense against the person of a child. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause.

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim and all offenses under § 18.2-49.1.

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision under this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or § 16.1-279.1.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.2-1526.

U. Petitions filed in connection with parental placement adoption consent hearings pursuant to § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within 10 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to seek consent of an authorized person.

After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independent of the wishes of any authorized person, or (ii) the minor is not mature enough or well enough informed to make such decision, but the desired abortion would be in her best interest.

If the judge authorizes an abortion based on the best interests of the minor, such order shall expressly state that such authorization is subject to the physician or his agent giving notice of intent to perform the abortion; however, no such notice shall be required if the judge finds that such notice would not be in the best interest of the minor. In determining whether notice is in the best interest of the minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not in the best interest of the minor if he finds that (i) one or more authorized persons with whom the minor regularly and customarily resides is abusive or neglectful, and (ii) every other authorized person, if any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian, custodian or person standing in loco parentis.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Notwithstanding any other provision of law, the provisions of this subsection shall govern proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and records of such proceedings shall be confidential. Such proceedings shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon as practicable but in no event later than four days after the petition is filed.

An expedited confidential appeal to the circuit court shall be available to any minor for whom the

court denies an order authorizing an abortion without consent or without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. The time periods required by this subsection shall be subject to § 1-13.3:1. An order authorizing an abortion without consent or without notice shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

If either the original court or the circuit court fails to act within the time periods required by this subsection, the court before which the proceeding is pending shall immediately authorize a physician to perform the abortion without consent or notice to an authorized person.

Nothing contained in this subsection shall be construed to authorize a physician to perform an abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult woman.

A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent has been obtained or the minor delivers to the physician a court order entered pursuant to this section and the physician or his agent provides such notice as such order may require. However, neither consent nor judicial authorization nor notice shall be required if the minor declares that she is abused or neglected and the attending physician has reason to suspect that the minor may be an abused or neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the facts justifying the exception in the minor's medical record.

For purposes of this subsection:

"Authorization" means the minor has delivered to the physician a notarized, written statement signed by an authorized person that the authorized person knows of the minor's intent to have an abortion and consents to such abortion being performed on the minor.

"Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with whom the minor regularly and customarily resides and who has care and control of the minor. Any person who knows he is not an authorized person and who knowingly and willfully signs an authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

"Consent" means that (i) the physician has given notice of intent to perform the abortion and has received authorization from an authorized person, or (ii) at least one authorized person is present with the minor seeking the abortion and provides written authorization to the physician, which shall be witnessed by the physician or an agent thereof. In either case, the written authorization shall be incorporated into the minor's medical record and maintained as a part thereof.

"Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.

"Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by telephone, at least 24 hours previous to the performance of the abortion; or (ii) the physician or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at least 72 hours prior to the performance of the abortion.

"Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage as provided in §§ 18.2-72, 18.2-73, or § 18.2-74.

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

W. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) of this chapter relating to standby guardians for minor children.

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision 3 of subsection A, except as provided in subdivision A 6 of § 17.1-272, or subsection B, D, M or R of this section.

Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of subsection V shall be guilty of a Class 3 misdemeanor.

§ 16.1-278.11. Mental illness and mental retardation.

In cases involving a person who is ~~adjudged mentally ill~~ *involuntarily admitted because of a mental illness* or is judicially certified as eligible for admission to a ~~treatment facility for the mentally retarded training center for persons with mental retardation~~, disposition shall be in accordance with the provisions of Chapters 1 (~~§ 37.1-14 et seq.~~) and 2 (~~§ 37.1-63 et seq.~~) of Title 37.1 (*§ 37.2-100 et seq.*)



and 8 (§ 37.2-800 *et seq.*) of Title 37.2. A child shall not be committed pursuant to §§ 16.1-278.2 through 16.1-278.8 or the provisions of Title ~~37.1~~ 37.2 to a maximum security unit within any state ~~mental~~ hospital where adults determined to be criminally insane reside.

§ 16.1-339. Parental admission of an objecting minor ~~fourteen~~ 14 years of age or older.

A. A minor ~~fourteen~~ 14 years of age or older who objects to admission may be admitted to a willing facility for up to ~~seventy-two~~ 72 hours, pending the review required by subsections B and C of this section, upon the application of a parent. If admission is sought to a state hospital, the community services board *or behavioral health authority* serving the area in which the minor resides shall provide the examination required by subsection B of § 16.1-338 and shall ensure that the necessary written findings, except the minor's consent, have been made before approving the admission.

B. A minor admitted under this section shall be examined within ~~twenty-four~~ 24 hours of his admission by a qualified evaluator designated by the community services board *or behavioral health authority* serving the area where the facility is located who is not and will not be treating the minor and who has no significant financial interest in the minor's hospitalization. The evaluator shall prepare a report ~~which~~ *that* shall include written findings as to whether:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusory thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;

2. The minor is in need of inpatient treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and

3. Inpatient treatment is the least restrictive alternative that meets the minor's needs. The qualified evaluator shall submit his report to the juvenile and domestic relations district court for the jurisdiction in which the facility is located.

C. Upon admission of a minor under this section, the facility shall immediately file a petition for judicial approval with the juvenile and domestic relations district court for the jurisdiction in which the facility is located. A copy of this petition shall be delivered to the minor's consenting parent. Upon receipt of the petition and of the evaluator's report submitted pursuant to subsection B, the juvenile and domestic relations district court judge *or special justice appointed pursuant to § 37.1-88* shall appoint a guardian ad litem for the minor. The court and the guardian ad litem shall review the petition and evaluator's report, and shall ascertain the views of the minor, the minor's consenting parent, the evaluator, and the attending psychiatrist. The court shall conduct its review in such place and manner, including the facility, as it deems to be in the best interests of the minor. Based upon its review and the recommendations of the guardian ad litem, the court shall order one of the following dispositions:

1. If the court finds that the minor does not meet the criteria for admission specified in subsection B, the court shall issue an order directing the facility to release the minor into the custody of the parent who consented to the minor's admission. However, nothing herein shall be deemed to affect the terms and provisions of any valid court order of custody affecting the minor.

2. If the court finds that the minor meets the criteria for admission specified in subsection B, the court shall issue an order authorizing continued hospitalization of the minor for up to ~~ninety~~ 90 days on the basis of the parent's consent.

Within ~~ten~~ 10 days after the admission of a minor under this section, the director of the facility or the director's designee shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and has been explained to the parent consenting to the admission and to the minor. A copy of the plan shall also be provided to the guardian ad litem. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured.

3. If the court determines that the available information is insufficient to permit an informed determination regarding whether the minor meets the criteria specified in subsection B, the court shall schedule a commitment hearing ~~which~~ *that* shall be conducted in accordance with the procedures specified in §§ 16.1-341 through 16.1-345. The minor may be detained in the hospital for up to ~~seventy-two~~ 72 additional hours pending the holding of the commitment hearing.

D. A minor admitted under this section who rescinds his objection may be retained in the hospital pursuant to § 16.1-338.

E. If the parent who consented to a minor's admission under this section revokes his consent at any time, the minor shall be released within ~~forty-eight~~ 48 hours to the parent's custody unless the minor's continued hospitalization is authorized pursuant to § 16.1-340 or § 16.1-345.

§ 16.1-346.1. Discharge plan.

Prior to discharge of any minor admitted to inpatient treatment, a ~~predischarge~~ *discharge* plan shall be formulated, provided and explained to the minor, and copies thereof shall be sent (i) to the minor's

parents or (ii) if the minor is in the custody of the local department of social services, to the department's director or the director's designee or (iii) to the minor's parents and (a) if the juvenile is to be housed in a detention home upon discharge, to the court in which the petition has been filed and the facility superintendent, or (b) if the minor is in custody of the local department of social services, to the department. If the minor was admitted to a state facility, the ~~predischarge~~ discharge plan shall be prepared and implemented in accordance with ~~§ 37.1-98.2~~ 37.2-837. The plan shall, at a minimum, (i) specify the services required by the released ~~patient~~ minor in the community to meet ~~the minor's~~ his needs for treatment, housing, nutrition, physical care, and safety; (ii) specify any income subsidies for which the minor is eligible; (iii) identify all local and state agencies which will be involved in providing treatment and support to the minor; and (iv) specify services which would be appropriate for the minor's treatment and support in the community but which are currently unavailable.

§ 16.1-348. Availability of judge.

The chief judge of every juvenile and domestic relations district court shall establish and require that a judge, as defined in ~~§ 37.1-1~~, be available seven days a week, ~~twenty-four~~ 24 hours a day, for the purpose of performing the duties established by this article.

§ 18.2-254. Commitment of convicted person for treatment for substance abuse.

A. Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, stimulant, depressant, or hallucinogenic drugs; or has not previously had a proceeding against him for violation of such an offense dismissed as provided in § 18.2-251; is found guilty of violating any law concerning the use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical substances, and like substances, the judge or court shall require such person to undergo a substance abuse screening pursuant to § 18.2-251.01 and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. The cost of such testing ordered by the court shall be paid by the Commonwealth and taxed as a part of the costs of the criminal proceedings. The judge or court shall also order the person to undergo such treatment or education for substance abuse, if available, as the judge or court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services or by a similar program available through the Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes a sentence of 12 months or less, by a similar program available through a local or regional jail, a community-based corrections program established pursuant to § 9.1-174, or an ASAP program certified by the Commission on VASAP.

B. The court trying the case of any person alleged to have committed any offense designated by this article or by the Drug Control Act (§ 54.1-3400 et seq.) or in any other criminal case in which the commission of the offense was motivated by, or closely related to, the use of drugs and determined by the court, pursuant to a substance abuse screening and assessment, to be in need of treatment for the use of drugs may commit, based upon a consideration of the substance abuse assessment, such person, upon his conviction, to any facility for the treatment of persons ~~for the intemperate use of narcotic or other controlled substances with substance abuse~~, licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction of such offense or, if sentence was determined by a jury, not in excess of the term of imprisonment as set by such jury. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. A charge of escape may be prosecuted in either the jurisdiction where the treatment facility is located or the jurisdiction where the person was sentenced to commitment. The court may revoke such commitment; at any time; and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

C. The court trying a case in which commission of the offense was related to the defendant's habitual abuse of alcohol and in which the court determines, pursuant to a substance abuse screening and assessment, that such defendant is ~~an alcoholic as defined in § 37.1-1~~ and in need of treatment, may commit, based upon a consideration of the substance abuse assessment, such person, upon his conviction, to any facility for the treatment of ~~alcoholics~~ persons with substance abuse licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. The court may revoke such commitment; at any time; and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has

successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

§ 18.2-255.2. Prohibiting the sale of drugs on or near certain properties.

A. It shall be unlawful for any person to manufacture, sell or distribute or possess with intent to sell, give or distribute any controlled substance, imitation controlled substance or marijuana while (i) upon the property, including buildings and grounds, of any public or private elementary, secondary, or post secondary school, or any public or private two-year or four-year institution of higher education; (ii) upon public property or any property open to public use within 1,000 feet of such school property; (iii) on any school bus as defined in § 46.2-100; (iv) upon a designated school bus stop, or upon either public property or any property open to public use which is within 1,000 feet of such school bus stop, during the time when school children are waiting to be picked up and transported to or are being dropped off from school or a school-sponsored activity; (v) upon the property, including buildings and grounds, of any publicly owned or publicly operated recreation or community center facility or any public library; or (vi) upon the property of any state ~~hospital facility~~ as defined in § ~~37.1-4~~ 37.2-100 or upon public property or property open to public use within 1,000 feet of such an institution. It is a violation of the provisions of this section if the person possessed the controlled substance, imitation controlled substance or marijuana on the property described in clauses (i) through (vi) of this subsection, regardless of where the person intended to sell, give or distribute the controlled substance, imitation controlled substance or marijuana. Nothing in this section shall prohibit the authorized distribution of controlled substances.

B. Violation of this section shall constitute a separate and distinct felony. Any person violating the provisions of this section shall, upon conviction, be imprisoned for a term of not less than one year nor more than five years and fined not more than \$100,000. A second or subsequent conviction hereunder for an offense involving a controlled substance classified in Schedule I, II, or III of the Drug Control Act (§ 54.1-3400 et seq.) or more than one-half ounce of marijuana shall be punished by a mandatory minimum term of imprisonment of one year to be served consecutively with any other sentence. However, if such person proves that he sold such controlled substance or marijuana only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance or marijuana to use or become addicted to or dependent upon such controlled substance or marijuana, he shall be guilty of a Class 1 misdemeanor.

C. If a person commits an act violating the provisions of this section, and the same act also violates another provision of law that provides for penalties greater than those provided for by this section, then nothing in this section shall prohibit or bar any prosecution or proceeding under that other provision of law or the imposition of any penalties provided for thereby.

§ 19.2-169.6. Emergency treatment prior to trial.

A. Any defendant who is not subject to the provisions of § 19.2-169.2 may be hospitalized for psychiatric treatment prior to trial if:

1. The court with jurisdiction over the defendant's case finds clear and convincing evidence that the defendant (i) is being properly detained in jail prior to trial; (ii) ~~is mentally ill~~ *has mental illness* and *is* imminently dangerous to ~~self~~ *himself* or others in the opinion of a qualified mental health professional; and (iii) requires treatment in a hospital rather than the jail in the opinion of a qualified mental health professional; or

2. The person having custody over a defendant who is awaiting trial has reasonable cause to believe that (i) the defendant ~~is mentally ill~~ *has mental illness* and *is* imminently dangerous to himself or others and (ii) requires treatment in a hospital rather than jail and the person having such custody arranges for an evaluation of the defendant by a person skilled in the diagnosis and treatment of mental illness provided a *district court judge or a special justice*, as defined in § ~~37.1-4~~ 37.2-100 or, if a judge or *special justice* is not available, a magistrate, upon the advice of a person skilled in the diagnosis and treatment of mental illness, subsequently issues a temporary ~~order of~~ *detention order* for treatment in accordance with the procedures specified in § ~~37.1-67.1~~ § 37.2-809 through 37.2-813. In no event shall the defendant have the right to make application for voluntary admission and treatment as may be otherwise provided in § ~~37.1-65~~ 37.2-805 or § ~~37.1-67.3~~ 37.2-814.

If the defendant is committed pursuant to subdivision 1 of this subsection, the attorney for the defendant shall be notified that the court is considering hospitalizing the defendant for psychiatric treatment and shall have the opportunity to challenge the findings of the qualified mental health professional. If the defendant is detained pursuant to subdivision 2 of this subsection, the court having jurisdiction over the defendant's case and the attorney for the defendant shall be given notice prior to the detention pursuant to a temporary ~~order of~~ *detention order* or as soon thereafter as is reasonable. Upon detention pursuant to subdivision 2 of this subsection, a hearing shall be held, upon notice to the attorney for the defendant, either (i) before the court having jurisdiction over the defendant's case or (ii) before a *district court judge or a special justice*, as defined in § ~~37.1-4~~ 37.2-100, in accordance with the provisions of § ~~37.1-67.4~~ 37.2-820, in which case the defendant shall be represented by counsel as specified in § ~~37.1-67.3~~ 37.2-814; the hearing shall be held within ~~forty-eight~~ 48 hours of execution of

the temporary order to allow the court ~~which~~ *that* hears the case to make the findings, based upon clear and convincing evidence, ~~which that~~ are specified in subdivision 1 of this subsection. If the ~~forty-eight~~ 48-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, ~~such~~ *the* person may be detained for the same period allowed for detention pursuant to ~~an order for a~~ temporary detention order issued pursuant to § ~~37.1-67.1~~ § 37.2-809 through 37.2-813.

In any case in which the defendant is hospitalized pursuant to this section, the court having jurisdiction over the defendant's case may provide by order that the admitting hospital evaluate the defendant's competency to stand trial and his mental state at the time of the offense pursuant to §§ 19.2-169.1 and 19.2-169.5.

B. A defendant subject to this section shall be treated at a hospital designated by the Commissioner as appropriate for treatment and evaluation of persons under criminal charge. The director of the hospital shall, within ~~thirty~~ 30 days of the defendant's admission, send a report to the court with jurisdiction over the defendant addressing the defendant's continued need for treatment as ~~mentally ill~~ *for a mental illness* and *being* imminently dangerous to ~~self himself~~ or others and, if so ordered by the court, the defendant's competency to stand trial, pursuant to subsection D of § 19.2-169.1, and his mental state at the time of the offense, pursuant to subsection D of § 19.2-169.5. Based on this report, the court shall ~~either~~ (i) find the defendant incompetent to stand trial pursuant to subsection E of § 19.2-169.1 and proceed accordingly, (ii) order that the defendant be discharged from custody pending trial, (iii) order that the defendant be returned to jail pending trial, or (iv) make other appropriate disposition, including dismissal of charges and release of the defendant.

C. A defendant may not be hospitalized longer than ~~thirty~~ 30 days under this section unless the court which has criminal jurisdiction over him or a *district court judge or a special justice*, as defined in § ~~37.1-4~~ 37.2-100, holds a hearing at which the defendant shall be represented by an attorney and finds clear and convincing evidence that the defendant continues to ~~be~~ (i) ~~mentally ill~~ *have a mental illness*, (ii) *be* imminently dangerous to ~~self himself~~ or others, and (iii) *be* in need of psychiatric treatment in a hospital. Hospitalization may be extended in this manner for periods of ~~sixty~~ 60 days, but in no event may such hospitalization be continued beyond trial, nor shall such hospitalization act to delay trial, so long as the defendant remains competent to stand trial.

#### § 19.2-177.1. Determination of mental illness after sentencing; hearing.

A person convicted of a crime who is in the custody of a local correctional facility after sentencing may be the subject of a ~~mental~~ commitment ~~proceeding~~ *hearing for involuntary admission* in accordance with the procedures provided in Chapter ~~2~~ 8 (§ ~~37.1-63~~ 37.2-800 et seq.) of Title ~~37.1~~ 37.2. Such ~~proceeding~~ *hearing* shall be commenced upon petition of the person having custody over the prisoner. If the person having custody over the prisoner has reasonable cause to believe that (i) the prisoner is ~~mentally ill~~ *has mental illness* and *is* imminently dangerous to himself or others and (ii) requires treatment in a hospital rather than a local correctional facility and the person having such custody arranges for an evaluation of the prisoner by a person skilled in the diagnosis and treatment of mental illness, then a *district court judge or a special justice*, as defined in § ~~37.1-4~~ 37.2-100 or, if a judge is not available, a magistrate, upon the advice of a person skilled in the diagnosis and treatment of mental illness, may issue a temporary ~~order of~~ detention *order* for treatment in accordance with the procedures specified in subdivision A 2 of § 19.2-169.6.

In all other respects, the involuntary ~~civil detention and commitment~~ *admission* procedures specified in Chapter ~~2~~ 8 of Title ~~37.1~~ 37.2 shall be applicable, except:

1. Any ~~detention or commitment~~ *involuntary admission* shall be only to a facility designated for this purpose by the Commissioner;
2. In no event shall the prisoner have the right to make application for voluntary admission and treatment as may be otherwise provided in § ~~37.1-65~~ 37.2-805 or § ~~37.1-67.3~~ 37.2-814;
3. The time that such prisoner is confined to a hospital shall be deducted from any term for which he may be sentenced, but in no event may such hospitalization be continued beyond the date upon which his sentence would have expired;
4. Any prisoner hospitalized pursuant to this section who has not completed service of his sentence upon discharge from the hospital shall serve the remainder of his sentence.

#### § 19.2-182.3. Commitment; civil proceedings.

Upon receipt of the evaluation report and, if applicable, a conditional release or discharge plan, the court shall schedule the matter for hearing on an expedited basis, giving the matter priority over other civil matters before the court, to determine the appropriate disposition of the acquittee. Except as otherwise ordered by the court, the attorney who represented the defendant at the criminal proceedings shall represent the acquittee through the proceedings pursuant to this section. The matter may be continued on motion of either party for good cause shown. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. The hearing is a civil proceeding.

At the conclusion of the hearing, the court shall commit the acquittee if it finds that he is ~~mentally ill~~ *has mental illness* or ~~mentally retarded~~ *mental retardation* and *is* in need of inpatient hospitalization.

For the purposes of this chapter, mental illness includes any mental illness, as ~~this term~~ is defined in § ~~37.1-1~~ 37.2-100, in a state of remission when the illness may, with reasonable probability, become active. The decision of the court shall be based upon consideration of the following factors:

1. To what extent the acquittee is ~~mentally ill~~ *has mental illness* or ~~mentally retarded~~ *mental retardation*, as those terms are defined in § ~~37.1-1~~ 37.2-100;
2. The likelihood that the acquittee will engage in conduct presenting a substantial risk of bodily harm to other persons or to himself in the foreseeable future;
3. The likelihood that the acquittee can be adequately controlled with supervision and treatment on an outpatient basis; and
4. Such other factors as the court deems relevant.

If the court determines that an acquittee does not need inpatient hospitalization solely because of treatment or habilitation he is currently receiving, but the court is not persuaded that the acquittee will continue to receive such treatment or habilitation, it may commit him for inpatient hospitalization. The court shall order the acquittee released with conditions pursuant to §§ 19.2-182.7 through 19.2-182.9 if it finds that he is not in need of inpatient hospitalization but that he meets the criteria for conditional release set forth in § 19.2-182.7. If the court finds that the acquittee does not need inpatient hospitalization nor does he meet the criteria for conditional release, it shall release him without conditions, provided the court has approved a discharge plan prepared ~~jointly by the hospital staff and~~ the appropriate community services board *or behavioral health authority in consultation with the appropriate hospital staff*.

§ 19.2-182.9. Emergency custody of conditionally released acquittee.

When exigent circumstances do not permit compliance with revocation procedures set forth in § 19.2-182.8, any *district court judge or a special justice*, as defined in § ~~37.1-1~~ 37.2-100, or a magistrate may issue an emergency custody order, upon the sworn petition of any responsible person or upon his own motion based upon probable cause to believe that an acquittee on conditional release (i) has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) requires inpatient hospitalization. The emergency custody order shall require the acquittee within his judicial district to be taken into custody and transported to a convenient location where a person designated by the community services board *or behavioral health authority* who is skilled in the diagnosis and treatment of mental illness shall evaluate such acquittee and assess his need for inpatient hospitalization. A law-enforcement officer who, based on his observation or the reliable reports of others, has probable cause to believe that any acquittee on conditional release has violated the conditions of his release and is no longer a proper subject for conditional release and requires emergency evaluation to assess the need for inpatient hospitalization, may take the acquittee into custody and transport him to an appropriate location to assess the need for hospitalization without prior judicial authorization. The evaluation shall be conducted immediately. The acquittee shall remain in custody until a temporary detention order is issued or until he is released, but in no event shall the period of custody exceed four hours. If it appears from all evidence readily available (i) that the acquittee has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) that he requires emergency evaluation to assess the need for inpatient hospitalization, the *district court judge or a special justice*, as defined in § ~~37.1-1~~ 37.2-100, or magistrate, upon the advice of such person skilled in the diagnosis and treatment of mental illness, may issue ~~an order of~~ a temporary detention order authorizing the executing officer to place the acquittee in an appropriate institution for a period not to exceed ~~forty-eight~~ 48 hours prior to a hearing. If the ~~forty-eight~~ 48-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the acquittee may be detained until the next day which is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

The committing court or any *district court judge or a special justice*, as defined in § ~~37.1-1~~ 37.2-100, shall have jurisdiction to hear the matter. Prior to the hearing, the acquittee shall be examined by a psychiatrist or licensed clinical psychologist, provided the psychiatrist or clinical psychologist is skilled in the diagnosis of mental illness, who shall certify whether the person is in need of hospitalization. At the hearing the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. Following the hearing, if the court determines, based on a preponderance of the evidence presented at the hearing, that the acquittee (i) has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) is ~~mentally ill~~ *has mental illness* or ~~mentally retarded~~ *mental retardation* and is in need of inpatient hospitalization, the court shall revoke the acquittee's conditional release and place him in the custody of the Commissioner. When an acquittee on conditional release pursuant to this chapter is taken into emergency custody, detained, or hospitalized, such action shall be considered to have been taken pursuant to this section, notwithstanding the fact that his status as an insanity acquittee was not known at the time of custody, detention, or hospitalization. Detention or hospitalization of an acquittee pursuant to provisions of law other than those applicable to insanity acquittees pursuant to this chapter shall not render the detention or hospitalization invalid. If a person's status as an insanity acquittee on conditional

release is not recognized at the time of emergency custody or detention, at the time his status as such is verified, the provisions applicable to such persons shall be applied and the court hearing the matter shall notify the committing court of the proceedings.

§ 22.1-281. Triennial census of school population.

Every three years, at a time to be designated by the Superintendent of Public Instruction, a census of all persons residing within each school division who, on or before December 31 immediately following the census, will have reached their fifth birthday but not their twentieth birthday shall be taken on forms furnished by the Superintendent of Public Instruction. Such persons who are domiciled in orphanages or eleemosynary institutions or who are dependents living on any federal military or naval reservation or other federal property shall be included in the census for the school division within which the institution or federal military or naval reservation or other federal property is located. Such persons who ~~are confined~~ *reside* in state hospitals, ~~state training schools or state training centers for the mentally retarded,~~ each as defined in § 37.1-1, or mental institutions 37.2-100, state or federal correctional institutions, or the Virginia School for the Deaf and the Blind at Staunton, or the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton shall be included in the census for the school division within which the parents or guardians of such person or persons legally reside. If the legal residence of the parents or guardians of such person is not ascertainable, such parents or guardians shall be deemed to be legal residents of the school division from which such person was admitted or committed.

§ 33.1-234. Guardian ad litem for persons under disability.

If any such owner or proprietor be ~~an infant, insane or feeble-minded~~ *a person under a disability as defined in § 8.01-2*, the circuit court of the county, or the judge thereof in vacation, shall, at the time the clerk shall issue such process, or as soon thereafter as practicable, upon the court's or judge's own motion, or upon the suggestion of any party in interest, appoint for such person a guardian ad litem, who shall faithfully represent the interest of the ~~infant, insane or feeble-minded~~ *person under a disability* and whose fees shall be fixed by the court or judge making the appointment.

TITLE 37.2.

MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE SERVICES.

SUBTITLE I.

GENERAL PROVISIONS.

CHAPTER 1.

DEFINITIONS.

§ 37.2-100. Definitions.

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

*"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the Department, excluding those operated by the Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to a person receiving care or treatment for mental illness, mental retardation, or substance abuse. Examples of abuse include acts such as:*

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

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

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

*"Board" means the State Mental Health, Mental Retardation and Substance Abuse Services Board.*

*"Commissioner" means the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services.*

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

*"Consumer" means a current direct recipient of public or private mental health, mental retardation, or substance abuse treatment or habilitation services.*

*"Department" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.*

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

*"Family member" means an immediate family member of a consumer or the principal caregiver of a consumer. A principal caregiver is a person who acts in the place of an immediate family member, including other relatives and foster care providers, but does not have a proprietary interest in the care of the consumer.*

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

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

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

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

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

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

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

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

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

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

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

*"Substance abuse" means the use of drugs, enumerated in the Virginia Drug Control Act*

(§ 54.1-3400 et seq.), without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Training center" means a facility operated by the Department for the treatment, training, or habilitation of persons with mental retardation.

## CHAPTER 2.

### STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD.

§ 37.2-200. State Mental Health, Mental Retardation and Substance Abuse Services Board.

A. The State Mental Health, Mental Retardation and Substance Abuse Services Board is established as a policy board, within the meaning of § 2.2-2100, in the executive branch of government. The Board shall consist of nine nonlegislative citizen members to be appointed by the Governor, subject to confirmation by the General Assembly. The nine members shall consist of one consumer or former consumer, one family member of a consumer or former consumer, one consumer or former consumer or family member of a consumer or former consumer, one elected local government official, one psychiatrist licensed to practice in Virginia, and four citizens of the Commonwealth at large. The Governor, in appointing the psychiatrist member, may make his selection from nominations submitted by the Medical Society of Virginia in collaboration with the Psychiatric Society of Virginia and the Northern Virginia Chapter of the Washington Psychiatric Society.

B. Appointments shall be made for terms of four years each, except appointments to fill vacancies that shall be for the unexpired terms of vacated appointments. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. However, no member shall be eligible to serve more than two four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. No person shall serve more than a total of 12 years. Members of the Board may be suspended or removed by the Governor at his pleasure.

C. Members of the Board shall receive compensation for their services and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. The Board is authorized to employ a secretary to assist in the Board's administrative duties. The compensation of the secretary shall be fixed by the Board within the specific limits of the appropriation made therefor by the General Assembly, and the compensation shall be subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. The secretary shall perform the duties required of him by the Board. The Department and all other agencies of the Commonwealth shall provide assistance to the Board upon request.

D. The main office of the Board shall be in the City of Richmond. The Board shall meet quarterly and at such other times as it deems proper. The Board shall elect a chairman and vice chairman from among its membership. The meetings of the Board shall be held at the call of the chairman or whenever the majority of the members so request. Five members shall constitute a quorum.

E. The chairman of the Board shall submit to the Governor and the General Assembly an annual executive summary of the activity and work of the Board no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

§ 37.2-201. Internal evaluation committee of Board.

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

§ 37.2-202. Members not eligible for positions in Department.

No member of the Board shall be eligible for any position in the Department during the term for which he is appointed or for 12 months thereafter.

§ 37.2-203. Powers and duties of Board.

The Board shall have the following powers and duties:

1. To develop and establish programmatic and fiscal policies governing the operation of state hospitals, training centers, community services boards, and behavioral health authorities;
2. To ensure the development of long-range programs and plans for mental health, mental retardation, and substance abuse services provided by the Department, community services boards, and behavioral health authorities;
3. To review and comment on all budgets and requests for appropriations for the Department prior



to their submission to the Governor and on all applications for federal funds;

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

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

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

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

8. To ensure that the Department assumes the responsibility for providing for education and training of school-age consumers in state facilities, pursuant to § 37.2-312; and

9. To change the names of state facilities.

Prior to the adoption, amendment, or repeal of any regulation regarding substance abuse services, the Board shall, in addition to the procedures set forth in the Administrative Process Act (§ 2.2-4000 *et seq.*), present the proposed regulation to the Substance Abuse Services Council, established pursuant to § 2.2-2690, at least 30 days prior to the Board's action for the Council's review and comment.

§ 37.2-204. Appointments to state and local human rights committees.

The Board shall appoint a state human rights committee that shall appoint local human rights committees to address alleged violations of consumers' human rights. One-third of the appointments made to the state or local human rights committees shall be current or former consumers or family members of current or former consumers, with at least two consumers who are receiving or who have received within five years of their initial appointment public or private mental health, mental retardation, or substance abuse treatment or habilitation services on each committee. Remaining appointments shall include lawyers, health care providers, and persons with interest, knowledge, or training in the mental health, mental retardation, or substance abuse field. No current employee of the Department, a community services board, or a behavioral health authority shall serve as a member of the state human rights committee. No current employee of the Department, a community services board, a behavioral health authority, or any facility, program, or organization licensed or funded by the Department or funded by a community services board or behavioral health authority shall serve as a member of any local human rights committee that serves an oversight function for the employing facility, program, or organization.

### CHAPTER 3.

## DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES.

### Article 1.

#### *The Department and the Commissioner.*

§ 37.2-300. Creation and supervision of Department.

The Department of Mental Health, Mental Retardation and Substance Abuse Services is hereby established in the executive branch of government responsible to the Governor. The Department shall be under the supervision and management of the Commissioner. The Commissioner shall carry out his management and supervisory responsibilities in accordance with the policies and regulations of the Board and applicable federal and state statutes and regulations.

§ 37.2-301. Appointment of Commissioner.

The Commissioner shall be appointed by the Governor, subject to confirmation by the General Assembly, if in session when the appointment is made or, if not in session, at its next session.

§ 37.2-302. Term of office and vacancy therein.

The Commissioner shall hold office at the pleasure of the Governor for a term coincident with that of the Governor making the appointment or until his successor shall be appointed and qualified. Vacancies shall be filled in the same manner as original appointments are made.

§ 37.2-303. Qualifications of Commissioner.

The Commissioner shall be a person of proven executive and administrative ability and shall have had appropriate education and substantial experience in the fields of mental health, mental retardation, or substance abuse.

§ 37.2-304. 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 state facilities.
2. To employ the personnel 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 contracts with the United States, other states, and agencies and governmental subdivisions of the Commonwealth, consistent with policies and regulations of the Board and applicable federal and state statutes and regulations.

4. To accept, hold, and enjoy gifts, donations, and bequests on behalf of the Department from the United States government, 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 conditions and execute agreements that may be necessary, convenient, or desirable, consistent with policies 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 state hospitals and training centers school-age consumers who have been identified as appropriate to be placed 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 a state hospital or training center is located.

7. To provide to the Director of the Virginia Office for Protection and Advocacy, pursuant to § 51.5-39.12, a written report setting forth the known facts of critical incidents or deaths of consumers in facilities within 15 working days of the critical incident or death.

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

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

#### § 37.2-305. Receiving gifts and endowments.

The Commissioner may receive gifts, bequests, and endowments to or for state facilities in their names or to or for any consumer in state facilities. When gifts, bequests, and endowments are accepted by the Commissioner, he shall well and faithfully administer such trusts.

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

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

§ 37.2-307. Employment of special counsel to defend Board member, officer, or employee of Department in criminal cases.

If the Commissioner, any Board member, or any officer or employee of the Department is arrested, indicted, or otherwise prosecuted on any charge arising out of any act committed in the discharge of his official duties, the Commissioner may employ special counsel, to be approved by the Attorney General, to defend the person. The compensation for the special counsel employed pursuant to this section shall, subject to approval of the Attorney General, be paid out of funds appropriated to the Department.

#### § 37.2-308. Data reporting on children and adolescents.

A. The Department shall collect and compile the following data:

1. The total number of licensed and staffed inpatient acute care psychiatric beds for children under the age of 14 and adolescents ages 14 through 17; and

2. The total number of licensed and staffed residential treatment beds for children under the age of 14 and adolescents ages 14 through 17 in residential facilities licensed pursuant to this title, excluding group homes.

B. The Department shall collect and compile data obtained from the community policy and management team pursuant to subdivision 15 of § 2.2-5206 and each community services board or behavioral health authority pursuant to § 37.2-507 and subdivision 18 of § 37.2-605. The Department shall ensure that the data reported is not duplicative.

C. The Department shall report this data on a quarterly basis to the Chairmen of the House Appropriations and Senate Finance Committees and to the Virginia Commission on Youth.

§ 37.2-309. Department responsible for substance abuse services; office established; qualifications of staff.

The Department shall be responsible for the administration, planning, and regulation of substance abuse services in the Commonwealth. The Commissioner shall establish an Office of Substance Abuse Services and employ a director and staff who shall have knowledge and experience in the field of substance abuse to carry out this responsibility. Each substance abuse treatment program shall provide data, statistics, schedules, and information that may be reasonably required to the Department.

#### § 37.2-310. Powers and duties of Department related to substance abuse.

The Department shall have the following powers and duties related to substance abuse:

1. To act as the sole state agency for the planning, coordination, and evaluation of the comprehensive interagency state plan for substance abuse services.

2. To provide staff assistance to the Substance Abuse Services Council pursuant to § 2.2-2690.
3. To (i) develop, implement, and promote, in cooperation with federal, state, local, and other publicly-funded agencies, a comprehensive interagency state plan for substance abuse services, consistent with federal guidelines and regulations, for the long-range development of adequate and coordinated programs, services, and facilities for the research, prevention, and control of substance abuse and the treatment and rehabilitation of persons with substance abuse; (ii) review the plan annually; and (iii) make revisions in the plan that are necessary or desirable.
4. To report biennially to the General Assembly on the comprehensive interagency state plan for substance abuse services and the Department's activities in administering, planning, and regulating substance abuse services and specifically on the extent to which the Department's duties as specified in this title have been performed.
5. To develop, in cooperation with the Department of Corrections, Virginia Parole Board, Department of Juvenile Justice, Department of Criminal Justice Services, Commission on the Virginia Alcohol Safety Action Program, Office of the Executive Secretary of the Supreme Court of Virginia, Department of Education, Department of Health, Department of Social Services, and other appropriate agencies, a section of the comprehensive interagency state plan for substance abuse services that addresses the need for treatment programs for persons with substance abuse who are involved with these agencies.
6. To specify uniform methods for keeping statistical information for inclusion in the comprehensive interagency state plan for substance abuse services.
7. To provide technical assistance and consultation services to state and local agencies in planning, developing, and implementing services for persons with substance abuse.
8. To review and comment on all applications for state or federal funds or services to be used in substance abuse programs in accordance with § 37.2-311 and on all requests by state agencies for appropriations from the General Assembly for use in substance abuse programs.
9. To recommend to the Governor and the General Assembly legislation necessary to implement programs, services, and facilities for the prevention and control of substance abuse and the treatment and rehabilitation of persons with substance abuse.
10. To organize and foster training programs for all persons engaged in the treatment of substance abuse.
11. To identify, coordinate, mobilize, and use the research and public service resources of institutions of higher education, all levels of government, business, industry, and the community at large in the understanding and solution of problems relating to substance abuse.
12. To inspect substance abuse treatment programs at reasonable times and in a reasonable manner.
13. To maintain a current list of substance abuse treatment programs, which shall be made available upon request.

§ 37.2-311. Review of applications for state or federal funds or services used in substance abuse programs.

A. No state agency that is authorized to issue final approval or disapproval of or to make a final review and comment on any application for state or federal funds or services that are to be used in a substance abuse program shall take final action on an application until the application is first reviewed and commented on by the Department to determine its compatibility with the comprehensive interagency state plan for substance abuse services, and thereafter the review and comment by the Department shall remain a part of the application documents.

B. Every applicant for any federal or state funds, services, loans, grants-in-aid, matching funds, or services that are to be used in connection with any substance abuse program shall submit a copy of the application for those funds, services, loans, grants-in-aid, matching funds, or services to the Department for review and comment simultaneously with submission of the application to the funding source.

C. The Department shall review and comment on each application within 45 days after receiving the application or in accordance with the requirements of the funding source.

D. Each state agency requesting an appropriation or a change in an existing appropriation from the General Assembly for substance abuse programs shall submit the request to the Department for review and comment to determine its compatibility with the comprehensive interagency state plan for substance abuse services and shall supply the Department with all relevant information, including a full report on funds expended pursuant to prior appropriations. The Department shall provide the Governor and the General Assembly with its assessment of each request by a state agency for an appropriation or a change in an existing appropriation.

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

The Department shall be responsible for providing for education and training of school-age consumers in state facilities. The Board of Education shall supervise the education and training provided to school-age consumers in training centers and provide for and direct the education for school-age consumers in state hospitals in cooperation with the Department. In discharging this responsibility, the Department shall exercise leadership by: (i) coordinating actions with the Department of Education and state facilities to ensure consistency between treatment and educational priorities in

*the policy and implementation of direct services for school-age consumers in state facilities; (ii) ensuring that comparable resources especially in career and technical education, appropriate to the students' disabilities and needs, are available in all state facilities; (iii) monitoring the quality of the instruction provided to all school-age consumers in state facilities; (iv) requiring state facility directors to evaluate the performance of the education directors pursuant to guidelines developed in cooperation with the Board of Education; (v) developing and implementing, in cooperation with the Department of Education, programs to ensure that the educational and treatment needs of children with dual diagnoses in state facilities are met; (vi) taking an active role with the Department of Education to evaluate the effectiveness of prevalent educational models in state facilities; and (vii) designing a mechanism for maintaining constant direct contact and the sharing of ideas, approaches, and innovations between the education directors and teachers whether they are employees of local school divisions or of the Commonwealth who are educating school-age consumers in state facilities.*

*§ 37.2-313. Employment of unlicensed physician by Department.*

*Unless a physician is licensed by the Commonwealth or is in an internship or residency program approved by the Commissioner, he shall not be employed by the Department for the practice of any of the healing arts or to provide services under the supervision of the Commissioner.*

*§ 37.2-314. Background check required.*

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

*B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated employment persons who have been (i) convicted of murder or manslaughter, as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob, as set out in § 18.2-41; abduction, as set out in subsection A of § 18.2-47; abduction for immoral purposes, as set out in § 18.2-48; assault and bodily wounding, as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery, as set out in § 18.2-58; carjacking, as set out § 18.2-58.1; extortion by threat, as set out in § 18.2-59; threat, as set out in § 18.2-60; any felony stalking violation, as set out in § 18.2-60.3; sexual assault, as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson, as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary, as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting, as set out in § 18.2-286.1; use of a machine gun in a crime of violence, as set out in § 18.2-289; aggressive use of a machine gun, as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence, as set out in subsection A of § 18.2-300; pandering, as set out in § 18.2-355; crimes against nature involving children, as set out in § 18.2-361; taking indecent liberties with children, as set out in § 18.2-370 or 18.2-370.1; abuse or neglect of children, as set out in § 18.2-371.1, including failing to secure medical attention for an injured child, as set out in § 18.2-314; obscenity offenses, as set out in § 18.2-374.1; possession of child pornography, as set out in § 18.2-374.1.1; electronic facilitation of pornography, as set out in § 18.2-374.3; incest, as set out in § 18.2-366; abuse or neglect of incapacitated adults, as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in § 18.2-379; delivery of drugs to prisoners, as set out in § 18.2-474.1; escape from jail, as set out in § 18.2-477; felonies by prisoners, as set out in § 53.1-203; or an equivalent offense in another state; (ii) convicted of any felony violation relating to possession of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, in the five years prior to the application date for employment; or (iii) convicted of any felony violation relating to possession of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, and continue on probation or parole or have failed to pay required court costs.*

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

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

*E. The Board may adopt regulations to comply with the provisions of this section. Copies of any information received by the state facility or Department pursuant to this section shall be available to the Department and to the applicable state facility but shall not be disseminated further, except as permitted*

by state or federal law. The cost of obtaining the criminal history record and the central registry information shall be borne by the applicant, unless the Department or state facility decides to pay the cost.

#### Article 2.

##### *Comprehensive State Plan for Mental Health, Mental Retardation, and Substance Abuse Services.*

§ 37.2-315. *Comprehensive State Plan for mental health, mental retardation, and substance abuse services.*

*The Department, in consultation with community services boards, behavioral health authorities, state hospitals and training centers, consumers, consumers' families, advocacy organizations, and other interested parties, shall develop and update biennially a six-year Comprehensive State Plan for mental health, mental retardation, and substance abuse services. The Comprehensive State Plan shall identify the needs of and the resource requirements for providing services and supports to persons with mental illness, mental retardation, or substance abuse across the Commonwealth and shall propose strategies to address these needs. The Comprehensive State Plan shall be used in the development of the Department's biennial budget submission to the Governor.*

#### Article 3.

##### *System Restructuring.*

§ 37.2-316. *System restructuring; state and community consensus and planning team required.*

*A. For the purpose of considering any restructuring of the system of mental health services involving an existing state hospital, the Commissioner shall establish a state and community consensus and planning team consisting of Department staff and representatives of the localities served by the state hospital, including local government officials, consumers, family members of consumers, advocates, state hospital employees, community services boards, behavioral health authorities, public and private service providers, licensed hospitals, local health department staff, local social services department staff, sheriffs' office staff, area agencies on aging, and other interested persons. In addition, the members of the House of Delegates and the Senate representing the localities served by the affected state hospital may serve on the state and community consensus and planning team for that state hospital. Each state and community consensus and planning team, in collaboration with the Commissioner, shall develop a plan that addresses (i) the types, amounts, and locations of new and expanded community services that would be needed to successfully implement the closure or conversion of the state hospital to any use other than the provision of mental health services, including a six-year projection of the need for inpatient psychiatric beds and related community mental health services; (ii) the development of a detailed implementation plan designed to build community mental health infrastructure for current and future capacity needs; (iii) the creation of new and enhanced community services prior to the closure of the state hospital or its conversion to any use other than the provision of mental health services; (iv) the transition of state hospital consumers to community services in the locality of their residence prior to admission or the locality of their choice after discharge; (v) the resolution of issues relating to the restructuring implementation process, including employment issues involving state hospital employee transition planning and appropriate transitional benefits; and (vi) a six-year projection comparing the cost of the current structure and the proposed structure.*

*B. The Commissioner shall ensure that each plan includes the following components:*

- 1. A plan for community education;*
- 2. A plan for the implementation of required community services, including state-of-the-art practice models and any models required to meet the unique characteristics of the area to be served, which may include models for rural areas;*
- 3. A plan for assuring the availability of adequate staff in the affected communities, including specific strategies for transferring qualified state hospital employees to community services;*
- 4. A plan for assuring the development, funding, and implementation of individualized discharge plans pursuant to § 37.2-505 for individuals discharged as a result of the closure or conversion of the state hospital to any use other than the provision of mental health services; and*
- 5. A provision for suspending implementation of the plan if the total general funds appropriated to the Department for state hospital and community services decrease in any year of plan implementation by more than 10 percent from the year in which the plan was approved by the General Assembly.*

*C. At least nine months prior to any proposed state hospital closure or conversion of the state hospital to any use other than the provision of mental health services, the state and community consensus and planning team shall submit a plan to the Joint Commission on Health Care and the Governor for review and recommendation.*

*D. The Joint Commission on Health Care shall make a recommendation to the General Assembly on the plan no later than six months prior to the date of the proposed closure or conversion of the state hospital to any use other than the provision of mental health services.*

*E. Upon approval of the plan by the General Assembly and the Governor, the Commissioner shall ensure that the plan components required by subsection B are in place and may thereafter perform all tasks necessary to implement the closure or conversion of the state hospital to any use other than the provision of mental health services.*

F. Any funds saved by the closure or conversion of the state hospital to any use other than the provision of mental health services and not allocated to individualized services plans for consumers being transferred or discharged as a result of the closure or conversion of the state hospital to any use other than the provision of mental health services shall be invested in the Mental Health, Mental Retardation, and Substance Abuse Services Trust Fund established in Article 4 (§ 37.2-317 et seq.) of this chapter.

G. Nothing in this section shall prevent the Commissioner from leasing unused, vacant space to any public or private organization.

#### Article 4.

##### *Mental Health, Mental Retardation, and Substance Abuse Services Trust Fund.*

##### *§ 37.2-317. Definitions.*

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

"Assets" means the buildings and land of state facilities operated by the Department.

"Fund" means the Mental Health, Mental Retardation, and Substance Abuse Services Trust Fund.

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

§ 37.2-318. *Mental Health, Mental Retardation, and Substance Abuse Services Trust Fund established; purpose.*

There is hereby created in the state treasury a special nonreverting fund to be known as the Mental Health, Mental Retardation, and Substance Abuse Services Trust Fund to enhance and ensure for the coming years the quality of care and treatment provided to consumers of public mental health, mental retardation, and substance abuse services. The Fund shall be established on the books of the Comptroller. Notwithstanding the provisions of § 2.2-1156, the Fund shall consist of the net proceeds of the sale of vacant buildings and land held by the Department. The Fund shall also consist of such moneys as shall be appropriated by the General Assembly and any private donations. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. 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 article. 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 Commissioner.

§ 37.2-319. *Administration of Mental Health, Mental Retardation, and Substance Abuse Services Trust Fund.*

The Fund shall be administered by the Commissioner. Moneys in the Fund shall be used solely to provide mental health, mental retardation, and substance abuse services to enhance and ensure the quality of care and treatment provided by the Commonwealth to persons with mental illness, mental retardation, or substance abuse. Notwithstanding any other provision of law, the net proceeds from the sale of any vacant buildings and land shall first be used to (i) deliver mental health, mental retardation, and substance abuse services within the same service area where the sold buildings and land were located to ensure the same level of mental health, mental retardation, and substance abuse services as before the sale and (ii) provide benefits to those persons who were employees of the Commonwealth and, as a result of the sale, are no longer employed by the Commonwealth or are otherwise negatively affected by the sale. Benefits shall include appropriate transitional benefits.

#### CHAPTER 4.

#### PROTECTION OF CONSUMERS.

##### Article 1.

##### *Human Rights.*

##### *§ 37.2-400. Rights of consumers.*

A. Each person who is a consumer in a hospital, training center, other facility, or program operated, funded, or licensed by the Department, excluding those operated by the Department of Corrections, shall be assured his legal rights and care consistent with basic human dignity insofar as it is within the reasonable capabilities and limitations of the Department, funded program, or licensee and is consistent with sound therapeutic treatment. Each person admitted to a hospital, training center, other facility, or program operated, funded, or licensed by the Department shall:

1. Retain his legal rights as provided by state and federal law;
2. Receive prompt evaluation and treatment or training about which he is informed insofar as he is capable of understanding;
3. Be treated with dignity as a human being and be free from abuse or neglect;

4. Not be the subject of experimental or investigational research without his prior written and informed consent or that of his legally authorized representative;

5. Be afforded an opportunity to have access to consultation with a private physician at his own expense and, in the case of hazardous treatment or irreversible surgical procedures, have, upon request, an impartial review prior to implementation, except in case of emergency procedures required for the preservation of his health;

6. Be treated under the least restrictive conditions consistent with his condition and not be subjected to unnecessary physical restraint and isolation;

7. Be allowed to send and receive sealed letter mail;

8. Have access to his medical and clinical treatment, training, or habilitation records and be assured of their confidentiality but, notwithstanding other provisions of law, this right shall be limited to access consistent with his condition and sound therapeutic treatment;

9. Have the right to an impartial review of violations of the rights assured under this section and the right of access to legal counsel; and

10. Be afforded appropriate opportunities, consistent with the person's capabilities and capacity, to participate in the development and implementation of his individualized services plan.

The Board shall adopt regulations to implement the provisions of this subsection after due notice and public hearing, as provided for in the Administrative Process Act (§ 2.2-4000 et seq.).

B. The Board shall adopt regulations delineating the rights of consumers with respect to nutritionally adequate diet; safe and sanitary housing; participation in nontherapeutic labor; attendance or nonattendance at religious services; participation in treatment decision-making, including due process procedures to be followed when a consumer may be unable to make an informed decision; use of telephones; suitable clothing; possession of money and valuables; and related matters.

C. The human rights regulations shall be applicable to all hospitals, training centers, other facilities, and programs operated, funded, or licensed by the Department; these hospitals, training centers, other facilities, or programs may be classified as to consumer population, size, type of services, or other reasonable classification.

D. The Board shall adopt regulations requiring public and private facilities and programs licensed or funded by the Department to provide nonprivileged information and statistical data to the Department related to (i) the results of investigations of abuse or neglect, (ii) deaths and serious injuries, (iii) instances of seclusion and restraint, including the duration, type, and rationale for use per consumer, and (iv) findings by state or local human rights committees or the Office of Human Rights in the Department of human rights violations, abuse, or neglect. The Board's regulations shall address the procedures for collecting, compiling, encrypting, and releasing the data. This information and statistical data shall be made available to the public in a format from which all provider and consumer-identifying information has been removed. The Board's regulations shall specifically exclude all proceedings, minutes, records, and reports of any committee or nonprofit entity providing a centralized credentialing service that are identified as privileged pursuant to § 8.01-581.17.

§ 37.2-401. Legally authorized representative prohibition.

No employee of the Department, a state hospital or training center, a community services board or behavioral health authority, a community services board or behavioral health authority contractor, or any other public or private program or facility licensed or funded by the Department shall serve as a legally authorized representative for a consumer being treated in any state hospital or training center, community services board or behavioral health authority, community services board or behavioral health authority contractor, or other licensed or funded public or private program or facility, unless the employee is a relative or legal guardian of the consumer.

§ 37.2-402. Board to establish regulations regarding human research.

The Board shall adopt regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to implement the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research, as defined in § 32.1-162.16, to be conducted or authorized by the Department, any community services board or behavioral health authority, or any other facility or program operated, funded, or licensed by the Department. The regulations shall require the human research committee to submit to the Governor, the General Assembly, and the Commissioner or his designee at least annually a report on the human research projects reviewed and approved by the committee and shall require the committee to report any significant deviations from the proposals as approved.

## Article 2.

Licensing Providers of Mental Health, Mental Retardation, and Substance Abuse Services.

§ 37.2-403. Definitions.

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

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers services to persons with mental illness, mental retardation, or substance abuse or to persons who receive day support, in-home support, or crisis stabilization services funded through the Individual and Families Developmental Disabilities Support Waiver. The person, entity, or organization shall include a hospital as defined in § 32.1-123, community



services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to § 54.1-3501, 54.1-3601, or 54.1-3701.

"Service or services" means:

1. Planned individualized interventions intended to reduce or ameliorate mental illness, mental retardation, or substance abuse through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, mental retardation, or substance abuse. Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment, and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, and other residential services; and

2. Day support, in-home support, and crisis stabilization services provided to individuals under the Individual and Families Developmental Disabilities Support Waiver.

§ 37.2-404. Authority of Commissioner to grant licenses.

The Commissioner, subject to regulations adopted by the Board, may license any suitable provider to establish, maintain and operate, or have charge of any service.

§ 37.2-405. License required; exception; license not transferable; operation of existing services; persons not to be admitted, etc., to unlicensed providers.

A. No provider shall establish, conduct, maintain, or operate or continue to operate in the Commonwealth any service, without being licensed under this article, except where the provider is exempt from licensing.

B. No license issued under this article shall be assignable or transferable.

C. No person shall be admitted, placed, treated, maintained, housed, or otherwise kept, voluntarily or involuntarily, by any provider required to be licensed by subsection A, unless and until the provider is licensed by the Commissioner.

§ 37.2-406. Conditions for initial licensure of certain providers.

A. Notwithstanding the Commissioner's discretion to grant licenses pursuant to this article or any Board regulation regarding licensing, no initial license shall be granted by the Commissioner to a provider of treatment for persons with opiate addiction through the use of methadone or other opioid replacements, if the provider is to be located within one-half mile of a public or private licensed day care center or a public or private K-12 school, except when such service is provided by a hospital licensed by the Board of Health or the Commissioner or is owned or operated by an agency of the Commonwealth.

B. Further, upon receiving notice of a proposal for or an application to obtain an initial license from a provider of treatment for persons with opiate addiction through the use of methadone or other opioid replacements, the Commissioner shall, within 15 days of the receipt, notify the local governing body of and the community services board serving the jurisdiction in which the facility is to be located of the proposal or application and the facility's proposed location.

Within 30 days of the date of the notice, the local governing body and community services board shall submit to the Commissioner comments on the proposal or application. The local governing body shall notify the Commissioner within 30 days of the date of the notice concerning the compliance of the applicant with this section and any applicable local ordinances.

C. No license shall be issued by the Commissioner to the provider until the conditions of this section have been met, i.e., local governing body and community services board comments have been received and the local governing body has determined compliance with the provisions of this section and any relevant local ordinances.

D. No applicant for a license to provide treatment for persons with opiate addiction through the use of methadone or other opioid replacements that has obtained a certificate of occupancy in accordance with the law and regulations in effect on January 1, 2004, shall be required to comply with the provisions of this section. No existing licensed provider shall be required to comply with the provisions of this section in any city or county in which it is currently providing such treatment.

E. The provisions of subsection A of this section shall not apply to the jurisdictions in Planning District 8.

§ 37.2-407. Regulations for treatment of pregnant women with substance abuse.

The Board shall adopt regulations that ensure that providers licensed to offer substance abuse services develop policies and procedures for the timely and appropriate treatment of pregnant women with substance abuse.

§ 37.2-408. Cooperation of Department with other state departments.

The Department shall assist and cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in such licensing and certification. The Board may adopt regulations that allow the Department to so assist and cooperate with other state departments. The Board may adopt regulations to enhance cooperation



*and assistance among agencies licensing similar programs.*

*§ 37.2-409. Intermediate care facilities for the mentally retarded.*

*The Board may adopt regulations specifying the maximum number of consumers to be served by any intermediate care facility for the mentally retarded.*

*§ 37.2-410. Expiration of license; renewal; license fees.*

*Licenses granted under this article may be issued for periods of up to three successive years from the date of issuance and may be renewed by the Commissioner. The Board may fix a reasonable fee for each license so issued and for any renewal thereof. All funds received by the Department under this article shall be paid into the general fund in the state treasury.*

*§ 37.2-411. Inspections.*

*All services provided or delivered under any license shall be subject to review or inspection at any reasonable time by any authorized inspector or agent of the Department. The Commissioner or his authorized agents shall inspect all licensed providers and shall have access at all reasonable times to all services and records, including medical records. Records that are confidential under federal or state law shall be maintained as confidential by the Department and shall not be further disclosed except as permitted by law; however, there shall be no right of access to communications that are privileged pursuant to § 8.01-581.17. The Commissioner shall call upon other state or local departments to assist in the inspections and those departments shall render an inspection report to the Commissioner. After receipt of all inspection reports, the Commissioner shall make the final determination with respect to the condition of the service so reviewed or inspected. The Commissioner or his authorized agents shall make at least one annual unannounced inspection of each service offered by each licensed provider. Inspections shall be focused on preventing specific risks to consumers, including an evaluation of the physical facilities in which the services are provided. In addition, the Commissioner shall promptly investigate all complaints. The Board may adopt and the Commissioner shall enforce reasonable regulations that may be necessary or proper to carry out the general purposes of this article.*

*§ 37.2-412. Human rights review.*

*Licensing pursuant to this article shall be contingent upon substantial compliance with § 37.2-400 and acceptable implementation of the human rights regulations adopted pursuant thereto, as determined by periodic human rights reviews performed by the Department. Such reviews shall be conducted as part of the Department's licensing reviews or, at the Department's discretion, whenever human rights issues arise.*

*§ 37.2-413. Necessity for supervision by licensed provider.*

*No person shall maintain or operate any service unless such service is under the direct supervision of a provider licensed under this article.*

*§ 37.2-414. Cure by mental or spiritual means without use of drugs or material remedy.*

*Nothing contained in this article shall be construed to authorize or require a license of a provider to establish, maintain and operate, or have charge of any service for the care and treatment of persons by the practice of the religious tenets of any church in the ministration to the sick and suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation, provided the statutes and regulations on sanitation and safety are complied with.*

*§ 37.2-415. Provisional and conditional licenses.*

*The Commissioner may issue a provisional license to a provider that has previously been fully licensed when the provider is temporarily unable to comply with all licensing standards. The maximum term of a provisional license shall be six months. The license may be renewed, but in no case, whether renewed or not, shall the total period of provisional licensing be longer than 12 successive months. A provisional license shall be prominently displayed by the provider at the site of the affected service and shall indicate thereon the violations of licensing standards to be corrected and the expiration date of the license.*

*The Commissioner may issue a conditional license to a provider to operate a new service in order to permit the provider to demonstrate compliance with all licensing standards. The maximum term of a conditional license shall be six months. A conditional license may be renewed, but in no case, whether renewed or not, shall the total period of conditional licensing be longer than 12 successive months.*

*§ 37.2-416. Background checks required.*

*A. As used in this section, the term "direct consumer care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of a consumer or (ii) immediately supervising a person in a position with this responsibility.*

*As used in this section, "hire for compensated employment" does not include (i) a promotion from one adult substance abuse treatment position to another such position within the same licensee licensed pursuant to this article or (ii) new employment in an adult substance abuse treatment position in another office or program licensed pursuant to this article if the person employed prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the application date for employment. As used in this section, "hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or mental retardation direct consumer care position within the same licensee licensed pursuant to this article or (b) new employment in any*

mental health or mental retardation direct consumer care position in another office or program of the same licensee licensed pursuant to this article for which the person has previously worked in an adult substance abuse treatment position.

B. Every provider licensed pursuant to this article shall require any applicant who accepts employment in any direct consumer care position to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsections C or E, no provider licensed pursuant to this article shall hire for compensated employment persons who have been convicted of any offense listed in subsection B of § 37.2-314.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the requesting authorized officer or director of a provider licensed pursuant to this article. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the authorized officer or director of a provider licensed pursuant to this article shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment at adult substance abuse treatment facilities a person who was convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56; or (ii) reckless handling of a firearm, as set out in § 18.2-56.1; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in § 18.2-92; or (d) possession of burglarious tools, as set out in § 18.2-94; or any felony violation relating to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H 1 and H 2 of § 18.2-248; or an equivalent offense in another state, if the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to consumers based on his criminal history background and his substance abuse history.

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

E. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct consumer care position.

F. Providers licensed pursuant to this article also shall require, as a condition of employment for all applicants, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

G. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the provider licensed pursuant to this article decides to pay the cost.

H. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

§ 37.2-417. Proceeding to prevent unlawful operation of service.

In case any service is being operated in violation of the provisions of this article or of any applicable regulations made under these provisions, the Commissioner, in addition to other remedies, may institute any appropriate action or proceedings against the provider to prevent the unlawful operation and to restrain, correct, or abate such violation or violations. Any action or proceeding shall be instituted in the circuit court of the county or city where the provider is located or conducts business, and the court shall have jurisdiction to enjoin the unlawful operation or the violation or violations.

§ 37.2-418. Revocation, suspension, or refusal of licenses; resumption of operation.

A. The Commissioner is authorized to revoke or suspend any license issued hereunder or refuse issuance of a license on any of the following grounds: (i) violation of any provision of this article or of any applicable regulation made pursuant to such provisions; (ii) permitting, aiding, or abetting the commission of an illegal act in services delivered by the provider; or (iii) conduct or practices detrimental to the welfare of any individual receiving services from the provider.

B. Whenever the Commissioner revokes, suspends, or denies a license, the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall apply. Any person aggrieved by the final decision of the Commissioner to refuse to issue a license or by his revocation or suspension of a license is entitled to judicial review in accordance with the provisions of the Administrative Process Act.

C. If a license is revoked or refused as herein provided, a new application for license may be considered by the Commissioner when the conditions upon which the action was based have been corrected and satisfactory evidence of this fact has been furnished. In no event may an applicant reapply for a license after the Commissioner has refused or revoked a license until a period of six months from the effective date of that action has elapsed, unless the Commissioner in his sole discretion believes that there has been such a change in the conditions causing refusal of the prior application or revocation of the license as to justify considering the new application. When an appeal is taken by the applicant pursuant to this section, the six-month period shall be extended until a final decision has been rendered on appeal. A new license may then be granted after proper inspection has been made and all provisions of this article and applicable regulations made thereunder have been complied with and recommendations to that effect have been made to the Commissioner upon the basis of an inspection by any authorized inspector or agent of the Department.

D. Suspension of a license shall in all cases be for an indefinite time and the suspension may be lifted and rights under the license fully or partially restored at such time as the Commissioner determines, based on an inspection, that the rights of the licensee appear to so require and the interests of the public will not be jeopardized by resumption of operation.

§ 37.2-419. Human rights and licensing enforcement and sanctions; notice.

A. As used in this section, "special order" means an administrative order issued to any party licensed or funded by the Department that has a stated duration of not more than 12 months and that may include a civil penalty that shall not exceed \$500 per violation per day, prohibition of new admissions, or reduction of licensed capacity for violations of § 37.2-400, the licensing or human rights regulations, or this article.

B. Notwithstanding any other provision of law, following a proceeding as provided in § 2.2-4019, the Commissioner may issue a special order for a violation of any of the provisions of § 37.2-400 or any regulation adopted under any provision of § 37.2-400 or of this article that adversely affects the human rights of consumers or poses an imminent and substantial threat to the health, safety, or welfare of consumers. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Commissioner shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders. The Commissioner may take the following actions to sanction public and private providers licensed or funded by the Department for noncompliance with § 37.2-400, the human rights regulations, or this article:

1. Place any service of any such provider on probation upon finding that it is substantially out of compliance with the licensing or human rights regulations and that the health or safety of consumers is at risk.

2. Reduce licensed capacity or prohibit new admissions when he concludes that the provider cannot or will not make necessary corrections to achieve compliance with licensing or human rights regulations except by a temporary restriction of its scope of service.

3. Require that probationary status announcements, provisional licenses, and denial or revocation notices be of sufficient size and distinction and be posted in a prominent place at each public entrance of the affected service.

4. Mandate training for the provider's employees, with any costs to be borne by the provider, when he concludes that the lack of training has led directly to violations of licensing or human rights regulations.

5. Assess civil penalties of not more than \$500 per violation per day upon finding that the licensed or funded provider is substantially out of compliance with the licensing or human rights regulations and that the health or safety of consumers is at risk.

6. Withhold funds from licensees or programs receiving public funds that are in violation of the licensing or human rights regulations.

C. The Commissioner shall inform other public agencies that provide funds to the licensee or the program, including the Departments of Social Services and Medical Assistance Services, of any licensee or program that is in violation of the licensing or human rights regulations.

D. The Board shall adopt regulations to implement the provisions of this section.

§ 37.2-420. Offer or payment of remuneration in exchange for referral prohibited.

No provider licensed pursuant to this article shall knowingly and willfully offer or pay any remuneration directly or indirectly, in cash or in kind, to induce any practitioner of the healing arts or

any clinical psychologist licensed under the provisions of Chapters 29 (§ 54.1-2900 et seq.) and 36 (54.1-3600 et seq.) of Title 54.1 to refer an individual or individuals to any service of the provider. The term "remuneration" excludes any payments, business arrangements, or payment practices not prohibited by Title 42, Section 1320a-7b (b) of the United States Code, as amended, or any regulations adopted pursuant thereto.

§ 37.2-421. Advertising by licensed providers.

The Board shall adopt regulations governing advertising practices of any provider licensed pursuant to this article. The regulations shall require that any provider's advertisement not contain false or misleading information or false or misleading representations as to fees charged for services.

§ 37.2-422. Penalty.

Any person violating any provision of this article or any applicable regulation made under such provisions shall be guilty of a Class 3 misdemeanor, and each day, or part thereof, of continuation of any such violation shall constitute a separate offense.

### Article 3.

Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services.

§ 37.2-423. Office created; appointment of Inspector General for Mental Health, Mental Retardation and Substance Abuse Services.

There is hereby created the Office of Inspector General for Mental Health, Mental Retardation and Substance Abuse Services to inspect, monitor, and review the quality of services provided in state facilities and by providers as defined in § 37.2-403, including licensed mental health treatment units in state correctional facilities. The Inspector General shall be appointed by the Governor, subject to confirmation by the General Assembly, and shall report to the Governor. The Inspector General shall be appointed initially for a term that expires one full year following the end of the Governor's term of office, and, thereafter, the term shall be for four years. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until 30 days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of the term.

§ 37.2-424. Powers and duties of Inspector General.

The Inspector General shall have the following powers and duties:

1. To operate and manage the Office of the Inspector General and to employ the personnel required to carry out the provisions of this article.

2. To make and enter into contracts and agreements that may be necessary and incidental to carry out the provisions of this article, and to apply for and accept grants from the United States government, agencies and instrumentalities thereof, and any other source, in furtherance of the provisions of this article.

3. To provide inspections of and make policy and operational recommendations for state facilities and for providers, including licensed mental health treatment units in state correctional facilities, in order to prevent problems, abuses, and deficiencies in and improve the effectiveness of their programs and services. The Inspector General shall provide oversight and conduct announced and unannounced inspections of state facilities and of providers, including licensed mental health treatment units in state correctional facilities, on an ongoing basis in response to specific complaints of abuse, neglect, or inadequate care and as a result of monitoring serious incident reports and reports of abuse, neglect, or inadequate care or other information received. The Inspector General shall conduct unannounced inspections at each state facility at least once annually.

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

5. To keep the Governor, General Assembly, and the Joint Commission on Health Care fully and currently informed by means of reports required by § 37.2-424 concerning significant problems, abuses, and deficiencies relating to the administration of the programs and services of state facilities and of providers, including licensed mental health treatment units in state correctional facilities, to recommend corrective actions concerning the problems, abuses, and deficiencies, and to report on the progress made in implementing the corrective actions.

6. To notify in a timely manner the attorney for the Commonwealth for the locality in which a state facility is located and law enforcement, as appropriate, whenever the Inspector General has reasonable grounds to believe there has been a violation of state criminal law. However, where the Inspector General has reason to believe that a criminal offense has been committed in a state correctional facility, notification of that suspicion shall be given to the Inspector General for the Department of Corrections.

7. To review, comment on, and make recommendations about, as appropriate, any reports prepared by the Department and the critical incident data collected by the Department in accordance with

regulations adopted under § 37.2-400 to identify issues related to quality of care, seclusion and restraint, medication usage, abuse and neglect, staff recruitment and training, and other systemic issues.

8. To monitor and participate in the adoption of regulations by the Board.

9. To receive reports, information, and complaints from the Virginia Office for Protection and Advocacy concerning issues related to quality of care provided in state facilities and by providers, including licensed mental health treatment units in state correctional facilities, and to conduct independent reviews and investigations.

For purposes of this section, the term "provider" shall be as defined in § 37.2-403.

§ 37.2-425. Reports.

A. The Inspector General shall prepare, not later than May 31 and November 30 of each year, semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Reports shall include:

1. A description of significant problems, abuses, and deficiencies related to the administration of the programs and services of state facilities and of providers, including licensed mental health treatment units in state correctional facilities, during the reporting period;

2. A description of the recommendations for corrective actions made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified;

3. An identification of each significant recommendation, described in previous reports under this section, on which corrective action has not been completed;

4. A summary of matters referred to the attorneys for the Commonwealth, law enforcement, and the Inspector General for the Department of Corrections and actions taken on them during the reporting period; and

5. Information concerning the numbers of complaints received and types of investigations completed by the Office during the reporting period.

B. Within 30 days of the transmission of each semiannual report, the Inspector General shall make copies of the report available to the public upon request and at a reasonable cost.

C. The Inspector General shall report immediately to the Governor and the Commissioner or the Director of the Department of Corrections, as may be appropriate, whenever the Office becomes aware of particularly serious problems, abuses, or deficiencies relating to the administration of the programs and services of state facilities and of providers, including licensed mental health treatment units in state correctional facilities.

D. The Inspector General may conduct additional investigations and make reports relating to the administration of the programs and services of state facilities and of providers, including licensed mental health treatment units in state correctional facilities, as are, in the judgment of the Inspector General, necessary or desirable.

E. Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted directly to the Governor, the General Assembly, and the Joint Commission on Health Care by the Inspector General without preliminary clearances or approvals. The Inspector General shall, insofar as feasible, provide copies of the semiannual reports to the Governor in advance of the date for their submission to the General Assembly and the Joint Commission on Health Care, to provide a reasonable opportunity for comments of the Governor to be appended to the reports when they are submitted to the General Assembly and the Joint Commission on Health Care.

F. Records that are confidential under federal or state law shall be maintained as confidential by the Inspector General and shall not be further disclosed, except as permitted by law.

G. The Inspector General's written reports of state facility inspections shall be transmitted to the Governor for review and comment as deemed necessary by the Governor. The Inspector General shall report on the general conditions, staffing patterns, and access to active and contemporary treatment in each state facility, at a minimum, on an annual basis. The Department shall comment in writing on any recommendations made by the Inspector General.

H. For purposes of this section, the term "provider" shall be as defined in § 37.2-403.

#### Article 4.

#### Miscellaneous and Penal Provisions.

§ 37.2-426. Officers may be appointed conservators of the peace; regulation of traffic.

Pursuant to § 19.2-13, the director, resident officers, policemen, and fire fighters of any hospital or training center may be appointed conservators of the peace on the hospital or training center property and shall have, in addition to the powers of conservators of the peace, authority to patrol and regulate traffic on all roadways and roads through hospital or training center property and to issue summons for violations thereof.

§ 37.2-427. Mistreatment of consumers in hospital or training center.

It shall be unlawful for any officer or employee of any hospital or training center or other person to maltreat or misuse any consumer who is being served in any hospital or training center or who is on a day pass, family visit, or trial visit from a hospital or training center. Any officer or employee of any hospital or training center or other person who maltreats or misuses any consumer who is being served in any hospital or training center or who is on a day pass, family visit, or trial visit from a hospital or

training center is guilty of a Class 1 misdemeanor.

*§ 37.2-428. Aiding and abetting in escapes.*

It shall be unlawful for any officer or employee of any hospital or training center or any other person to aid or abet in the escape or secretion of any lawfully admitted consumer of any hospital or training center, while the consumer is in the hospital or training center or on a day pass, family visit, trial visit, bond or escapement, or to willfully fail or refuse to return a consumer on a day pass, family visit, or trial visit under his care and custody to any hospital or training center in which he is a consumer, having given written obligation to do so, when directed in writing to do so by the director of the hospital or training center. Any such officer or employee of any hospital or training center or any other person is guilty of a Class 1 misdemeanor.

*§ 37.2-429. Disorderly conduct on grounds and interference with officers.*

It shall be unlawful for any person to conduct himself in an insulting or disorderly manner on the grounds of any hospital or training center or in any way to resist or interfere with any officer or employee of any hospital or training center in discharge of his duty. Any person who conducts himself in an insulting or disorderly manner on the grounds of any hospital or training center or in any way resists or interferes with any officer or employee of any hospital or training center in discharge of his duty is guilty of a Class 1 misdemeanor.

*§ 37.2-430. Providing alcoholic beverages to consumers.*

It shall be unlawful for any person to sell or give alcoholic beverages to any consumer at any hospital or training center, bring alcoholic beverages onto the premises of the hospital or training center, administer alcoholic beverages to any consumer, or place alcoholic beverages or cause them to be placed where any consumer may access them, except if the alcoholic beverages are prescribed by the director or physicians of the hospital or training center. Any such person is guilty of a Class 1 misdemeanor.

*§ 37.2-431. Contriving or conspiring to maliciously obtain admission of person.*

It shall be unlawful for any person to knowingly and maliciously contrive or conspire to obtain without reasonable cause the admission of any person to any hospital or training center. Any person who knowingly and maliciously contrives or conspires to obtain without reasonable cause the admission of any person to any hospital or training center is guilty of a Class 1 misdemeanor.

*Article 5.*

*Disclosure of Patient Information to Third Party Payors by Professionals.*

*§ 37.2-432. Definitions.*

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

"Patient" means a person who applies for service, consults, or is examined, interviewed, treated, or otherwise served to some extent by a professional, a treatment facility, or both with regard to a primarily mental or emotional condition or a social deprivation or dysfunction or a developmental disability of a mental or emotional order.

"Patient identifying information" means name, address, social security number, or other information by which the identity of a patient can be determined with reasonable accuracy directly or by access to other publicly available information.

"Professional" means any individual authorized by law to engage in the diagnosis or treatment of a mental health, mental retardation, substance abuse, or emotional condition, including a psychiatrist, psychologist, psychiatric social worker, physician, nurse, or other professional person providing mental health, mental retardation, or substance abuse services.

"Third party payors" means all third parties who provide by contract or by policy of insurance for the payment of treatment facility services, professional services, or for a combination of such services.

"Treatment facility" means all mental health, mental retardation, and substance abuse facilities, including facilities licensed pursuant to Article 2 of this chapter, hospitals licensed pursuant to § 32.1-126, and state facilities.

*§ 37.2-433. Patient deemed to authorize disclosure of certain information.*

A patient who has requested a professional or a treatment facility to submit a bill to a third party payor for payment under a contract or policy of insurance covering the patient shall be deemed to have authorized the disclosure of the following information to the third party payor:

1. The patient's name, address, date of birth, and the contract or policy number;
2. The date the patient was admitted to a treatment facility or the date the patient began receiving mental health, mental retardation, or substance abuse services;
3. The date of onset of the patient's illness;
4. The date the patient was discharged from the treatment facility or the date that services were terminated, if known;
5. The diagnosis, with brief information substantiating the diagnosis;
6. A brief description of the services provided to the patient, including type of therapy, medications ordered and administered, and number of hours spent in individual, group, or family treatment, recreational therapy, or rehabilitative activities;
7. Status of the patient, whether in-patient or out-patient; and

8. *The patient's relationship to the contract subscriber or policyholder.*

§ 37.2-434. *Disclosure of additional information.*

If the third party payor is unable to settle the claim on the basis of the information provided pursuant to § 37.2-433, a physician or other authorized professional employed by the third party payor may request additional information, stating the reasons therefor. The professional or the treatment facility, or both, may submit to the physician or other authorized professional the requested additional information that shall be treated as confidential by the third party payor and its agents, consultants, and employees.

§ 37.2-435. *Disclosure of information by third party payor prohibited; exceptions.*

A. No third party payor shall disclose any information received from a professional or a treatment facility, or both, about a patient without the patient's authorization, except as hereafter provided in this section.

B. Such information may be disclosed by the third party payor without the patient's authorization for the purposes of rate review, auditing, or evaluation to the extent that the information is necessary to accomplish these purposes. Where a disclosure made to any person pursuant to this subsection includes patient identifying information, the records containing the information may not be removed from the premises of the third party payor and the information may not be used in connection with any legal, administrative, supervisory, or other action whatsoever with respect to the patient.

C. Any third party payor participating in a coordination of benefit program with other third party payors may disclose the information to another third party payor without the patient's authorization. Information released under this subsection shall be limited to:

1. The name of the patient;
2. The name of the professional;
3. The name of the treatment facility;
4. The date of onset of the patient's illness and the period of treatment covered by the third party payor; and
5. The amount already paid.

D. No person receiving any information about a patient from a third party payor may disclose the information.

§ 37.2-436. *Form of authorization.*

No authorization required by § 37.2-435 shall be valid unless the authorization is in writing and states:

1. The person to whom disclosure is to be made;
2. The nature of the information to be disclosed;
3. The purpose for which disclosure is to be made; and
4. The inclusive dates of the records to be disclosed.

No authorization shall be valid unless it is dated and signed by the person providing the authorization. Any authorization may be revoked except to the extent that action has already been taken in reliance on the authorization.

Any authorization pursuant to this section shall also comply with the relevant requirements of subsection G of § 32.1-127.1:03.

§ 37.2-437. *Disclosure to patient of information released.*

Any patient who is the subject of information received by a third party payor pursuant to the provisions of this article may request and shall be entitled to receive from the third party payor a statement as to the substance of the information received.

However, if the professional treating the patient or the treatment facility, or both, has advised the third party payor that the patient's treating physician or treating clinical psychologist has determined that the information, if given to the patient, would be reasonably likely to endanger the life or physical safety of the patient or another person or that the record makes reference to a person other than a health care provider, and the access requested would be reasonably likely to cause substantial harm to the referenced person, the third party payor shall, if requested by the patient, provide the information (i) to an attorney designated by the patient rather than to the patient or (ii) to a physician or clinical psychologist designated by the patient, whose licensure, training, and experience, relative to the patient's condition, are at least equivalent to that of the treating physician or treating clinical psychologist upon whose opinion the denial is based, who, at the patient's expense, shall make a judgment as to whether to make the information available to the patient.

Alternatively, upon the patient's request, the third party payor shall instead provide the information to a physician or clinical psychologist, selected by the third party payor, whose licensure, training, and experience relative to the patient's condition are at least equivalent to that of the physician or clinical psychologist who initially advised the third party payor to deny the patient access to his records and who did not participate in the original decision to make, at the third party payor's expense, a judgment as to whether to make the information available to the patient.

The third party payor shall comply with the judgment of the reviewing physician or clinical psychologist.

*§ 37.2-438. Remedies and penalties.*

*A. Any person violating any provision of this article shall be liable in damages to any person injured by such violation. Punitive damages may be awarded in the event of multiple or continuous violations of this article.*

*B. Any person who willfully violates any provision of this article shall be guilty of a Class 2 misdemeanor.*

*C. Any violation of the provisions of this article may be enjoined at the suit of the person injured thereby.*

*§ 37.2-439. Federal law to govern in case of conflict.*

*If any provision of federal law is in conflict with the requirements of this article, the federal law shall govern.*

*§ 37.2-440. Inapplicability of article.*

*The provisions of this article shall not apply to the underwriting of any application for insurance.*

**SUBTITLE II.**

**MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE SERVICES.**

**CHAPTER 5.**

**COMMUNITY SERVICES BOARDS.**

*§ 37.2-500. Purpose; community services board; services to be provided.*

*The Department, for the purposes of establishing, maintaining, and promoting the development of mental health, mental retardation, and substance abuse services in the Commonwealth, may provide funds to assist any city or county or any combinations of cities or counties or cities and counties in the provision of these services. Every county or city shall establish a community services board by itself or in any combination with other cities and counties, unless it establishes a behavioral health authority pursuant to Chapter 6 (§ 37.2-600 et seq.) of this title. Every county or city or any combination of cities and counties that has established a community services board, in consultation with that board, shall designate it as an operating community services board, an administrative policy community services board or a local government department with a policy-advisory community services board. The governing body of each city or county that established the community services board may change this designation at any time by ordinance. In the case of a community services board established by more than one city or county, the decision to change this designation shall be the unanimous decision of all governing bodies.*

*The core of services provided by community services boards within the cities and counties that they serve shall include emergency services and, subject to the availability of funds appropriated for them, case management services. The core of services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, and other appropriate mental health, mental retardation, and substance abuse services necessary to provide individualized services and supports to persons with mental illnesses, mental retardation, or substance abuse.*

*In order to provide comprehensive mental health, mental retardation, and substance abuse services within a continuum of care, the community services board shall function as the single point of entry into publicly funded mental health, mental retardation, and substance abuse services.*

*§ 37.2-501. Community services board; appointment; membership; duties of fiscal agent.*

*A. Every city or county or any combination of counties and cities, before it shall come within the provisions of this chapter, shall establish a community services board with no less than six and no more than 18 members. When any city or county singly establishes a community services board, the board shall be appointed by the governing body of the city or county establishing the board. When any combination of counties and cities establishes a community services board, the board of supervisors of each county or the council of each city shall mutually agree on the size of the board and shall appoint the members of the community services board. Prior to making appointments, the governing body shall disclose the names of those persons being considered for appointment.*

*Appointments to the community services board shall be broadly representative of the community. One-third of the appointments to the board shall be identified consumers or former consumers or family members of consumers or former consumers, at least one of whom shall be a consumer receiving services. One or more appointments may be nongovernmental service providers. Sheriffs or their designees also shall be appointed, when practical. No employee of the community services board or employee or board member of an organization that receives funding from any community services board shall be appointed a member of that board.*

*No community services board shall be composed of a majority of local government officials, elected or appointed, as members, nor shall any county or city be represented on a board by more than two officials, elected or appointed.*

*The board appointed pursuant to this section shall be responsible to the governing body of each county or city that established it.*

*B. The county or city or any combination of cities and counties that establishes an operating or administrative policy board shall receive an independent annual audit of the total revenues and expenditures of that board, a copy of which shall be provided to the Department, and designate an*



official of one member city or county to act as fiscal agent for the board. The county or city whose designated official serves as fiscal agent for the board in the case of boards established by more than one city or county shall review and act upon the independent audit of the board and, in conjunction with the other cities and counties, arrange for the provision of legal services to the board. When a single county or city establishes an operating or administrative policy board, it shall arrange for the provision of legal services to the board.

C. The county or city that establishes a policy-advisory board shall provide an annual audit of the total revenues and expenditures of the city or county government department to the board and the Department, carry out the responsibilities and duties enumerated in subsection A of § 37.2-504 and § 37.2-505, and provide legal services to the board. When any combination of cities and counties establishes a policy-advisory board, those cities and counties shall designate which local government shall operate the city or county government department. This local government shall provide an annual audit of the total revenues and expenditures of that department to the board and the Department, carry out the responsibilities and duties enumerated in subsection A of § 37.2-504 and § 37.2-505, and, in conjunction with the other cities and counties, arrange for the provision of legal services to the board.

§ 37.2-502. Community services board members; term of office; vacancies; removal.

The term of office of each member of a community services board shall be for three years from January 1 of the year of appointment or, at the option of the governing body of a county or city, from July 1 of the year of appointment, except that of the members first appointed, several shall be appointed for terms of one year each, several for terms of two years each, and the remaining members of the board for terms of three years each. The appointment of members for one-year, two-year, and three-year terms shall be as nearly equal as possible with regard to the total number of members on the board. If a governing body has appointed members for terms commencing January 1 or July 1 but desires to change the date on which the terms of office commence, the governing body may, as the terms of the members then in office expire, appoint successors for terms of two and one-half or three and one-half years, so that the terms expire on June 30 or December 31. In the case of a board established by more than one city or county, the decision to change the date on which terms of office commence shall be the unanimous decision of all governing bodies. Vacancies shall be filled for unexpired terms in the same manner as original appointments. No person shall be eligible to serve more than three full three-year terms; however, persons appointed to fill vacancies may serve three additional full three-year terms. Any member of a board may be removed by the appointing authority for cause, after being given a written statement of the causes and an opportunity to be heard thereon.

§ 37.2-503. Compensation of community services board members.

The governing body of any county or city or the governing bodies of any combination of cities and counties establishing a community services board may pay, out of its general fund or their general funds, no more than \$600 per year to each board member as compensation for his attendance at board meetings. No city or county shall be reimbursed out of state or federal funds for any part of such compensation.

§ 37.2-504. Community services boards; local government departments; powers and duties.

A. Every operating and administrative policy community services board and local government department with a policy-advisory board shall have the following powers and duties:

1. Review and evaluate public and private community mental health, mental retardation, and substance abuse services and facilities that receive funds from it and advise the governing body of each city or county that established it as to its findings.

2. Pursuant to § 37.2-508, submit to the governing body of each city or county that established it an annual performance contract for community mental health, mental retardation, and substance abuse services for its approval prior to submission of the contract to the Department.

3. Within amounts appropriated for this purpose, provide services authorized under the performance contract.

4. In accordance with its approved performance contract, enter into contracts with other providers for the delivery of services or operation of facilities.

5. In the case of operating and administrative policy boards, make policies or regulations concerning the delivery of services and operation of facilities under its direction or supervision, subject to applicable policies and regulations adopted by the Board.

6. In the case of an operating board, appoint an executive director of community mental health, mental retardation, and substance abuse services, who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by the operating board within the amounts made available by appropriation for this purpose. The executive director shall serve at the pleasure of the operating board and be employed under an annually renewable contract that contains performance objectives and evaluation criteria. For an operating board, the Department shall approve the selection of the executive director for adherence to minimum qualifications established by the Department and the salary range of the executive director. In the case of an administrative policy board, the board shall participate with local government in the appointment and annual performance evaluation of an executive director of community mental health, mental

retardation, and substance abuse services, who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by local government in consultation with the administrative policy board within the amounts made available by appropriation for this purpose. In the case of a local government department with a policy-advisory board, the director of the local government department shall serve as the executive director. The policy-advisory board shall participate in the selection and the annual performance evaluation of the executive director, who meets the minimum qualifications established by the Department. The compensation of the executive director shall be fixed by local government in consultation with the policy-advisory board within the amounts made available by appropriation for this purpose.

7. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the board and establish procedures for the collection of those fees. All fees collected shall be included in the performance contract submitted to the local governing body or bodies pursuant to subdivision 2 of this section and § 37.2-508 and shall be used only for community mental health, mental retardation, and substance abuse purposes. Every board shall institute a reimbursement system to maximize the collection of fees from persons receiving services under its jurisdiction or supervision, consistent with the provisions of § 37.2-511, and from responsible third party payors. Boards shall not attempt to bill or collect fees for time spent participating in commitment hearings for involuntary admissions pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8.

8. Accept or refuse gifts, donations, bequests, or grants of money or property from any source and utilize them as authorized by the governing body of each city or county that established it.

9. Seek and accept funds through federal grants. In accepting federal grants, the board shall not bind the governing body of any city or county that established it to any expenditures or conditions of acceptance without the prior approval of the governing body.

10. Notwithstanding any provision of law to the contrary, disburse funds appropriated to it in accordance with such regulations as may be established by the governing body of each city or county that established it.

11. Apply for and accept loans as authorized by the governing body of each city or county that established it.

12. Develop joint written agreements, consistent with policies adopted by the Board, with local school divisions; health departments; boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging; and regional Department of Rehabilitative Services offices. The agreements shall specify the services to be provided to consumers. All participating agencies shall develop and implement the agreements and shall review the agreements annually.

13. Develop and submit to the Department the necessary information for the preparation of the Comprehensive State Plan for mental health, mental retardation, and substance abuse services pursuant to § 37.2-315.

14. Take all necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and services planning, delivery, and evaluation.

15. Institute, singly or in combination with other community services boards or behavioral health authorities, a dispute resolution mechanism that is approved by the Department and enables consumers and family members of consumers to resolve concerns, issues, or disagreements about services without adversely affecting their access to or receipt of appropriate types and amounts of current or future services from the community services board.

16. Notwithstanding the provisions of § 37.2-400 or any regulations adopted thereunder, release data and information about individual consumers to the Department so long as the Department implements procedures to protect the confidentiality of that data and information.

17. In the case of administrative policy boards and local government departments with policy-advisory boards, carry out other duties and responsibilities as assigned by the governing body of each city or county that established it.

By local agreement between the administrative policy board and the governing body of the city or county that established it, additional responsibilities may be carried out by the local government, including personnel or financial management. In the case of an administrative policy board established by more than one city or county, the cities and counties shall designate which local government shall assume these responsibilities.

B. Every policy-advisory community services board, with staff support provided by the director of the local government department, shall have the following powers and duties:

1. Advise the local government regarding policies or regulations for the delivery of services and operation of facilities by the local government department, subject to applicable policies and regulations adopted by the Board.

2. Review and evaluate the operations of the local government department and advise the local governing body of each city or county that established it as to its findings.

3. Review the community mental health, mental retardation, and substance abuse services provided by the local government department and advise the local governing body of each city or county that

established it as to its findings.

4. Review and comment on the annual performance contract, performance reports, and Comprehensive State Plan information developed by the local government department. The board's comments shall be attached to the performance contract, performance reports, and Comprehensive State Plan information prior to their submission to the local governing body of each city or county that established it and to the Department.

5. Advise the local government as to the necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and services planning, delivery, and evaluation.

6. Participate in the selection and the annual performance evaluation of the local government department director employed by the city or county.

7. Carry out other duties and responsibilities as assigned by the governing body of each city or county that established it.

§ 37.2-505. Coordination of services for preadmission screening and discharge planning.

A. The community services board shall fulfill the following responsibilities:

1. Be responsible for coordinating the community services necessary to accomplish effective preadmission screening and discharge planning for persons referred to the community services board. When preadmission screening reports are required by the court on an emergency basis pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8, the community services board shall ensure the development of the report for the court. To accomplish this coordination, the community services board shall establish a structure and procedures involving staff from the community services board and, as appropriate, representatives from (i) the state hospital or training center serving the board's service area, (ii) the local department of social services, (iii) the health department, (iv) the Department of Rehabilitative Services office in the board's service area, (v) the local school division, and (vi) other public and private human services agencies, including licensed hospitals.

2. Provide preadmission screening services prior to the admission for treatment pursuant to § 37.2-805 or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of any person who requires emergency mental health services while in a city or county served by the community services board.

3. Provide, in consultation with the appropriate state hospital or training center, discharge planning for any person who, prior to admission, resided in a city or county served by the community services board or who chooses to reside after discharge in a city or county served by the board and who is to be released from a state hospital or training center pursuant to § 37.2-837. The discharge plan shall be completed prior to the person's discharge. The plan shall be prepared with the involvement and participation of the consumer or his representative and must reflect the consumer's preferences to the greatest extent possible. The plan shall include the mental health, mental retardation, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the consumer will need upon discharge into the community and identify the public or private agencies that have agreed to provide these services.

No person shall be discharged from a state hospital or training center without completion by the community services board of the discharge plan described in this subdivision. If state hospital or training center staff identify a consumer as ready for discharge and the community services board that is responsible for the person's care disagrees, the community services board shall document in the treatment plan within 30 days of the person's identification any reasons for not accepting the person for discharge. If the state hospital or training center disagrees with the community services board and the board refuses to develop a discharge plan to accept the person back into the community, the state hospital or training center or the community services board shall ask the Commissioner to review the state hospital's or training center's determination that the person is ready for discharge in accordance with procedures established by the Department in collaboration with state hospitals, training centers, and community services boards. If the Commissioner determines that the person is ready for discharge, a discharge plan shall be developed by the Department to ensure the availability of adequate services for the consumer and the protection of the community. The Commissioner also shall verify that sufficient state-controlled funds have been allocated to the community services board through the performance contract. If sufficient state-controlled funds have been allocated, the Commissioner may contract with a private provider, another community services board, or a behavioral health authority to deliver the services specified in the discharge plan and withhold allocated funds applicable to that consumer's discharge plan from the community services board in accordance with subsections C and E of § 37.2-508.

B. The community services board may perform the functions set out in subdivision A 1 in the case of children by referring them to the locality's family assessment and planning team and by cooperating with the community policy and management team in the coordination of services for troubled youths and their families. The community services board may involve the family assessment and planning team and the community policy and management team, but it remains responsible for performing the functions set out in subdivisions A 2 and A 3 in the case of children.

§ 37.2-506. Background checks required.

A. As used in this section, the term "direct consumer care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of a consumer or (ii) immediately supervising a person in a position with this responsibility.

As used in this section, "hire for compensated employment" does not include (i) a promotion from one adult substance abuse treatment position to another such position within the same community services board or (ii) new employment in an adult substance abuse treatment position in another office or program of the same community services board if the person employed prior to July 1, 1999, had no convictions in the five years prior to the application date for employment. As used in this section, "hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or mental retardation direct consumer care position within the same community services board or (b) new employment in any mental health or mental retardation direct consumer care position in another office or program of the same community services board for which the person has previously worked in an adult substance abuse treatment position.

B. Every community services board shall require any applicant who accepts employment in any direct consumer care position with the community services board to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsections C or E, no community services board shall hire for compensated employment persons who have been convicted of any offense listed in subsection B of § 37.2-314.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the requesting executive director or personnel director of the community services board. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the executive director or personnel director of any community services board shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse treatment programs a person who was convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56; or (ii) reckless handling of a firearm, as set out in § 18.2-56.1; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in § 18.2-92; or (d) possession of burglarious tools, as set out in § 18.2-94; or any felony violation relating to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H 1 or H 2 of § 18.2-248; or an equivalent offense in another state, if the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to consumers based on his criminal history background and his substance abuse history.

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

E. Notwithstanding the provisions of subsection B, a community services board may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct consumer care position.

F. Community services boards also shall require, as a condition of employment for all applicants, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

G. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the community services board decides to pay the cost.

*H. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.*

*§ 37.2-507. Data collection on children and adolescents.*

*Every community services board shall submit to the Department information on children under the age of 14 and adolescents ages 14 through 17 for whom admission to an inpatient acute care psychiatric or residential treatment facility licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of this title, excluding group homes, was sought but was unable to be obtained by the board. Information to be submitted shall include:*

- a. The child or adolescent's date of birth;*
- b. Date admission was attempted; and*
- c. Reason the child or adolescent could not be admitted to the facility.*

*§ 37.2-508. Performance contract for mental health, mental retardation, and substance abuse services.*

*A. The Department shall develop and initiate negotiation of the performance contracts through which it provides funds to community services boards to accomplish the purposes set forth in this chapter. Six months prior to the beginning of each fiscal year, the Department shall make available to the public the standard performance contract form that it intends to use as the performance contract for that fiscal year and solicit public comments for a period of 60 days.*

*B. Any community services board may apply for the assistance provided in this chapter by submitting annually to the Department its proposed performance contract for the next fiscal year together with (i) the approval of its board of directors for operating and administrative policy boards or the comments of the local government department's policy-advisory board and (ii) the approval of the contract by formal vote of the governing body of each city or county that established it. The community services board shall make its proposed performance contract available for public review and solicit public comments for a period of 30 days prior to submitting its proposed contract for the approval of its board of directors for operating and administrative policy boards or the comments of the local government department's policy-advisory board. To avoid disruptions in service continuity and allow sufficient time to complete public review and comment about the contract and negotiation and approval of the contract, the Department may provide up to six semi-monthly payments of state-controlled funds to the community services board. If the governing body of each city or county does not approve the proposed performance contract by September 30 of each year, the performance contract shall be deemed approved.*

*C. The performance contract shall (i) delineate the responsibilities of the Department and the community services board; (ii) specify conditions that must be met for the receipt of state-controlled funds; (iii) identify the groups of consumers to be served with state-controlled funds; (iv) contain specific consumer outcome, provider performance, consumer satisfaction, and consumer and family member participation and involvement measures; (v) contain mechanisms that have been identified or developed jointly by the Department and community services board and that will be employed collaboratively by the community services board and the state hospital to manage the utilization of state hospital beds; (vi) establish an enforcement mechanism, should a community services board fail to be in substantial compliance with its performance contract, including notice and appeal processes and provisions for remediation, withholding or reducing funds, methods of repayment of funds, and the Department's exercise of the provisions of subsection E; and (vii) include reporting requirements and revenue, cost, service, and consumer information displayed in a consistent, comparable format determined by the Department.*

*The Department may provide for performance monitoring in order to determine whether the community services boards are in substantial compliance with their performance contracts.*

*D. No community services board shall be eligible to receive state-controlled funds for mental health, mental retardation, or substance abuse services after September 30 of each year unless (i) its performance contract has been approved by the governing body of each city or county that established it and by the Department; (ii) it provides service, cost, revenue, and aggregate and individual consumer data and information, notwithstanding the provisions of § 37.2-400 or any regulations adopted thereunder, to the Department in the format prescribed by the Department; and (iii) it uses standardized cost accounting and financial management practices approved by the Department.*

*E. If, after unsuccessful use of a remediation process described in the performance contract, a community services board remains in substantial noncompliance with its performance contract with the Department, the Department may, after affording the community services board an adequate opportunity to use the appeal process described in the performance contract, terminate all or a portion of the contract. Using the state-controlled resources associated with that contract, the Department, after consulting with the governing body of each city or county that established the board, may negotiate a performance contract with another board, a behavioral health authority, or a private nonprofit or for-profit organization or organizations to obtain services that were the subject of the terminated performance contract.*

*§ 37.2-509. Mental health, mental retardation, and substance abuse services; allocation of funds by*

Department; reduction of funds.

A. At the beginning of each fiscal year, the Department shall allocate available state-controlled funds to community services boards for disbursement in accordance with procedures established by the Department and performance contracts approved by the Department. Allocations of state-controlled funds to each community services board shall be determined by the Department, after careful consideration of all of the following factors:

1. The total amounts of state-controlled funds appropriated for this purpose;
2. Previous allocations of state-controlled funds to each community services board;
3. Requirements or conditions attached to appropriations of state-controlled funds by the General Assembly, the Governor, or federal granting authorities;
4. Community services board input about the uses of and methodologies for allocating existing and new state-controlled funds; and
5. Other relevant and appropriate considerations.

Allocations to any community services board for operating expenses, including salaries and other costs, or the construction of facilities shall not exceed 90 percent of the total amount of state and local matching funds provided for these expenses or such construction, unless a waiver is granted by the Department pursuant to policy adopted by the Board.

B. The Department shall notify the governing body of each city or county that established the community services board before implementing any reduction of state-controlled funds. Before any city or county reduces local government matching funds, it shall notify its community services board and the Department.

C. All fees collected by the community services board shall be included in its performance contract and retained and used by the board for mental health, mental retardation, and substance abuse purposes.

§ 37.2-510. Community services board; withdrawal of county or city.

No county or city participating in a joint community services board shall withdraw from it without providing two years' notice to the other participating counties or cities, unless the other counties or cities agree to an earlier withdrawal.

§ 37.2-511. Liability for expenses of services.

The income and estate of a consumer shall be liable for the expenses of services under the jurisdiction or supervision of any community services board that are utilized by the consumer. Any person responsible for holding, managing, or controlling the income and estate of the consumer shall apply the income and estate toward the expenses of the services utilized by the consumer.

Any person responsible for the support of a consumer pursuant to § 20-61 or a common law duty to support shall be liable for the expenses of services under the jurisdiction or supervision of any community services board that are utilized by the consumer, unless the consumer, regardless of age, qualifies for and is receiving aid under a federal or state program of assistance to the blind or disabled. Any such person shall no longer be financially liable, however, when a cumulative total of 1,826 days of (i) care and treatment or training for the consumer in a state facility, (ii) utilization by the consumer of services under the jurisdiction or supervision of any community services board, or (iii) a combination of (i) and (ii) has passed and payment for or a written agreement to pay the charges for 1,826 days of care and services has been made. Not less than three hours of service per day shall be required to include one day in the cumulative total of 1,826 days of utilization of services under the jurisdiction or supervision of any community services board. In order to claim this exemption, the person legally liable for the consumer shall produce evidence sufficient to prove eligibility for it.

#### CHAPTER 6.

#### BEHAVIORAL HEALTH AUTHORITIES.

§ 37.2-600. Definitions.

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

"Behavioral health" means the full range of mental health, mental retardation, and substance abuse services and treatment modalities.

"Behavioral health authority board of directors" means the public body organized in accordance with provisions of this chapter that is appointed by and accountable to the governing body of the city or county that established it.

"Behavioral health project" means any facility suitable for providing adequate care for concentrated centers of population and includes structures, buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, franchises, machinery, equipment, furnishings, landscaping, approaches, roadways, and other necessary or desirable facilities.

"Member" means a person appointed by the governing body of a city or county to the behavioral health authority board of directors.

§ 37.2-601. Behavioral health authorities; purpose.

The Department, for the purposes of establishing, maintaining, and promoting the development of behavioral health services in the Commonwealth, may provide funds to assist certain cities or counties in the provision of these services.

*The governing body of the Cities of Virginia Beach or Richmond or the County of Chesterfield may establish a behavioral health authority and shall declare its intention to do so by resolution.*

*The behavioral health services provided by behavioral health authorities within the cities or counties they serve shall include emergency services and, subject to the availability of funds appropriated for them, case management services. The behavioral health services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, and other appropriate mental health, mental retardation, and substance abuse services necessary to provide individualized services and supports to persons with mental illnesses, mental retardation, or substance abuse.*

*In order to provide comprehensive mental health, mental retardation, and substance abuse services within a continuum of care, the behavioral health authority shall function as the single point of entry into publicly funded mental health, mental retardation, and substance abuse services.*

**§ 37.2-602. Board of directors; appointment; membership.**

*A city or county, before it shall come within the provisions of this chapter, shall establish a behavioral health authority with a board of directors with no less than six and no more than 18 members. When any city or county establishes a behavioral health authority, the board of directors shall be appointed by the governing body of the city or county establishing the authority. Prior to making appointments, the governing body shall disclose the names of persons being considered for appointment.*

*Appointments to the board of directors shall be broadly representative of the community. One-third of the appointments to the board shall be identified consumers or former consumers or family members of consumers or former consumers, at least one of whom shall be a consumer receiving services. One or more appointments may be nongovernmental services providers. Sheriffs or their designees also shall be appointed, when practical.*

*No board of directors shall include more than two local government officials, elected or appointed, as members.*

*The board of directors appointed pursuant to this section shall be responsible to the governing body of the city or county that established the authority.*

*The county or city that establishes a behavioral health authority shall receive an independent annual audit of the total revenues and expenditures from the authority, a copy of which shall be provided to the Department.*

**§ 37.2-603. Board of directors; terms; vacancies; removal.**

*The term of office of each member of the behavioral health authority board of directors shall be for three years from January 1 of the year of appointment or, at the option of the governing body of the city or county, from July 1 of the year of appointment, except that of the members first appointed, several shall be appointed for terms of one year each, several for terms of two years each, and the remaining members for terms of three years each. The appointment of members for one-year, two-year, and three-year terms shall be as nearly equal as possible with regard to the total number of members. If the governing body has appointed members for terms commencing January 1 or July 1 but desires to change the date on which the terms of office commence, the governing body may, as the terms of the members then in office expire, appoint successors for terms of two and one-half or three and one-half years, so that the terms expire on June 30 or December 31. Vacancies shall be filled for unexpired terms in the same manner as original appointments. No person shall be eligible to serve more than three full three-year terms; however, persons appointed to fill vacancies may serve three additional full three-year terms. Any member of the board of directors may be removed by the appointing authority for cause, after being given a written statement of the causes and an opportunity to be heard thereon.*

**§ 37.2-604. Board of directors; officers; meetings.**

*The members of the behavioral health authority board of directors shall annually elect one of their members as chairman and another as vice chairman and also shall elect a secretary and a treasurer, who may or may not be members, for terms to be determined by the members. The same person may serve as secretary and treasurer. The members shall make regulations and bylaws for their own governance and procedure as they shall determine; they shall meet at least 10 times per year and may hold such special meetings as they deem necessary. The regulations and bylaws shall be submitted to the governing body of the city or county that established the authority for review and comment.*

**§ 37.2-605. Behavioral health authorities; powers and duties.**

*Every authority shall be deemed to be a public instrumentality, exercising public and essential governmental functions to provide for the public mental health, welfare, convenience, and prosperity of the residents and such other persons who might be served by the authority and to provide behavioral health services to those residents and persons. An authority shall have the following powers and duties:*

*1. Review and evaluate public and private community mental health, mental retardation, and substance abuse services and facilities that receive funds from the authority and advise the governing body of the city or county that established it as to its findings.*

*2. Pursuant to § 37.2-608, submit to the governing body of the city or county that established the authority an annual performance contract for community mental health, mental retardation, and substance abuse services for its approval prior to submission of the contract to the Department.*

*3. Within amounts appropriated for this purpose, provide services authorized under the performance*



*contract.*

4. In accordance with its approved performance contract, enter into contracts with other providers for the delivery of services or operation of facilities.

5. Make and enter into all other contracts or agreements as the authority may determine that are necessary or incidental to the performance of its duties and to the execution of powers granted by this chapter, including contracts with any federal agency, any subdivision or instrumentality of the Commonwealth, behavioral health providers, insurers, and managed care or health care networks on such terms and conditions as the authority may approve.

6. Make policies or regulations concerning the delivery of services and operation of facilities under its direction or supervision, subject to applicable policies and regulations adopted by the Board.

7. Appoint a chief executive officer of the behavioral health authority, who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of the chief executive officer shall be fixed by the authority within the amounts made available by appropriation for this purpose. The chief executive officer shall serve at the pleasure of the authority's board of directors and be employed under an annually renewable contract that contains performance objectives and evaluation criteria. The Department shall approve the selection of the chief executive officer for adherence to minimum qualifications established by the Department and the salary range of the chief executive officer.

8. Authorize the chief executive officer to maintain a complement of professional staff to operate the behavioral health authority's service delivery system.

9. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the authority and establish procedures for the collection of those fees. All fees collected shall be included in the performance contract submitted to the local governing body pursuant to subdivision 2 of this section and § 37.2-608 and shall be used only for community mental health, mental retardation, and substance abuse purposes. Every authority shall institute a reimbursement system to maximize the collection of fees from persons receiving services under the jurisdiction or supervision of the authority, consistent with the provisions of § 37.2-612, and from responsible third party payors. Authorities shall not attempt to bill or collect fees for time spent participating in commitment hearings for involuntary admissions pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8.

10. Accept or refuse gifts, donations, bequests, or grants of money or property or other assistance from the federal government, the Commonwealth, any municipality thereof, or any other sources, public or private; utilize them to carry out any of its purposes; and enter into any agreement or contract regarding or relating to the acceptance, use, or repayment of any such grant or assistance.

11. Seek and accept funds through federal grants. In accepting federal grants, the authority shall not bind the governing body of the city or county that established it to any expenditures or conditions of acceptance without the prior approval of that governing body.

12. Notwithstanding any provision of law to the contrary, disburse funds appropriated to it in accordance with applicable regulations.

13. Apply for and accept loans in accordance with regulations established by the board of directors.

14. Develop joint written agreements, consistent with policies adopted by the Board, with local school divisions; health departments; local boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging; and regional Department of Rehabilitative Services offices. The agreements shall specify the services to be provided to consumers. All participating agencies shall develop and implement the agreements and shall review the agreements annually.

15. Develop and submit to the Department the necessary information for the preparation of the Comprehensive State Plan for mental health, mental retardation, and substance abuse services pursuant to § 37.2-315.

16. Take all necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and service planning, delivery, and evaluation.

17. Institute, singly or in combination with community services boards or other behavioral health authorities, a dispute resolution mechanism that is approved by the Department and enables consumers and family members of consumers to resolve concerns, issues, or disagreements about services without adversely affecting their access to or receipt of appropriate types and amounts of current or future services from the authority.

18. Notwithstanding the provisions of § 37.2-400 and regulations adopted thereunder, release data and information about individual consumers to the Department, so long as the Department implements procedures to protect the confidentiality of that data and information. Every authority shall submit data on children and youth in the same manner as community services boards, as set forth in § 37.2-507.

19. Fulfill all other duties and be subject to applicable provisions specified in the Code of Virginia pertaining to community services boards.

20. Make loans and provide other assistance to corporations, partnerships, associations, joint ventures, or other entities in carrying out any activities authorized by this chapter.



21. Transact its business, locate its offices and control, directly or through stock or nonstock corporations or other entities, facilities that will assist the authority in carrying out the purposes and intent of this chapter, including without limitations the power to own or operate, directly or indirectly, behavioral health facilities in its service area.

22. Acquire property, real or personal, by purchase, gift, or devise on such terms and conditions and in such manner as it may deem proper and such rights, easements, or estates therein as may be necessary for its purposes and sell, lease, and dispose of the same or any portion thereof or interest therein, whenever it shall become expedient to do so.

23. Participate in joint ventures with individuals, corporations, partnerships, associations, or other entities for providing behavioral health care or related services or other activities that the authority may undertake to the extent that such undertakings assist the authority in carrying out the purposes and intent of this chapter.

24. Conduct or engage in any lawful business, activity, effort, or project that is necessary or convenient for the purposes of the authority or for the exercise of any of its powers.

25. As a public instrumentality, establish and operate its administrative management infrastructure in whole or in part independent of the local governing body; however, nothing in the chapter precludes behavioral health authorities from acquiring support services through existing governmental entities.

26. Carry out capital improvements and bonding through existing economic or industrial development authorities.

27. Establish retirement, group life insurance, and group accident and sickness insurance plans or systems for its employees in the same manner as cities, counties, and towns are permitted to do under § 51.1-801.

28. Provide an annual report to the Department of the authority's activities.

29. Ensure a continuation of all consumer services during any transition period.

§ 37.2-606. Coordination of services for preadmission screening and discharge planning.

A behavioral health authority shall coordinate services for preadmission screening and discharge planning and provide preadmission screening services and discharge planning in the same manner as community services boards, as set forth in § 37.2-505.

§ 37.2-607. Background check required.

A behavioral health authority shall fulfill the duties of and be subject to the employee background check requirements that are applicable to community services boards, as set forth in § 37.2-506.

§ 37.2-608. Performance contract for mental health, mental retardation, and substance abuse services.

A. The Department shall develop and initiate negotiation of the performance contracts through which it provides funds to behavioral health authorities to accomplish the purposes set forth in this chapter. Six months prior to the beginning of each fiscal year, the Department shall make available to the public the standard performance contract form that it intends to use as the performance contract for that fiscal year and solicit public comments for a period of 60 days.

B. Any behavioral health authority may apply for the assistance provided in this chapter by submitting annually to the Department its proposed performance contract for the next fiscal year together with the approval of its board of directors and the approval by formal vote of the governing body of the city or county that established it. The behavioral health authority shall make its proposed performance contract available for public review and solicit public comments for a period of 30 days prior to submitting its proposed contract for the approval of its board of directors. To avoid disruptions in service continuity and allow sufficient time to complete public review and comment about the contract and negotiation and approval of the contract, the Department may provide up to six semi-monthly payments of state-controlled funds to the authority. If the governing body of the city or county does not approve the proposed performance contract by September 30 of each year, the performance contract shall be deemed approved.

C. The performance contract shall (i) delineate the responsibilities of the Department and the behavioral health authority; (ii) specify conditions that must be met for the receipt of state-controlled funds; (iii) identify the groups of consumers to be served with state-controlled funds; (iv) contain specific consumer, provider performance, consumer satisfaction, and consumer and family member participation and involvement measures; (v) contain mechanisms that have been identified or developed jointly by the Department and the behavioral health authority and that will be employed collaboratively by the behavioral health authority and the state hospital to manage the utilization of state hospital beds; (vi) establish an enforcement mechanism, should the behavioral health authority fail to be in substantial compliance with its performance contract, including notice and appeal processes and provisions for remediation, withholding or reducing funds, methods of repayment of funds, and the Department's exercise of the provisions of subsection E; and (vii) include reporting requirements and revenue, cost, service, and consumer information displayed in a consistent, comparable format determined by the Department.

The Department may provide for performance monitoring to determine whether behavioral health authorities are in substantial compliance with their performance contracts.

D. No behavioral health authority shall be eligible to receive state-controlled funds for mental health, mental retardation, or substance abuse services after September 30 of each year unless (i) its performance contract has been approved by the governing body of the city or county that established it and by the Department; (ii) it provides service, cost, revenue, and aggregate and individual consumer data and information, notwithstanding § 37.2-400 or any regulations adopted thereunder, to the Department in the format prescribed by the Department; and (iii), it uses standardized cost accounting and financial management practices approved by the Department.

E. If, after unsuccessful use of a remediation process described in the performance contract, a behavioral health authority remains in substantial noncompliance with its performance contract with the Department, the Department may, after affording the authority an adequate opportunity to use the appeal process described in the performance contract, terminate all or a portion of the contract. Using the state-controlled resources associated with that contract, the Department, after consulting with the governing body of the city or county that established the behavioral health authority, may negotiate a performance contract with a community services board, another behavioral health authority, or a private nonprofit or for-profit organization or organizations to obtain services that were the subject of the terminated performance contract.

§ 37.2-609. Exemption from taxation.

The exercise of the powers granted by this chapter shall be in all respects for the benefit of individuals in the authority's service area and for the promotion of their safety, health, welfare, convenience, and prosperity. As the operation and maintenance of any behavioral health project that the authority is authorized to undertake will constitute the performance of an essential governmental function, the authority shall not be required to pay any taxes or assessments upon any behavioral health project acquired or constructed by it or on the revenues generated by its operation.

§ 37.2-610. Transfer of facilities and assets.

The governing body of the city or county that established the authority is authorized to transfer to the authority the operation and maintenance of suitable facilities that are now or may be hereafter owned by the city or county on the terms and conditions that it may prescribe; but this section shall not be construed as authorizing the authority to maintain and operate such facilities until the operation of them has been transferred by the governing body of the city or county that established it.

§ 37.2-611. Local appropriations; allocation of funds by Department; reduction of funds.

The city or county that established the authority is authorized to make appropriations and to provide funds for the operation of the authority and to further its purposes. Such appropriations for the authority shall be subject to the requirements that are applicable to community services boards, as set forth in § 37.2-509. The Department shall allocate available state-controlled funds to behavioral health authorities for disbursement in accordance with the provisions that are applicable to community services boards, as set forth in § 37.2-509, and shall notify the governing body of the city or county that established the authority before implementing any reduction of state-controlled funds.

§ 37.2-612. Consumer liability for expenses of services.

Consumers shall be liable for the expenses of services provided by a behavioral health authority in the same manner that they are liable to community services boards, as set forth in § 37.2-511.

§ 37.2-613. Proceedings for dissolution.

When the board of directors of a behavioral health authority determines that the need for the authority no longer exists, then, upon a petition by the board to the circuit court of the appropriate city or county, after giving 90 days' notice to the city or county and upon the production of satisfactory evidence in support of the petition and a detailed dissolution plan, the court may enter an order declaring that the need for the authority in that city or county no longer exists and approving a plan for the winding up of the authority's business, the payment or assumption of its obligations, and the transfer of its assets. In order for it to be approved by the court, the court must find that this plan describes specifically how the city or county that established the authority will fulfill the same duties and responsibilities required for community services boards under Chapter 5 (§ 37.2-500 et seq.) and how the city or county will ensure continuity of care for consumers who are receiving services from the authority.

§ 37.2-614. When powers and duties cease to exist.

If the court shall enter an order, as provided in § 37.2-613, that the need for a behavioral health authority no longer exists, then, except for the winding up of its affairs in accordance with the plan approved by the court, the authority's authorities, powers, and duties to transact business or to function shall cease to exist as of that date set forth in the order of the court.

CHAPTER 7.

STATE FACILITIES.

Article I.

General Provisions.

§ 37.2-700. Construction of state facilities; razing buildings.

A. The Commissioner, subject to the approval of the Board and the Governor, shall determine the necessity for and select the site of any new state facility and any land to be taken or purchased by the

Commonwealth for the purposes of any new or existing state facility. The Commissioner shall have charge of the construction of any new building at any state facility, shall determine the design of the building, and may employ architects and other experts or hold competitions for plans and designs for this purpose. If any land or property is taken or purchased by the Board, title shall be taken in the name of the Commonwealth.

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

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

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

§ 37.2-702. Separate state facilities for geriatric consumers; free-standing state facilities authorized.

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

The Board may, giving full consideration to the needs and resources available, authorize the establishment of free-standing state facilities for geriatric consumers.

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

The Commissioner shall prescribe and cause to be established and maintained at all state facilities:

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

(b) An efficient system of keeping records concerning the consumers admitted to or residing in each state facility.

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

§ 37.2-704. Commissioner authorized to receive and expend social security and other federal payments for consumers in state facilities.

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

§ 37.2-705. Private funds provided for consumers.

A. The Commissioner is hereby authorized to provide for the deposit with the director or other proper officer of any state facility of any money given or provided for the purpose of supplying extra comforts, conveniences, or services to any consumer in a state facility and any money otherwise received and held from, for, or on behalf of any consumer.

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

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

D. If any consumer for whose benefit any such fund has been or shall be provided has departed or shall depart from any state facility, leaving any unexpended balance in such fund, and the director, in the exercise of reasonable diligence, has been or shall be unable to find the person or persons entitled to such unexpended balance, the Commissioner may, after the lapse of three years from the date of such departure, authorize the use of the balance for the benefit of all or any of the consumers then in the state facility.

§ 37.2-706. Disposal of unclaimed personal property of certain consumers in state facilities.

If any consumer in a state facility dies, is released, is discharged, or escapes and leaves any article of personal property, including bonds, money, and any intangible assets, in the custody of a state

facility, the director of the state facility may, after notification in person, by telephone, or by registered mail to the consumer, known next-of-kin, or personal representative of the consumer and after the lapse of three years from the date of the death, release, discharge, or escape, if no claim has been made:

1. Sell the personal property at public or private sale and deposit the net proceeds in the welfare fund of the state facility;
2. Retain and issue for use of current consumers articles of clothing suitable for continued use; or
3. Order destruction or other disposal of personal care articles, articles of clothing, and other belongings that are not suitable by reason of their nature or condition for sale or use by others, including personal and private papers, writings, drawings, or photographs that would compromise the privacy or confidentiality of any person who may be the author, creator, or subject of them.

§ 37.2-707. Employment and qualifications of directors of state facilities.

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

Any director of a state facility employed or reemployed by the Commissioner after July 1, 2002, may be employed as a classified employee or under a contract that specifies the terms and conditions of employment, including compensation, benefits, duties and responsibilities, performance standards, evaluation criteria, and contract termination and renewal provisions. The length of 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 a contract. Any director of a state facility employed under an employment contract shall be exempt from the Virginia Personnel Act, yet he shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.). Personnel actions under this exemption shall be taken without regard to race, sex, color, national origin, religion, age, disability, 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 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 the director is not a licensed physician, the act shall be performed by a licensed physician designated by the director.

§ 37.2-708. Salaries of directors and other employees of state facilities.

The directors and other employees of state facilities shall each annually receive such salaries as shall be fixed from time to time in the appropriation act, and, when they occupy buildings on the grounds or belonging to their state facility, they shall pay the rent that was fixed in accordance with law.

§ 37.2-709. State facility reporting requirements; Virginia Office for Protection and Advocacy.

Each director of a state facility shall notify the Director of the Virginia Office for Protection and Advocacy, pursuant to § 51.5-39.12, in writing within 48 hours of critical incidents or deaths of consumers in the state facility.

§ 37.2-710. State facility reporting requirements; Virginia Patient Level Data system.

State facilities shall report such patient-level data and financial data as may be required to the Virginia Patient Level Data system in accordance with Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1.

§ 37.2-711. Exchange of information.

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

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

Notwithstanding any provision of law to the contrary, any state facility may collect and disseminate information concerning the religious preferences and affiliations of its consumers, provided that no consumer may be required to indicate his religious preference or affiliation and that no dissemination of the information shall be made except to categories of persons as to whom the consumer or his guardian or other legally authorized representative or other fiduciary has given his authorization that dissemination may be made.

§ 37.2-713. *Residence of consumers in state facilities and school-age children in state facilities generally.*

For purposes of eligibility for and receipt of social services and public assistance, each consumer in a state facility shall be deemed a resident of the county or city in which he resided at the time of his admission to the state facility, and not of the county or city in which the state facility is located. Each person between the ages of two and 21 in the population of any state facility whom the Department determines could benefit from a program of education or training shall be included in the census taken as provided in § 22.1-281. The Department shall be entitled to receive annually from the Board of Education and the school division where the person is included in the census a sum equal to the required local expenditure per pupil, as set forth in the appropriation act, and an additional payment for special education, as applicable, for support of the person's education. This amount shall be paid by the Board of Education, and the Board shall then deduct that payment from the amount payable by the Board of Education from the basic school aid fund to the school division.

§ 37.2-714. *Children born in state facilities.*

Any child born in a state facility shall be deemed a resident of the county or city in which the mother resided at the time of her admission. The child shall be removed from the state facility as soon after birth as the health and well-being of the child permit and shall be delivered to his father or other member of his family. If he is unable to effect the child's removal as herein provided, the director of the state facility shall cause the filing of a petition in the juvenile and domestic relations district court of the county or city in which the child is present, requesting adjudication of the care and custody of the child under the provisions of § 16.1-278.3. If the mother has been a consumer in a state facility continuously for 10 months, the Department of Social Services shall have financial responsibility for the care of the child, and the custody of the child shall be determined in accordance with the provisions of § 16.1-278.3. The judge of such court shall take appropriate action to effect prompt removal of the child from the state facility.

## Article 2.

### *Expenses of Care, Treatment or Training, and Maintenance.*

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

Any person who has been or who may be admitted to any state facility or who is the subject of counseling or receives treatment from the staff of a state facility shall be deemed to be a consumer for the purposes of this article.

The income and estate of a consumer shall be liable for the expenses of his care, treatment or training, and maintenance in a state facility. Any person responsible for holding, managing, or controlling the income and estate of the consumer shall apply the income and estate toward the expenses of the consumer's care, treatment or training, and maintenance.

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

Such expenses shall not exceed the average cost for the particular type of service rendered and shall be determined no less frequently than annually by the Department in accordance with generally accepted accounting principles applicable to the health care industry. In no event shall recovery be permitted for amounts more than five years past due. A certificate of the Commissioner or his designee shall be prima facie evidence of the actual charges for the particular type of service rendered.

§ 37.2-716. *Mental Health, Mental Retardation and Substance Abuse Services Revenue Fund.*

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

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

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

A. The Department shall investigate and determine which consumers or parents, guardians, conservators, trustees, or other persons legally responsible for consumers are financially able to pay the expenses of the care, treatment or training, and maintenance, and the Department shall notify these

consumers or their parents, guardians, conservators, trustees, or other legally responsible persons of the expenses of care, treatment or training, and maintenance and, in general, of the provisions of this article.

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

C. All contracts made by and between the Department and any person acting in a fiduciary capacity for any consumer adjudicated to be incapacitated under the provisions of Article 1 (§ 37.2-1000 et seq.) of Chapter 10 of this title and all assessments made by the Department upon that consumer or his fiduciaries, providing for payment of the expenses of such consumer in any state facility, shall be subject to the approval of any circuit court having jurisdiction over the incapacitated person's estate or for the county or city in which he resides or from which he was admitted to the state facility.

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

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

B. The consumer and his estate shall first be liable for the payment of his expenses and thereafter, the person liable for the support of the consumer. Such person shall be the father, mother, husband, wife, or child of the consumer who has attained the age of majority. Multiple persons shall be jointly and severally liable. The Department shall collect part or all of the expenses from the several sources as appears proper under the circumstances and may proceed against all sources, except that the principal or income or both from a trust created for the benefit of the consumer shall be liable for payment only as provided in § 55-19. In evaluating the circumstances, the Department may consider any events related to the admission of the consumer for treatment or training that have affected the person liable, such as the infliction of serious injury by the consumer on the person who is liable. The proceedings for the collection of expenses shall conform to the procedure for collection of debts due the Commonwealth.

C. Notice of any hearing on the petition of the Department for an order to compel payment of expenses shall be served at least 15 days prior to the hearing and in the manner provided for the service of civil process on the consumer and, if there is one, on his guardian, conservator, or trustee, on the other person legally responsible for the consumer's support, or on the person against whom the proceedings are instituted.

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

E. Upon application of any interested party and upon like notice and procedure, the court may at any time modify an order to compel payment of expenses. If the application is made by any party other than the Department, the notice shall be served on the Commissioner.

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

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

§ 37.2-719. Statement forms to be completed by the person liable for support of the consumer.

*The Commissioner may prescribe statement forms that shall be completed by those persons liable under § 37.2-715 for the support of the consumer. The statement shall be sworn to by the person and returned to the Commissioner within 30 days from the time the statement was mailed to the person. Should the person fail to return the properly completed statement to the Commissioner within 30 days, the Commissioner shall send another statement by registered mail. If the statement is not then returned properly completed within 30 days, the person to whom it was sent by registered mail shall be assessed \$5 for each week or part of each week in excess of the 30-day period that the statement is overdue. The Department shall collect these assessments in the same manner as other sums due for the care, treatment or training, and maintenance of consumers from the persons whose duty it was to complete each statement. When collected, these assessments shall be paid into the same fund into which other collections are paid under this article.*

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

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

*This article shall not be held or construed to require the Department to collect the expenses of the care, treatment or training, and maintenance of any indigent consumer from that person or from any person liable for him when investigation discloses that the indigent consumer or person liable for his support is without financial means or that such payment would work a hardship on the person or his family. Neither shall it be the duty or obligation of the Department to institute any proceedings provided for in this article to effect collection where investigation discloses that proceedings would be without effect or would work a hardship on the consumer or the person liable for his support.*

*§ 37.2-721. Liability of estate of consumer.*

*Upon the death of any consumer or former consumer, his estate shall be liable only for the charges remaining unpaid and not more than five years past due and the unsatisfied portion of any judgment rendered by a court in a proceeding under this article. Upon the death of any consumer or former consumer, the provisions of § 37.2-717, which prohibit depleting the consumer's estate below \$500, shall after funeral expenses have no further application, and such sum may be applied to the charges of the Department remaining unpaid or may be applied to the unsatisfied portion of any judgment.*

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

### **SUBTITLE III.**

### **ADMISSIONS AND DISPOSITIONS.**

#### **CHAPTER 8.**

#### **EMERGENCY CUSTODY AND VOLUNTARY AND INVOLUNTARY CIVIL ADMISSIONS.**

##### **Article 1.**

##### **General Provisions.**

*§ 37.2-800. Applicability of chapter.*

*For the purposes of this chapter, whenever the term mental illness appears, it shall include substance abuse.*

*§ 37.2-801. Admission procedures; forms.*

*A. Any person alleged to have a mental illness to a degree that warrants treatment in a facility may be admitted to a facility by compliance with one of the following admission procedures:*

- 1. Voluntary admission by the procedure described in § 37.2-805, or*
- 2. Involuntary admission by the procedure described in §§ 37.2-809 through 37.2-820.*

*B. The Board shall prescribe and the Department shall prepare the forms required in procedures for admission. These forms, which shall be the legal forms used in admissions, shall be approved by the Attorney General and distributed by the Department to the clerks of the general district courts and juvenile and domestic relations district courts of the Commonwealth and to the directors of the state facilities.*

*§ 37.2-802. Interpreters in admission or certification proceedings.*

*A. In any proceeding pursuant to § 37.2-806 or §§ 37.2-809 through 37.2-820 in which a person who is deaf is alleged to have mental retardation or mental illness, an interpreter for the person shall be appointed by the district court judge or special justice before whom the proceeding is pending from a list of qualified interpreters provided by the Department for the Deaf and Hard-of-Hearing. The*

interpreter shall be compensated as provided for in § 37.2-804.

B. In any proceeding pursuant to § 37.2-806 or §§ 37.2-809 through 37.2-820 in which a non-English-speaking person is alleged to have mental retardation or mental illness or is a witness in such proceeding, an interpreter for the person shall be appointed by the district court judge or special justice, or in the case of §§ 37.2-809 through 37.2-813 a magistrate, before whom the proceeding is pending. Failure to appoint an interpreter when an interpreter is not reasonably available or when the person's level of English fluency cannot be determined shall not be a basis to dismiss the petition or void the order entered at the proceeding. The compensation for the interpreter shall be fixed by the court in accordance with the guidelines set by the Judicial Council of Virginia and shall be paid out of the state treasury.

§ 37.2-803. Special justices to perform duties of judge.

The chief judge of each judicial circuit may appoint one or more special justices, for the purpose of performing the duties required of a judge by this chapter, Chapter 11 (§ 37.2-1100 et seq.), and §§ 16.1-69.28, 16.1-339, 19.2-169.6, 19.2-174.1, 19.2-177.1, 19.2-182.9, 53.1-40.1, 53.1-40.2, and 53.1-40.9. Each special justice shall be a person licensed to practice law in the Commonwealth and shall have all the powers and jurisdiction conferred upon a judge. The special justice shall serve under the supervision and at the pleasure of the chief judge making the appointment. Within six months of appointment, each special justice appointed on or after January 1, 1996, shall complete a minimum training program prescribed by the Executive Secretary of the Supreme Court. Special justices shall collect the fees prescribed in this chapter for their service and shall retain those fees, unless the governing body of the county or city in which the services are performed provides for the payment of an annual salary for the services, in which case the fees shall be collected and paid into the treasury of that county or city.

§ 37.2-804. Fees and expenses.

A. Any special justice, or any district court substitute judge who presides over hearings pursuant to the provisions of §§ 37.2-809 through 37.2-820, shall receive a fee of \$86.25 for each commitment hearing for involuntary admission and his necessary mileage and \$43.25 for each certification hearing and each order under Chapter 11 (§ 37.2-1100 et seq.) ruling on competency or treatment and his necessary mileage.

B. Any physician, psychologist or other mental health professional, or any interpreter, appointed pursuant to § 37.2-802 for persons who are deaf, who is not regularly employed by the Commonwealth and is required to serve as a witness or as an interpreter in any proceeding under this chapter shall receive a fee of \$75 and his necessary expenses for each commitment hearing for involuntary admission in which he serves and \$43.25 and necessary expenses for each certification hearing in which he serves.

C. Other witnesses regularly summoned before a judge or special justice under the provisions of this chapter shall receive the compensation for their attendance and mileage that is allowed witnesses summoned to testify before grand juries.

D. Every attorney appointed under § 37.2-806 or §§ 37.2-809 through 37.2-820 shall receive a fee of \$75 and his necessary expenses for each commitment hearing for involuntary admission and \$43.25 and his necessary expenses for each certification hearing and each proceeding under Chapter 11 (§ 37.2-1100 et seq.).

E. Except as hereinafter provided, all expenses incurred, including the fees, attendance, and mileage aforesaid, shall be paid by the Commonwealth. When any such fees, costs, and expenses, incurred in connection with an examination or hearing for an admission pursuant to § 37.2-806 or §§ 37.2-809 through 37.2-820, to carry out the provisions of this chapter or in connection with a proceeding under Chapter 11 (§ 37.2-1100 et seq.), are paid by the Commonwealth, they shall be recoverable by the Commonwealth from the person who is the subject of the examination, hearing, or proceeding or from his estate. Collection or recovery may be undertaken by the Department. When the fees, costs, and expenses are collected or recovered by the Department, they shall be refunded to the Commonwealth. No fees or costs shall be recovered, however, from the person who is the subject of the examination or hearing or his estate when no good cause for his admission exists or when the recovery would create an undue financial hardship.

## Article 2.

### Voluntary Admission.

§ 37.2-805. Voluntary admission.

Any state facility shall admit any person requesting admission who has been (i) screened by the community services board or behavioral health authority that serves the city or county where the person resides or, if impractical, where the person is located, (ii) examined by a physician on the staff of the state facility, and (iii) deemed by the board or authority and the state facility physician to be in need of treatment, training, or habilitation in a state facility.

## Article 3.

### Admission to Training Centers.

§ 37.2-806. Judicial certification of eligibility for admission of persons with mental retardation.

A. Whenever a person alleged to have mental retardation is not capable of requesting admission to a



training center pursuant to § 37.2-805, a parent or guardian of the person or another responsible person may initiate a proceeding to certify the person's eligibility for admission pursuant to this section.

B. Prior to initiating the proceeding, the parent or guardian or other responsible person seeking the person's admission shall first obtain (i) a preadmission screening report that recommends admission to a training center from the community services board or behavioral health authority that serves the city or county where the person who is alleged to have mental retardation resides and (ii) the approval of the training center to which it is proposed that the person be admitted. The Board shall adopt regulations establishing the procedure and standards for the issuance of such approval. These regulations may include provision for the observation and evaluation of the person in a training center for a period not to exceed 48 hours. No person alleged to have mental retardation who is the subject of a proceeding under this section shall be detained on that account pending the hearing except for observation and evaluation pursuant to the provisions of this subsection.

C. Upon the filing of a petition in any city or county alleging that the person has mental retardation, is in need of training, treatment, or habilitation, and has been approved for admission pursuant to subsection B of this section, a proceeding to certify the person's eligibility for admission to the training center may be commenced. The petition shall be filed with any district court or special justice. A copy of the petition shall be personally served on the person named in the petition, his attorney, and his guardian or conservator. Prior to any hearing under this section, the judge or special justice shall appoint an attorney to represent the person. However, the person shall not be precluded from employing counsel of his choosing and at his expense.

D. The person who is the subject of the hearing shall be allowed sufficient opportunity to prepare his defense, obtain independent evaluations and expert opinion at his own expense, and summons other witnesses. He shall be present at any hearing held under this section, unless his attorney waives his right to be present and the judge or special justice is satisfied by a clear showing and after personal observation that the person's attendance would subject him to substantial risk of physical or emotional injury or would be so disruptive as to prevent the hearing from taking place.

E. Notwithstanding the above, the judge or special justice shall summons either a physician or a clinical psychologist who is licensed in Virginia and is qualified in the assessment of persons with mental retardation or a person designated by the local community services board or behavioral health authority who meets the qualifications established by the Board. The physician, clinical psychologist, or community services board or behavioral health authority designee may be the one who assessed the person pursuant to subsection B of this section. The judge or special justice also shall summons other witnesses when so requested by the person or his attorney. The physician, clinical psychologist, or community services board or behavioral health authority designee shall certify that he has personally assessed the person and has probable cause to believe that the person (i) does or does not have mental retardation, (ii) is or is not eligible for a less restrictive service, and (iii) is or is not in need of training, treatment, or habilitation in a training center. The judge or special justice may accept written certification of a finding of a physician, clinical psychologist, or community services board or behavioral health authority designee, provided such assessment has been personally made within the preceding 30 days and there is no objection to the acceptance of the written certification by the person or his attorney.

F. If the judge or special justice, having observed the person and having obtained the necessary positive certification and other relevant evidence, specifically finds that (i) the person is not capable of requesting his own admission, (ii) the training center has approved the proposed admission pursuant to subsection B of this section, (iii) there is no less restrictive alternative to training center admission, consistent with the best interests of the person who is the subject of the proceeding, and (iv) the person has mental retardation and is in need of training, treatment, or habilitation in a training center, the judge or special justice shall by written order certify that the person is eligible for admission to a training center.

G. Certification of eligibility for admission hereunder shall not be construed as a judicial commitment for involuntary admission of the person but shall authorize the parent or guardian or other responsible person to admit the person to a training center and shall authorize the training center to accept the person.

§ 37.2-807. Emergency or respite care admissions to training centers.

The Board may adopt regulations to provide for emergency and respite care admissions to training centers. A respite care or emergency admission made pursuant to such regulation shall not be considered an admission under § 37.2-806 and shall not require judicial certification of eligibility for admission. No individual shall be admitted to a training center under an emergency or respite care admission for more than 21 consecutive days or 75 days in a calendar year.

#### Article 4.

##### Emergency Custody and Involuntary Temporary Detention.

§ 37.2-808. Emergency custody; issuance and execution of order.

A. Any magistrate may issue, upon the sworn petition of any responsible person or upon his own motion, an emergency custody order when he has probable cause to believe that any person within his

judicial district (i) has mental illness, (ii) presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill as to be substantially unable to care for himself, (iii) is in need of hospitalization or treatment, and (iv) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

B. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board or behavioral health authority who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. Transportation under this section shall include transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment. This evaluation or treatment shall be conducted immediately in accordance with state and federal law.

D. The magistrate shall order the primary law-enforcement agency from the jurisdiction served by the community services board or behavioral health authority that designated the person to perform the evaluation required in subsection B to execute the order and provide transportation. If the community services board or behavioral health authority serves more than one jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular jurisdiction within the community services board's or behavioral health authority's service area where the person who is the subject of the emergency custody order was taken into custody or, if the person has not yet been taken into custody, the primary law-enforcement agency from the jurisdiction where the person is presently located to execute the order and provide transportation.

E. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing an emergency custody order pursuant to this section.

F. A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency custody as stated in this section may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization or treatment without prior authorization. Such evaluation shall be conducted immediately.

G. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

H. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period of custody exceed four hours.

I. If an emergency custody order is not executed within four hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate thereof.

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

A. For the purposes of this section:

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

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

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

B. A magistrate may issue, upon the sworn petition of any responsible person or upon his own motion and only after an in-person evaluation by an employee or a designee of the local community services board, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician or clinical psychologist treating the person, that the person (i) has mental illness, (ii) presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill as to be substantially unable to care for himself, (iii) is in need of hospitalization or treatment, and (iv) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

C. A magistrate may issue a temporary detention order without an emergency custody order

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

D. An employee or a designee of the local community services board shall determine the facility of temporary detention for all individuals detained pursuant to this section. The facility of temporary detention shall be one that has been approved pursuant to regulations of the Board. The facility shall be identified on the preadmission screening report and indicated on the temporary detention order. Except as provided in § 37.2-811 for defendants requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses.

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

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

G. The duration of temporary detention shall not exceed 48 hours prior to a hearing. If the 48-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained, as herein provided, until the next day that is not a Saturday, Sunday, or legal holiday.

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

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

#### § 37.2-810. Transportation of person in the temporary detention process.

A. The magistrate issuing the temporary detention order shall specify the law-enforcement agency and jurisdiction that shall execute the temporary detention order and provide transportation. The magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the person resides to execute the order and provide transportation. However, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located shall execute the order and provide transportation. The order may include transportation of the person to such other medical facility as may be necessary to obtain emergency medical evaluation or treatment prior to placement. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section. Such evaluation or treatment shall be conducted immediately in accordance with state and federal law.

B. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing any temporary detention order pursuant to this section. Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation.

#### § 37.2-811. Emergency treatment of defendants prior to trial.

A. In any case in which temporary detention is ordered pursuant to § 37.2-809 upon petition of a person having custody of a defendant in accordance with subdivision A 2 of § 19.2-169.6, the magistrate executing the temporary detention order shall place the person in a hospital designated by the Commissioner as appropriate for treatment and evaluation of persons under a criminal charge or, if

*such facility is not available, the defendant shall be detained in a jail or other place of confinement for persons charged with criminal offenses and shall be transferred to such hospital as soon as possible thereafter.*

*B. The hearing shall be held, upon notice to the attorney for the defendant, either (i) before the court having jurisdiction over the defendant's case or (ii) before a district court judge or special justice in accordance with the provisions of § 37.2-820, in which case the defendant shall be represented by counsel as specified in § 37.2-814.*

*§ 37.2-812. Temporary detention and involuntary admission of minors.*

*In any case in which temporary detention is ordered pursuant to § 37.2-809 upon petition for involuntary admission of a minor, the petition shall be filed and the hearing scheduled in accordance with the provisions of § 16.1-341.*

*§ 37.2-813. Release of person prior to commitment hearing for involuntary admission.*

*Prior to a hearing as authorized in §§ 37.2-814 through 37.2-819 or § 16.1-341, the district court judge or special justice may release the person on his personal recognizance or bond set by the district court judge or special justice if it appears from all evidence readily available that the person will not pose an imminent danger to himself or others. In the case of a minor, the juvenile and domestic relations district court judge may release the minor to his parent. The director of any facility in which the person is detained may release the person prior to a hearing as authorized in §§ 37.2-814 through 37.2-819 or § 16.1-341 if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the person, that the person would not present an imminent danger to himself or others if released.*

#### *Article 5.*

##### *Involuntary Admissions.*

*§ 37.2-814. Commitment hearing for involuntary admission; written explanation; right to counsel; rights of petitioner.*

*A. The commitment hearing for involuntary admission shall be held within 48 hours of the execution of the temporary detention order as provided for in § 37.2-809; however, if the 48-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the person may be detained, as herein provided, until the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.*

*B. At the commencement of the commitment hearing, the district court judge or special justice shall inform the person whose involuntary admission is being sought of his right to apply for voluntary admission and treatment as provided for in § 37.2-805 and shall afford the person an opportunity for voluntary admission. The judge or special justice shall ascertain if the person is then willing and capable of seeking voluntary admission and treatment. If the judge or special justice finds that the person is capable and willingly accepts voluntary admission and treatment, the judge or special justice shall require him to accept voluntary admission for a minimum period of treatment not to exceed 72 hours. After such minimum period of treatment, the person shall give the hospital 48 hours' notice prior to leaving the hospital. During this notice period, the person shall not be discharged except as provided in § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject to the transportation provisions as provided in § 37.2-829 and the requirement for preadmission screening by a community services board or behavioral health authority as provided in § 37.2-805.*

*C. If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the judge or special justice shall inform the person of his right to a commitment hearing and right to counsel. The judge or special justice shall ascertain if the person whose admission is sought is represented by counsel, and, if he is not represented by counsel, the judge or special justice shall appoint an attorney to represent him. However, if the person requests an opportunity to employ counsel, the judge or special justice shall give him a reasonable opportunity to employ counsel at his own expense.*

*D. A written explanation of the involuntary admission process and the statutory protections associated with the process shall be given to the person, and its contents shall be explained by an attorney prior to the commitment hearing. The written explanation shall describe, at a minimum, the person's rights to (i) retain private counsel or be represented by a court-appointed attorney, (ii) present any defenses including independent evaluation and expert testimony or the testimony of other witnesses, (iii) be present during the hearing and testify, (iv) appeal any order for involuntary admission to the circuit court, and (v) have a jury trial on appeal. The judge or special justice shall ascertain whether the person whose involuntary admission is sought has been given the written explanation required herein.*

*E. To the extent possible, during or before the commitment hearing, the attorney for the person whose involuntary admission is sought shall interview his client, the petitioner, the examiner described in § 37.2-815, the community services board or behavioral health authority staff, and any other material witnesses. He also shall examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings. A health care provider shall disclose or make available all such reports, treatment information, and*

records concerning his client to the attorney, upon request. The role of the attorney shall be to represent the wishes of his client, to the extent possible.

F. The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence. The petitioner shall be encouraged but shall not be required to testify at the hearing, and the person whose involuntary admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing.

§ 37.2-815. Commitment hearing for involuntary admission; examination required.

Notwithstanding § 37.2-814, the district court judge or special justice shall require an examination of the person who is the subject of the hearing by a psychiatrist or a psychologist who is licensed in Virginia by the Board of Medicine or the Board of Psychology and is qualified in the diagnosis of mental illness or, if such a psychiatrist or psychologist is not available, any mental health professional who is (i) licensed in Virginia through the Department of Health Professions and (ii) qualified in the diagnosis of mental illness. The examiner chosen shall be able to provide an independent examination of the person. The examiner shall (a) not be related by blood or marriage to the person, (b) not be responsible for treating the person, (c) have no financial interest in the admission or treatment of the person, (d) have no investment interest in the facility detaining or admitting the person under this chapter, and (e) except for employees of state hospitals and of the U.S. Department of Veterans Affairs, not be employed by the facility. For purposes of this section, the term "investment interest" shall be as defined in § 37.2-809.

All such examinations shall be conducted in private. The judge or special justice shall summons the examiner who shall certify that he has personally examined the person and has probable cause to believe that the person (i) does or does not present an imminent danger to himself or others as a result of mental illness or is or is not so seriously mentally ill as to be substantially unable to care for himself and (ii) requires or does not require involuntary inpatient treatment. Alternatively, the judge or special justice may accept written certification of the examiner's findings if the examination has been personally made within the preceding five days and if there is no objection sustained to the acceptance of the written certification by the person or his attorney. The judge or special justice shall not render any decision on the petition until the examiner has presented his report orally or in writing.

§ 37.2-816. Commitment hearing for involuntary admission; preadmission screening report.

The district court judge or special justice shall require a preadmission screening report from the community services board or behavioral health authority that serves the county or city where the person resides or, if impractical, where the person is located. The report shall be admissible as evidence of the facts stated therein and shall state (i) whether the person presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill that he is substantially unable to care for himself, (ii) whether the person is in need of involuntary inpatient treatment, (iii) whether there is no less restrictive alternative to inpatient treatment, and (iv) the recommendations for that person's placement, care, and treatment. The board or authority shall provide the preadmission screening report within 48 hours or if the 48-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. In the case of a person who has been sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge or special justice may proceed to adjudicate whether the person has mental illness and should be involuntarily admitted without requesting a preadmission screening report from the community services board or behavioral health authority.

§ 37.2-817. Involuntary admission and outpatient treatment orders.

A. The district court judge or special justice shall render a decision on the petition for involuntary admission after the appointed examiner has presented his report, orally or in writing, pursuant to § 37.2-815 and after the community services board or behavioral health authority that serves the county or city where the person resides or, if impractical, where the person is located has presented a preadmission screening report, orally or in writing, with recommendations for that person's placement, care, and treatment pursuant to § 37.2-816. These reports, if not contested, may constitute sufficient evidence upon which the district court judge or special justice may base his decision.

B. After observing the person and obtaining the necessary positive certification and considering any other relevant evidence that may have been offered, if the judge or special justice finds specifically that (i) the person presents an imminent danger to himself or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for himself and (ii) alternatives to involuntary inpatient treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to involuntary inpatient treatment, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 180 days from the date of the court order. Such involuntary admission shall be to a facility designated by the community services board or behavioral health authority that serves the city or county in which the person was examined as provided in § 37.2-816. If the community services board or behavioral health authority does not designate a facility

at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner. The person shall be released at the expiration of 180 days unless he is involuntarily admitted by further petition and order of a court or such person makes application for treatment on a voluntary basis as provided for in § 37.2-805.

C. After observing the person and obtaining the necessary positive certification and considering any other relevant evidence that may have been offered, if the judge or special justice finds specifically that (i) the person presents an imminent danger to himself or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for himself, (ii) less restrictive alternatives to involuntary inpatient treatment have been investigated and are deemed suitable, (iii) the person (a) has the degree of competency necessary to understand the stipulations of his treatment, (b) expresses an interest in living in the community and agrees to abide by his treatment plan, and (c) is deemed to have the capacity to comply with the treatment plan, and (iv) the ordered treatment can be delivered on an outpatient basis and be monitored by the community services board, behavioral health authority or designated provider, the judge or special justice shall order outpatient treatment, which may include day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of the person. The community services board or behavioral health authority that serves the city or county in which the person resides shall recommend a specific course of treatment and programs for the provision of involuntary outpatient treatment. The community services board, behavioral health authority, or designated provider shall monitor the person's compliance with the treatment ordered by the court under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this section. Upon failure of the person to adhere to the terms of the outpatient treatment order, the judge or special justice may revoke it and, upon notice to the person and after a commitment hearing, order involuntary admission to a facility.

§ 37.2-818. Commitment hearing for involuntary admission; recordings and records.

A. The district court judge or special justice shall make or cause to be made a tape or other audio recording of the commitment hearing and shall submit the recording to the appropriate district court clerk to be retained in a confidential file. Recordings shall be used only to document and to answer questions concerning the judge's or special justice's conduct of the hearing. These recordings shall be retained for at least three years from the date of the commitment hearing.

B. Except as provided in this section and § 37.2-819, the court shall keep its copies of relevant medical records, reports, and court documents pertaining to the hearing provided for in this section confidential if so requested by the person who was the subject of the hearing or his counsel, with access provided only upon court order for good cause shown. Such records, reports, and documents shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

C. The judge or special justice shall order that copies of the relevant medical records of the person be released to the facility in which he is placed upon the request of the treating physician or director of the facility.

§ 37.2-819. Order of involuntary admission forwarded to CCRE; firearm background check.

The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order for involuntary admission to a facility. The copy of the form and the order shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm.

§ 37.2-820. Place of hearing.

The hearing provided for pursuant to §§ 37.2-814 through 37.2-819 may be conducted by the district court judge or a special justice at the convenient facility or other place open to the public provided for in § 37.2-809, if he deems it advisable, even though the facility or place is located in a county or city other than his own. In conducting such hearings in a county or city other than his own, the judge or special justice shall have all of the authority and power that he would have in his own county or city. A district court judge or special justice of the county or city in which the facility or place is located may conduct the hearing provided for in §§ 37.2-814 through 37.2-819.

§ 37.2-821. Appeal of involuntary admission or certification order.

Any person involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819 or certified as eligible for admission pursuant to § 37.2-806 shall have the right to appeal the order to the circuit court in the jurisdiction where he was involuntarily admitted or certified or where the facility to which he was admitted is located. Choice of venue shall rest with the party noting the appeal. The court may transfer the case upon a finding that the other forum is more convenient. An appeal shall be filed within 30 days from the date of the order and shall be given priority over all other pending matters before the court and heard as soon as possible, notwithstanding § 19.2-241 regarding the time within which the court shall set criminal cases for trial. The clerk of the court from which an appeal is taken shall immediately transmit the record to the clerk of the appellate court. The clerk of the circuit court shall provide written notification of the appeal to the petitioner in the case in accordance with procedures set forth in

§ 16.1-112. No appeal bond or writ tax shall be required, and the appeal shall proceed without the payment of costs or other fees. Costs may be recovered as provided for in § 37.2-804.

The appeal shall be heard *de novo* in accordance with the provisions set forth in § 37.2-806 or this article. An order continuing the involuntary admission shall be entered only if the criteria in § 37.2-817 are met at the time the appeal is heard. The person so admitted or certified shall be entitled to trial by jury. Seven persons from a panel of 13 shall constitute a jury.

If the person is not represented by counsel, the judge shall appoint an attorney to represent him. Counsel so appointed shall be paid a fee of \$75 and his necessary expenses. The order of the court from which the appeal is taken shall be defended by the attorney for the Commonwealth.

§ 37.2-822. Treatment of person admitted while appeal is pending.

Whenever the director of any facility reasonably believes that treatment is necessary to protect the life, health, or safety of a person, treatment may be given during the period allowed for any appeal unless prohibited by order of a circuit court in the county or city wherein the appeal is pending.

§ 37.2-823. Examination of admission papers by director; examination of persons admitted.

A. Upon the receipt of any order for admission of any person, the director of the facility shall immediately examine the admission papers and, if they are found to be in substantial compliance with the law, he shall forthwith admit the person to the facility.

B. Any person presented for admission to a facility shall be examined within 24 hours after arrival by one or more of the physicians on the facility's staff. If the examination reveals that there is sufficient cause to believe that the person has mental illness, he shall be retained at the facility; but if the examination reveals insufficient cause, the person shall be returned to the locality in which the petition was initiated or in which the person resides.

C. The Board shall adopt regulations to institute preadmission screening to prevent inappropriate admissions to state facilities.

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

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

§ 37.2-825. Admission raises no presumption of legal incapacity.

The admission of any person to a facility shall not, of itself, create a presumption of legal incapacity.

§ 37.2-826. Disposition of nonresidents.

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

§ 37.2-827. Admission of aliens.

Whenever any person is admitted to a state facility, the Commissioner shall inquire forthwith into the nationality of the person. If it shall appear that the person is an alien, the Commissioner shall notify immediately the United States immigration officer in charge of the district in which the state facility is located.

Upon the official request of the United States immigration officer in charge of the territory or district in which is located any district court judge or special justice certifying or ordering the admission of any alien to a state facility, the clerk of the court shall furnish, without charge, a certified copy in duplicate of any record pertaining to the case of the admitted alien. This information shall be deemed confidential.

§ 37.2-828. Receiving and maintaining federal prisoners in state facilities.

The Commissioner is authorized to enter into a contract with the United States, through the Director of the United States Bureau of Prisons or other authorized agent of the United States, for the reception, maintenance, care, and observation in state facilities, or in those designated by the Commissioner for the purpose, of any persons charged with a crime in the courts of the United States sitting in Virginia and committed by the courts to the state facilities for those purposes. All persons so admitted shall remain subject to the jurisdiction of the court by whom they were committed, and they may be returned to that court at any time for hearing or trial.

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

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

No contract made pursuant to this section shall obligate the Commonwealth or the Commissioner to



receive a federal prisoner into any state facility in which all available beds are needed for persons otherwise admitted, or in any other case where, in the opinion of the director, the admission of the prisoner would interfere with the care and treatment of other persons admitted or with the proper administration of the state facility.

#### Article 6.

##### *Transportation of Admitted Persons; Detention by Sheriff; Escape; Transfers.*

##### *§ 37.2-829. Transportation of person in civil admission process.*

When a person has been ordered to be admitted to a facility under §§ 37.2-814 through 37.2-821, a determination shall be made by the judge or special justice regarding the transportation of that person to the proper facility. The judge or special justice may consult with the person's treating mental health professional and any involved community services board or behavioral health authority staff regarding the person's dangerousness and whether the sheriff should transport or whether transportation alternatives as provided in § 37.2-830 may be utilized. If the judge or special justice determines that the person requires transportation by the sheriff, the person may be delivered to the care of the sheriff, as specified in this section, who shall transport the person to the proper facility. In no event shall transport commence later than six hours after notification to the sheriff of the judge's or special justice's order.

The sheriff of the jurisdiction where the person is a resident shall be responsible for transporting the person unless the sheriff's office of that jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction of which the person is a resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the person. The cost of transportation of any person ordered to be admitted pursuant to §§ 37.2-814 through 37.2-821 shall be paid by the Commonwealth from the same funds as for care in jail.

If any state hospital has become too crowded to admit any such person, the Commissioner shall give notice of the fact to all sheriffs and shall designate the facility to which they shall transport such persons.

##### *§ 37.2-830. Custody of person ordered to be admitted for purpose of transportation.*

Any judge or special justice may order that a person admitted pursuant to this chapter be placed in the custody of any responsible person, including a representative of the facility in which the person is temporarily placed during the temporary detention period, for the sole purpose of transporting the person to the proper facility.

##### *§ 37.2-831. Detention in jail after order of admission.*

It shall be unlawful for any sheriff, sergeant, or other officer to use any jail or other place of confinement for criminals as a place of detention for any person in his custody for transportation to a facility in accordance with this chapter, unless the person's detention therein, for a period not to exceed 24 hours, is specifically authorized by the judge or special justice who ordered the admission, except that such authority shall not be given by any judge or special justice for the Counties of Augusta, Arlington, and Fairfax and the Cities of Alexandria, Fairfax, Falls Church, Waynesboro, and Staunton.

##### *§ 37.2-832. Persons with mental illness not to be confined in cells with criminals.*

In no case shall any sheriff or jailer confine any person with mental illness in a cell or room with prisoners charged with or convicted of crimes.

##### *§ 37.2-833. Escape, sickness, death, or discharge of a person ordered to be involuntarily admitted while in custody; warrant for person escaping.*

If any person who has been ordered to be involuntarily admitted to a facility escapes, becomes too sick to travel, dies, or is discharged by due process of law while in the custody of a sheriff or other person, the sheriff or other person shall immediately notify the facility of that fact. If any person in the custody of a sheriff or other person pursuant to the provisions of this chapter escapes, the sheriff or other person having that person in custody shall immediately secure a warrant from any officer authorized to issue warrants charging the individual with escape from lawful custody, directing his apprehension, and stating what disposition shall be made of the person upon arrest.

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

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

##### *§ 37.2-835. Arrest without warrant.*

Any officer authorized to make arrests is authorized to make an arrest under a warrant issued under the provisions of § 37.2-833 or 37.2-834, without having the warrant in his possession, provided the warrant has been issued and the arresting officer has been advised of the issuance of the warrant by printed message or any form of wire or wireless communication containing the name of the person wanted, directing the disposition to be made of the person when apprehended, and stating the basis of the issuance of the warrant.



*§ 37.2-836. Employees to accompany persons admitted voluntarily to facilities.*

When application is made to the director of a facility for admission pursuant to § 37.2-805, he may send an employee from the facility to accompany the person to the facility. If for any reason it is impracticable for an employee to do so, then the director may appoint some suitable person for the purpose, or may request the sheriff of the county or city in which the person resides to convey him to the facility. The sheriff or other person appointed for the purpose shall receive only his necessary expenses for conveying any person admitted to the facility. Expenses authorized herein shall be paid by the Department.

#### Article 7.

##### Discharge and Transfers.

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

A. Except for a state hospital consumer held upon an order of a court for a criminal proceeding, the director of a state hospital or training center may discharge, after the preparation of a discharge plan:

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

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

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

For all individuals discharged, the discharge plan shall be formulated in accordance with the provisions of § 37.2-505 by the community services board or behavioral health authority that serves the city or county where the consumer resided prior to admission or by the board or authority that serves the city or county where the consumer or his legally authorized representative on his behalf chooses to reside immediately following the discharge. The discharge plan shall be contained in a uniform discharge document developed by the Department and used by all state hospitals, training centers, and community services boards or behavioral health authorities. If the individual will be housed in an assisted living facility, as defined in § 63.2-100, the discharge plan shall identify the facility, document its appropriateness for housing and capacity to care for the consumer, contain evidence of the facility's agreement to admit and care for the consumer, and describe how the community services board or behavioral health authority will monitor the consumer's care in the facility.

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

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

*§ 37.2-838. Discharge of persons from a licensed hospital.*

The person in charge of a licensed hospital may discharge any consumer involuntarily admitted who is recovered or, if not recovered, whose discharge will not be detrimental to the public welfare or injurious to the consumer, or who meets other criteria as specified in § 37.2-837. The person in charge of the licensed hospital may refuse to discharge any consumer involuntarily admitted, if, in his judgment, the discharge will be detrimental to the public welfare or injurious to the consumer. The person in charge of a licensed hospital may grant a trial or home visit to a consumer in accordance with regulations adopted by the Board.

*§ 37.2-839. Exchange of information between community services boards or behavioral health authorities and state facilities.*

Community services boards or behavioral health authorities and state facilities may, when the individual has refused authorization, exchange the information required to prepare and implement a comprehensive individualized treatment plan, including a discharge plan as specified in subsection A of § 37.2-837. This section shall apply to all consumers of community services boards, behavioral health

authorities, and state facilities.

When a consumer who is deemed suitable for discharge pursuant to subsection A of § 37.2-837 or his guardian or conservator refuses to authorize the release of information that is required to formulate and implement a discharge plan as specified in subsection A of § 37.2-837, then the community services board or behavioral health authority may release without authorization to those service providers and human service agencies identified in the discharge plan only the information needed to secure those services specified in the plan.

The release of any other consumer information to any agency or individual not affiliated directly or by contract with community services boards, behavioral health authorities, or state facilities shall be subject to all regulations adopted by the Board or by agencies of the United States government that govern confidentiality of patient information.

§ 37.2-840. Transfer of consumers.

A. The Commissioner may order the transfer of a consumer from one state hospital to another or from one training center to another. When so transferred, in accordance with appropriate admission, certification, or involuntary admission criteria as provided in this chapter, a consumer is hereby declared to be lawfully admitted to the state facility to which he is transferred.

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

1. Apply to the Commissioner for the transfer of the consumer to a state hospital, or
2. Apply to the Director of the United States Veterans Affairs Medical Center for the transfer of the consumer to such center.

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

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

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

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

§ 37.2-842. Veterans admitted or transferred to Veterans Affairs hospital, center, or other facility or installation subject to rules; power and authority of medical officer in charge.

Every veteran, after admission to a Veterans Affairs hospital, center, or other facility or installation, either upon initial admission or transfer, shall be subject to the regulations of the Veterans Affairs hospital, center, or other facility or installation, and the medical officer in charge of the Veterans Affairs hospital, center, or other facility or installation to which the veteran is admitted or transferred is vested with the same powers authorized by law to be exercised by the director of a state hospital with reference to retention, custody, trial or home visit, and discharge of the veteran so admitted or

transferred.

§ 37.2-843. *Providing drugs or medicines for certain persons discharged from state facilities.*

When any consumer is discharged from a state facility and he or the person liable for his care and treatment is financially unable to pay for or otherwise access drugs or medicines that are prescribed for him by a member of the medical staff of the state facility in order to mitigate or prevent a recurrence of the condition for which he has received care and treatment in the state facility, the Department or the community services board or behavioral health authority serving the consumer's county or city of residence may, from funds appropriated to the Department for that purpose, provide the consumer with such drugs and medicines, which shall be dispensed only in accordance with law.

Article 8.

#### *Testing Legality of Detention.*

§ 37.2-844. *Habeas corpus as means.*

A. Any person held in custody because of his mental illness may by petition for a writ of habeas corpus have the question of the legality of his detention determined by a court of competent jurisdiction. Upon the petition, after notice to the authorities of the facility or other institution in which the person is confined, the court shall determine in a courtroom of the county or city or in some other convenient public place in that county or city, whether the person has a mental illness and whether he should be detained.

B. Any proceeding to challenge the continued secure inpatient treatment of a person held in custody as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of this title shall be conducted in accordance with § 37.2-910.

§ 37.2-845. *Procedure when person confined in facility or other institution.*

A. If the person referenced in § 37.2-844 is held in custody and actually confined in any facility or other institution, he may file his petition in the circuit court of the county or the city in which the facility or other institution is located or in the circuit court of the county or the city adjoining the county or city in which the facility or other institution is located.

B. Any proceeding to challenge the continued secure inpatient treatment of any person held in custody as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of this title shall be conducted in the circuit court wherein the person was last convicted of a sexually violent offense or wherein the defendant was deemed unrestorably incompetent and referred for commitment pursuant to § 19.2-169.3.

§ 37.2-846. *Procedure when person not confined in facility or other institution.*

A. In all cases, other than those provided for in § 37.2-845, the person may file his petition in the circuit court of the county or the city in which he resides or in which he was found to have a mental illness or in which an order was entered authorizing his continued involuntary inpatient treatment, pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of this title.

B. Any proceeding to challenge the continued secure inpatient treatment of any person held in custody as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of this title shall be conducted in the circuit court wherein the person was last convicted of a sexually violent offense or wherein the defendant was deemed unrestorably incompetent and referred for commitment pursuant to § 19.2-169.3.

§ 37.2-847. *Duty of attorney for Commonwealth.*

In any case to test the legality of the detention of a person pursuant to this article, whether by habeas corpus or otherwise, the attorney for the Commonwealth of the county or city in which the hearing is held shall, on request of the director of the facility or other institution having or claiming custody of the person, represent the Commonwealth in opposition to any such petition, appeal, or procedure for the discharge of the person from custody.

#### **CHAPTER 9.**

#### **CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS.**

§ 37.2-900. *Definitions.*

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

"Defendant" means any person charged with a sexually violent offense who is deemed to be an unrestorably incompetent defendant pursuant to § 19.2-169.3 and is referred for commitment review pursuant to § 37.2-905.

"Director" means the Director of the Department of Corrections.

"Mental abnormality" or "personality disorder" means a congenital or acquired condition that affects a person's emotional or volitional capacity and renders the person so likely to commit sexually violent offenses that he constitutes a menace to the health and safety of others.

"Sexually violent offense" means (i) a felony conviction under former § 18-54, former § 18.1-44, § 18.2-61, 18.2-67.1, or 18.2-67.2, or subdivision A 1 of § 18.2-67.3 or (ii) a felony conviction under the laws of the Commonwealth for a forcible sexual offense committed prior to July 1, 1981, where the criminal behavior on which the conviction is based is set forth in § 18.2-67.1 or 18.2-67.2, or subdivision A 1 of § 18.2-67.3.

"Sexually violent predator" means any person who (i) has been convicted of a sexually violent

offense or has been charged with a sexually violent offense and is unrestorably incompetent to stand trial pursuant to § 19.2-169.3 and (ii) because of a mental abnormality or personality disorder, finds it difficult to control his predatory behavior, which makes him likely to engage in sexually violent acts.

*§ 37.2-901. Rights of prisoners and defendants.*

*In hearings and trials held pursuant to this chapter, prisoners and defendants shall have the following rights:*

- 1. To receive adequate notice of the proceeding.*
- 2. To be represented by counsel.*
- 3. To remain silent or to testify.*
- 4. To be present during the hearing or trial.*
- 5. To present evidence and to cross-examine witnesses.*
- 6. To view and copy all petitions and reports in the court file.*

*In no event shall a prisoner or defendant be permitted, as a part of any proceedings under this chapter, to raise challenges to the validity of his prior criminal sentences or institutional convictions.*

*In the event the prisoner or defendant refuses to cooperate with the mental health examination required under § 37.2-904, the court may admit evidence of such refusal and may bar the prisoner or defendant from introducing his own expert psychiatric or psychological evidence.*

*§ 37.2-902. Commitment Review Committee; membership.*

*A. The Director shall establish a Commitment Review Committee (CRC) to screen, evaluate, and make recommendations regarding prisoners in the custody of the Department of Corrections for the purposes of this chapter. The CRC shall be under the supervision of the Department of Corrections. Members of the CRC and any licensed psychiatrists or licensed clinical psychologists providing examinations under subsection B of § 37.2-904 shall be immune from personal liability while acting within the scope of their duties except for gross negligence or intentional misconduct.*

*B. The CRC shall consist of seven members to be appointed as follows: (i) three full-time employees of the Department of Corrections, appointed by the Director; (ii) three full-time employees of the Department, appointed by the Commissioner, at least one of whom shall be a psychiatrist or psychologist licensed to practice in the Commonwealth who is skilled in the diagnosis of mental abnormalities and personality disorders associated with violent sex offenders; and (iii) one assistant or deputy attorney general, appointed by the Attorney General. Initial appointments by the Director and the Commissioner shall be for terms as follows: one member each for two years, one member each for three years, and one member each for four years. The initial appointment by the Attorney General shall be for a term of four years. Thereafter, all appointments to the CRC shall be for terms of four years, and vacancies shall be filled for the unexpired terms. Five members shall constitute a quorum.*

*C. The CRC shall meet at least monthly and at other times as it deems appropriate. The CRC shall elect a chairman from its membership to preside during meetings.*

*§ 37.2-903. Treatment plans; database of prisoners convicted of sexually violent offenses; maintained by Department of Corrections; notice of pending release to CRC.*

*A. The Director shall establish and maintain a treatment program for prisoners convicted pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 and committed to the custody of the Department of Corrections. This program shall include a clinical assessment of all such prisoners upon receipt into the custody of the Department of Corrections and the development of appropriate treatment plans, if indicated. This program shall be operated under the direction of a licensed psychiatrist or licensed clinical psychologist who is experienced in the diagnosis and treatment of mental abnormalities and disorders associated with criminal sexual offenders.*

*B. The Director shall establish and maintain a database of prisoners in his custody who are incarcerated for sexually violent offenses. The database shall include the following information regarding each prisoner: (i) the prisoner's criminal record, (ii) the prisoner's sentences and scheduled date of release, and (iii) the appropriate locality for a commitment petition.*

*C. Each month, the Director shall review the database of prisoners incarcerated for sexually violent offenses and identify all such prisoners who are scheduled for release from prison within 10 months from the date of such review who receive a score of four or more on the Rapid Risk Assessment for Sexual Offender Recidivism or a like score on a comparable, scientifically validated instrument designated by the Commissioner. Upon the identification of such prisoners, the Director shall forward their names, their scheduled dates of release, and copies of their files to the CRC for assessment.*

*§ 37.2-904. CRC assessment of prisoners eligible for commitment as sexually violent predators; mental health examination; recommendation.*

*A. Within 90 days of receiving notice from the Director pursuant to § 37.2-903 regarding a prisoner who is incarcerated for a sexually violent offense, the CRC shall (i) complete its assessment of the prisoner for possible commitment pursuant to subsection B and (ii) forward its written recommendation regarding the prisoner to the Attorney General pursuant to subsection C.*

*B. CRC assessments of prisoners incarcerated for sexually violent offenses shall include a mental health examination, including a personal interview, of the prisoner by a licensed psychiatrist or a licensed clinical psychologist who is designated by the Commissioner, skilled in the diagnosis and*

treatment of mental abnormalities and disorders associated with violent sex offenders, and not a member of the CRC. The licensed psychiatrist or licensed clinical psychologist shall determine whether the prisoner is a sexually violent predator, as defined in § 37.2-900, and forward the results of this evaluation and any supporting documents to the CRC for its review. The CRC assessment shall also include consideration of the prisoner's score on the Rapid Risk Assessment for Sexual Offender Recidivism or a comparable, scientifically validated instrument designated by the Commissioner and a review of (i) the prisoner's institutional history and treatment record, if any; (ii) the prisoner's criminal background; and (iii) any other factor that is relevant to the determination of whether the prisoner is a sexually violent predator. Notwithstanding § 19.2-299.1 or any other provision of law, the CRC is authorized to possess, copy, and use presentence reports, postsentence reports, and victim impact statements for all lawful purposes.

C. Following the examination and review of a prisoner conducted pursuant to subsection B, the CRC shall recommend that the prisoner (i) be committed as a sexually violent predator pursuant to this chapter; (ii) not be committed, but be placed in a conditional release program as a less restrictive alternative; or (iii) not be committed because he does not meet the definition of a sexually violent predator. To assist the Attorney General in his review, the Department of Corrections, the CRC, and the psychiatrist or psychologist who conducts the mental health examination pursuant to this section shall provide the Attorney General with all evaluation reports, prisoner records, criminal records, medical files, and any other documentation relevant to determining whether a prisoner is a sexually violent predator.

D. Pursuant to clause (ii) of subsection C, the CRC shall recommend that a prisoner enter a conditional release program if it finds that (i) the prisoner does not need inpatient treatment, but needs outpatient treatment and monitoring to prevent his condition from deteriorating to a degree that he would need inpatient treatment; (ii) appropriate outpatient supervision and treatment are reasonably available; (iii) there is significant reason to believe that the prisoner, if conditionally released, would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety.

E. Notwithstanding any other provision of law, all state and local courts, clerks, agencies, boards, and commissions shall provide to the CRC all requested records, documents, notes, recordings, or other information of any kind, including presentence or postsentence reports, victim impact statements, and child abuse registry records, within 20 days of receiving such request.

§ 37.2-905. Review of prisoners incarcerated for sexually violent offenses; unrestorably incompetent defendants charged with sexually violent offenses; petition for commitment; notice to Department of Corrections or referring court regarding disposition of review.

A. Upon receipt of a recommendation by the CRC regarding a prisoner incarcerated for a sexually violent offense or upon receipt of a court order referring an unrestorably incompetent defendant for review pursuant to § 19.2-169.3, the Attorney General shall have 90 days to conduct a review of the prisoner or defendant and (i) file a petition for the civil commitment of the prisoner or defendant as a sexually violent predator and stating sufficient facts to support such allegation or (ii) notify the Director and Commissioner, in the case of a prisoner, or the referring court and the Commissioner, in the case of an unrestorably incompetent defendant, that he will not file a petition for commitment. Petitions for commitment shall be filed in the circuit court in which the prisoner was last convicted of a sexually violent offense or in which the defendant was deemed unrestorably incompetent and referred for commitment review pursuant to § 19.2-169.3.

B. In determining whether to file a petition to civilly commit a prisoner under this chapter, the Attorney General shall review (i) the CRC recommendation and its reasoning; (ii) the results of the mental health examination conducted pursuant to § 37.2-904; (iii) the prisoner's institutional history and treatment record, if any; (iv) the prisoner's criminal offense history; and (v) any other factor relevant to the determination of whether the prisoner should be civilly committed. Although the Attorney General shall consider the CRC recommendation as part of the review, the CRC recommendation is not binding upon the Attorney General.

C. In determining whether to file a petition to civilly commit a defendant under this chapter, the Attorney General shall review (i) the defendant's warrant or indictment, (ii) the competency report completed pursuant to § 19.2-169.1, (iii) the report and recommendations prepared by the director of the defendant's treating facility pursuant to § 19.2-169.3, (iv) the defendant's criminal offense history, (v) information about the alleged crime, and (vi) any other factor relevant to the determination of whether the defendant should be civilly committed.

D. Notwithstanding § 19.2-299.1 or any other provision of law, the Attorney General is authorized to possess, copy, and use presentence reports, postsentence reports, and victim impact statements for all lawful purposes.

§ 37.2-906. Probable cause hearing.

A. Upon the filing of a petition alleging that a person is a sexually violent predator, the circuit court shall (i) forthwith order that until a final order is entered in the proceeding, in the case of a prisoner, he remain in the secure custody of the Department of Corrections or, in the case of a defendant, he

remain in the secure custody of the Department and (ii) schedule a hearing within 60 days to determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. A copy of the petition shall be mailed by the clerk to the attorney appointed or retained for the person named in the petition and, in those cases in which the person named in the petition is a prisoner, to the warden or superintendent of the correctional facility in which the person is then confined. The warden or superintendent shall cause the petition to be delivered to the person and shall certify the delivery to the clerk. In addition, a written explanation of the sexually violent predator involuntary commitment process and the statutory protections associated with the process shall be given to the person at the time the petition is delivered.

B. Prior to any hearing under this section, the judge shall ascertain if the person whose commitment is sought is represented by counsel and, if he is not represented by counsel, the judge shall appoint an attorney to represent him. However, if the person requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to employ counsel at his own expense.

C. At the probable cause hearing, the judge shall (i) verify the person's identity and (ii) determine whether probable cause exists to believe that the person is a sexually violent predator. In the case of a prisoner in the custody of the Department of Corrections, if the judge finds that there is not probable cause to believe that the person is a sexually violent predator, the judge shall dismiss the petition, and the person shall remain in the custody of the Department of Corrections until his scheduled date of release from prison. In the case of a defendant, if the judge finds that there is not probable cause to believe the defendant is a sexually violent predator, the judge shall dismiss the petition and order that the defendant be discharged, involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819, or certified for admission pursuant to § 37.2-806.

§ 37.2-907. Right to assistance of experts; compensation.

A. Any person who is the subject of a petition under this chapter shall have, prior to trial, the right to employ experts at his own expense to perform examinations and testify on his behalf. However, if a person has not employed an expert and requests expert assistance, the judge shall appoint such experts as he deems necessary to perform examinations and participate in the trial on the person's behalf. Any expert appointed to assist the person on matters relating to the person's mental health, including examination, evaluation, diagnosis, and treatment, shall have the qualifications required by subsection B of § 37.2-904. Any expert employed to assist the person on matters relating to the person's mental health shall be a licensed psychiatrist or licensed clinical psychologist who is skilled in the diagnosis and treatment of mental abnormalities and disorders associated with violent sex offenders and who is not a member of the CRC. Any expert employed or appointed pursuant to this section shall have reasonable access to all relevant medical and psychological records and reports pertaining to the person he has been employed or appointed to assist.

B. Each psychiatrist, psychologist, or other expert appointed by the court to render professional service pursuant to this chapter who is not regularly employed by the Commonwealth, except by the University of Virginia School of Medicine and the Virginia Commonwealth University School of Medicine, shall receive a reasonable fee for such service. The fee shall be determined in each instance by the court that appointed the expert, in accordance with guidelines established by the Supreme Court after consultation with the Department. The fee shall not exceed \$5,000. However, in addition, if any such expert is required to appear as a witness in any hearing held pursuant to this chapter, he shall receive mileage and a fee of \$750 for each day during which he is required to serve. An itemized account of expenses, duly sworn to, must be presented to the court, and, when allowed, shall be certified to the Supreme Court for payment out of the state treasury, and shall be charged against the appropriations made to pay criminal charges. Allowance for the fee and for the per diem authorized shall also be made by order of the court, duly certified to the Supreme Court, for payment out of the appropriation to pay criminal charges.

§ 37.2-908. Trial; right to trial by jury; standard of proof; discovery.

A. Within 90 days after the completion of the probable cause hearing held pursuant to § 37.2-906, the court shall conduct a trial to determine whether the person who is the subject of the petition is a sexually violent predator.

B. The Attorney General or the person who is the subject of the petition shall have the right to a trial by jury. Seven persons from a panel of 13 shall constitute a jury in such cases. If a jury determines a person to be a sexually violent predator, a unanimous verdict shall be required. If no demand is made by either party for a trial by jury, the trial shall be before the court.

C. The court or jury shall determine whether, by clear and convincing evidence, the person who is the subject of the petition is a sexually violent predator. If the court or jury does not find clear and convincing evidence that the person is a sexually violent predator, the court shall, in the case of a prisoner, direct that he be returned to the custody of the Department of Corrections until his scheduled date of release, or that the prisoner be unconditionally released if his scheduled date of release has passed. In the case of a defendant, if the court or jury does not find by clear and convincing evidence that the defendant is a sexually violent predator, the court shall order that the defendant be discharged, involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819, or certified for admission pursuant to

§ 37.2-806.

*If the court or jury finds the person to be a sexually violent predator, the court shall then determine the nature of treatment the person is to receive. If the court finds, in its determination of treatment needs, that alternatives to involuntary secure inpatient treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to involuntary secure inpatient treatment, the judge shall by written order and specific findings so certify and order that the person be committed to the custody of the Department for appropriate inpatient treatment in a secure facility designated by the Commissioner. Persons committed pursuant to this chapter are subject to the provisions of § 19.2-174.1 and Chapter 11 (§ 37.2-1100 et seq.).*

*If the court determines not to order full commitment, the court shall continue the case for not less than 30 days and shall require the Commissioner to submit a report to the court, the Attorney General, and counsel for the person suggesting possible alternatives to full commitment. The court shall then reconvene the hearing and receive testimony on the possible alternatives to full commitment. At the conclusion of the hearing, if the court finds, in determining the treatment needs of a person found to be a sexually violent predator, that less restrictive alternatives to involuntary secure inpatient treatment have been investigated and are deemed suitable, and if the judge finds specifically that the person meets the criteria for conditional release set forth in § 37.2-912, the judge shall order outpatient treatment, day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11 (§ 37.2-1100 et seq.), or such other appropriate course of treatment as may be necessary to meet the needs of the individual. The Department shall recommend a specific course of treatment and programs for provision of such treatment and shall monitor the person's compliance with such treatment as may be ordered by the court under this section, unless the person is on parole or probation, in which case the parole or probation officer shall monitor the person's compliance. The person's failure to comply with involuntary outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this chapter. Upon failure of the person to adhere to the terms of the involuntary outpatient treatment, the judge may revoke the same and, upon notice to the person undergoing involuntary outpatient treatment and after a hearing, order the person committed as a sexually violent predator for inpatient treatment at a secure facility designated by the Commissioner.*

*In the event of a mistrial, the court shall direct that the prisoner remain in the secure custody of the Department of Corrections or the defendant remain in the secure custody of the Department until another trial is conducted. Any subsequent trial following a mistrial shall be held within 90 days of the previous trial.*

*All proceedings conducted hereunder are civil proceedings. However, no discovery other than that provided in § 37.2-901 shall be allowed without prior leave of the court, which may deny or limit discovery in any such proceeding. No less than 30 days prior to the trial of the matter, any expert employed or appointed pursuant to § 37.2-907 shall prepare a written report detailing his findings and conclusions and shall submit the report, along with all supporting data, to the court, the Attorney General, and counsel for the person. Under no circumstances shall the prisoner or defendant be entitled to receive a copy of the victim impact statement or the presentence investigation report. However, counsel for the prisoner or defendant and any expert employed or appointed pursuant to § 37.2-907 may review the victim impact statement or presentence investigation report outside the presence of the prisoner or defendant. The Attorney General shall file with the clerk redacted copies of any relevant presentence reports, postsentence reports, and victim impact statements in his possession, withholding identifying information about victims. Such filings shall be held by the court in confidence and reviewable only by the court, the Attorney General, and the counsel for the prisoner or defendant pursuant to this section.*

§ 37.2-909. Placement of committed persons.

*A. Any person committed pursuant to this chapter shall be placed in the custody of the Department for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person will not present an undue risk to public safety. The Department shall provide such control, care, and treatment at a secure facility operated by it or may contract with private or public entities, in or outside of the Commonwealth, or with other states to provide comparable control, care, or treatment. At all times, persons committed for control, care, and treatment by the Department pursuant to this chapter shall be kept in a secure facility. Persons committed under this chapter shall be segregated by sight and sound at all times from prisoners in the custody of a correctional facility. The Commissioner may make treatment and management decisions regarding committed persons in his custody without obtaining prior approval of or review by the committing court.*

*B. Prior to the siting of a new facility or the designation of an existing facility to be operated by the Department for the control, care, and treatment of persons convicted of a sexually violent offense who have been referred for civil commitment, the Commissioner shall notify the state elected officials for and the local governing body of the jurisdiction of the proposed location, designation, or expansion of the facility. Upon receiving such notice, the local governing body of the jurisdiction of the proposed site or where the existing facility is located may publish a descriptive notice concerning the proposed site or*



existing facility in a newspaper of general circulation in the jurisdiction.

The Commissioner also shall establish an advisory committee relating to any facility for which notice is required by this subsection or any facility being operated for the purpose of the control, care, and treatment of persons convicted of a sexually violent offense who have been referred for civil commitment. The advisory committee shall consist of state and local elected officials and representatives of community organizations serving the jurisdiction in which the facility is proposed to be or is located. Upon request, the members of the appropriate advisory committee shall be notified whenever the Department increases the number of beds in the relevant facility.

§ 37.2-910. Review of continuation of secure inpatient treatment hearing; procedure and reports; disposition.

A. The committing court shall conduct a hearing 12 months after the date of commitment to assess each committed person's need for secure inpatient treatment. A hearing for assessment shall be conducted at yearly intervals for five years and at biennial intervals thereafter. The court shall schedule the matter for hearing as soon as possible after it becomes due, giving the matter priority over all pending matters before the court.

B. Prior to the hearing, the Commissioner shall provide to the court a report reevaluating the committed person's condition and recommending treatment. The report shall be prepared by a licensed psychiatrist or a licensed clinical psychologist skilled in the diagnosis and treatment of mental abnormalities and personality disorders associated with violent sex offenders and qualified by training and experience to perform forensic evaluations. If the Commissioner's report recommends discharge or the committed person requests discharge, the committed person's condition and need for secure inpatient treatment shall be evaluated by a second person with such credentials who is not currently treating the committed person. Any professional person who conducts a second evaluation of a committed person shall submit a report of his findings to the court and the Commissioner. A copy of any report submitted pursuant to this subsection shall be sent to the Attorney General.

C. The burden of proof at the hearing shall be upon the Commonwealth to prove to the court by clear and convincing evidence that the committed person remains a sexually violent predator.

D. If the court finds, based upon the report and other evidence provided at the hearing, that the committed person's condition has so changed that he is no longer a sexually violent predator, the court shall (i) release the committed person from secure inpatient treatment if he does not need it and does not meet the criteria for conditional release set forth in § 37.2-912, provided the court has approved a discharge plan prepared by the Department or (ii) place the committed person on conditional release if he meets the criteria for conditional release and the court has approved a conditional release plan prepared by the Department. However, if the court finds that the committed person remains a sexually violent predator, it shall order that he remain in the custody of the Commissioner for secure inpatient treatment.

§ 37.2-911. Petition for release; hearing; procedures.

A. The Commissioner may petition the committing court for conditional or unconditional release of the committed person at any time he believes the committed person's condition has so changed that he is no longer a sexually violent predator in need of secure inpatient treatment. The petition shall be accompanied by a report of clinical findings supporting the petition and by a conditional release or discharge plan, as applicable, prepared by the Department. The committed person may petition the committing court for release only once in each year in which no annual judicial review is required pursuant to § 37.2-910. The party petitioning for release shall transmit a copy of the petition to the Attorney General and the Commissioner.

B. Upon the submission of a petition pursuant to this section, the committing court shall conduct the proceedings according to the procedures set forth in § 37.2-910.

§ 37.2-912. Conditional release; criteria; conditions; reports.

At any time the court considers the committed person's need for secure inpatient treatment pursuant to this chapter, it shall place the committed person on conditional release if it finds that (i) based on consideration of the factors that the court must consider in its commitment decision, he does not need secure inpatient treatment but needs outpatient treatment or monitoring to prevent his condition from deteriorating to a degree that he would need secure inpatient treatment; (ii) appropriate outpatient supervision and treatment are reasonably available; (iii) there is significant reason to believe that the committed person, if conditionally released, would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety. The court shall subject a conditionally released committed person to the orders and conditions it deems will best meet the committed person's need for treatment and supervision and best serve the interests of justice and society.

The Department or, if the person is on parole or probation, the person's parole or probation officer shall implement the court's conditional release orders and shall submit written reports to the court on the committed person's progress and adjustment in the community no less frequently than every six months. The Department or, if the person is on parole or probation, the person's parole or probation officer shall send a copy of each written report submitted to the court and copies of all correspondence with the court pursuant to this section to the Attorney General and the Commissioner.



*§ 37.2-913. Emergency custody of conditionally released person; revocation of conditional release.*

A judicial officer may issue an emergency custody order, upon the sworn petition of any responsible person or upon his own motion, based upon probable cause to believe that a person on conditional release within his judicial district has violated the conditions of his release and is no longer a proper subject for conditional release. The emergency custody order shall require a law-enforcement officer to take the person into custody immediately and transport him to a convenient location specified in the order where a person designated by the Department who is skilled in the diagnosis and treatment of mental abnormalities and personality disorders shall, as soon as practicable, evaluate him for the purpose of determining the nature and degree of violation of the conditions of his release. A copy of the petition shall be sent to the Attorney General and the Commissioner.

The person on conditional release shall remain in custody until a hearing is held in the circuit court on the motion or petition to determine if he should be returned to the custody of the Commissioner. The hearing shall be given priority on the court's docket. If upon hearing the evidence, the court finds that the person on conditional release has violated the conditions of his release and that the violation of conditions was sufficient to render him no longer suitable for conditional release, the court shall revoke his conditional release and order him returned to the custody of the Commissioner for secure inpatient treatment. The person may petition the original committing court for re-release pursuant to the conditions set forth in § 37.2-911 no sooner than six months from his return to custody. The party petitioning for re-release shall transmit a copy of the petition to the Attorney General and the Commissioner.

*§ 37.2-914. Modification or removal of conditions; notice; objections; review.*

A. The committing court may modify conditions of release or remove conditions placed on release pursuant to § 37.2-912, upon petition of the Department, the supervising parole or probation officer, the Attorney General, or the person on conditional release or upon its own motion based on reports of the Department or the supervising parole or probation officer. However, the person on conditional release may petition only annually commencing six months after the conditional release order is issued. Upon petition, the court shall require the Department or, if the person is on parole or probation, the person's parole or probation officer to provide a report on the person's progress while on conditional release. The party petitioning for release shall transmit a copy of the petition to the Attorney General and the Commissioner.

B. As it deems appropriate based on the Department's or parole or probation officer's report and any other evidence provided to it, the court may issue a proposed order for modification or removal of conditions. The court shall provide notice of the order and their right to object to it within 21 days of its issuance to the person, the Department or parole or probation officer, and the Attorney General. The proposed order shall become final if no objection is filed within 21 days of its issuance. If an objection is so filed, the court shall conduct a hearing at which the person on conditional release, the Attorney General, and the Department or the parole or probation officer have an opportunity to present evidence challenging the proposed order. At the conclusion of the hearing, the court shall issue an order specifying conditions of release or removing existing conditions of release.

*§ 37.2-915. Representation of Commonwealth and person subject to commitment; nature of proceedings.*

The Attorney General shall represent the Commonwealth in all proceedings held pursuant to this chapter. The Attorney General shall receive prior written notice of all proceedings held under this chapter in which he is to represent the Commonwealth.

The court shall appoint counsel for the person subject to commitment or conditional release pursuant to subsection B of § 37.2-906 unless the person waives his right to counsel. The court shall consider appointment of the person who represented the person in previous proceedings.

All proceedings held under this chapter shall be civil proceedings.

*§ 37.2-916. Authority of Commissioner; delegation to board; liability.*

For the purposes of carrying out the duties of this chapter, the Commissioner may appoint an advisory board composed of persons with demonstrated expertise in such matters. The Department shall assist the board in its administrative and technical duties. The membership of the board shall include (i) a citizen appointed by the Commissioner, (ii) a psychiatrist or psychologist licensed to practice in the Commonwealth who is skilled in the diagnosis of mental abnormalities and personality disorders associated with violent sex offenders and who is a full-time employee of the Department of Corrections, to be appointed by its director, (iii) a member of the Department of State Police, and (iv) such other members as deemed appropriate by the Commissioner. Members of the board shall exercise their powers and duties without compensation, except that members of the board who are not state employees shall be reimbursed by the Department for their approved travel expenses to the meetings of this board at the approved state rate. Members of the board shall be immune from personal liability while acting within the scope of their duties except for intentional misconduct.

*§ 37.2-917. Escape of persons committed; penalty.*

Any person committed to the custody of the Commissioner pursuant to this chapter who escapes from custody shall be guilty of a Class 6 felony.

§ 37.2-918. *Persons on conditional release leaving Commonwealth; penalty.*

*Any person placed on conditional release pursuant to this chapter who leaves the Commonwealth without permission from the court that conditionally released the person shall be guilty of a Class 6 felony.*

#### SUBTITLE IV.

### GUARDIANSHIP, CONSERVATORSHIP, AND JUDICIAL AUTHORIZATION OF TREATMENT.

#### CHAPTER 10.

### GUARDIANSHIP AND CONSERVATORSHIP.

#### Article 1.

#### Appointment.

§ 37.2-1000. *Definitions.*

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

*"Advance directive" shall have the same meaning as provided in the Health Care Decisions Act (§ 54.1-2981 et seq.).*

*"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes (i) a local or regional program designated by the Department for the Aging as a public conservator pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c) (3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person.*

*"Estate" includes both real and personal property.*

*"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes a (i) local or regional program designated by the Department for the Aging as a public guardian pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c) (3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person.*

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

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

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

*"Property" includes both real and personal property.*

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

§ 37.2-1001. *Filing of petition; jurisdiction; instructions to be provided.*

A. *A petition for the appointment of a guardian or conservator shall be filed with the circuit court of the county or city in which the respondent is a resident or is located or in which the respondent resided immediately prior to becoming a patient, voluntarily or involuntarily, in a hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123, or a resident in a nursing facility or nursing home, convalescent home, assisted living facility as defined in § 63.2-100, or any other similar institution or, if the petition is for the appointment of a conservator for a nonresident with property in the state, in the city or county in which the respondent's property is located.*

B. *Instructions regarding the duties, powers, and liabilities of guardians and conservators shall be provided to each clerk of court by the Office of the Executive Secretary of the Supreme Court, and the clerk shall provide that information to each guardian and conservator upon notice of appointment.*

C. *The circuit court in which the proceeding is first commenced may order a transfer of venue if it would be in the best interest of the respondent.*

*§ 37.2-1002. Who may file petition; contents.*

*A. Any person may file a petition for the appointment of a guardian, a conservator, or both.*

*B. A petition for the appointment of a guardian, a conservator, or both, shall state the petitioner's name, place of residence, post office address, and relationship, if any, to the respondent and, to the extent known as of the date of filing, shall include the following:*

*1. The respondent's name, date of birth, place of residence or location, social security number, and post office address;*

*2. The names and post office addresses of the respondent's spouse, adult children, parents, and adult siblings or, if no such relatives are known to the petitioner, at least three other known relatives of the respondent, including step-children. If a total of three such persons cannot be identified and located, the petitioner shall certify that fact in the petition, and the court shall set forth such finding in the final order;*

*3. The name, place of residence or location, and post office address of the individual or facility, if any, that is responsible for or has assumed responsibility for the respondent's care or custody;*

*4. The name, place of residence or location, and post office address of any agent designated under a durable power of attorney or an advance directive of which the respondent is the principal or any guardian, committee, or conservator currently acting, whether in this state or elsewhere, with a copy of any such documents, if available, attached by the petitioner;*

*5. The type of guardianship or conservatorship requested and a brief description of the nature and extent of the respondent's alleged incapacity;*

*6. When the petition requests appointment of a guardian, a brief description of the services currently being provided for the respondent's health, care, safety, or rehabilitation and, where appropriate, a recommendation as to living arrangement and treatment plan;*

*7. If the appointment of a limited guardian is requested, the specific areas of protection and assistance to be included in the order of appointment and, if the appointment of a limited conservator is requested, the specific areas of management and assistance to be included in the order of appointment;*

*8. The name and post office address of any proposed guardian or conservator or any guardian or conservator nominated by the respondent and that person's relationship to the respondent;*

*9. The native language of the respondent and any necessary alternative mode of communication;*

*10. A statement of the financial resources of the respondent that shall, to the extent known, list the approximate value of the respondent's property and the respondent's anticipated annual gross income, other receipts, and debts;*

*11. A statement of whether the petitioner believes that the respondent's attendance at the hearing would be detrimental to the respondent's health, care, or safety; and*

*12. A request for appointment of a guardian ad litem.*

*§ 37.2-1003. Appointment of guardian ad litem.*

*A. On the filing of every petition for guardianship or conservatorship, the court shall appoint a guardian ad litem to represent the interests of the respondent. The guardian ad litem shall be paid a fee that is fixed by the court to be paid by the petitioner or taxed as costs, as the court directs.*

*B. Duties of the guardian ad litem include: (i) personally visiting the respondent; (ii) advising the respondent of rights pursuant to §§ 37.2-1006 and 37.2-1007, and certifying to the court that the respondent has been so advised; (iii) recommending that legal counsel should be appointed for the respondent, pursuant to § 37.2-1006, if the guardian ad litem believes that counsel for the respondent is necessary; (iv) investigating the petition and evidence, requesting additional evaluation if necessary, and filing a report pursuant to subsection C; and (v) personally appearing at all court proceedings and conferences.*

*C. In the report required by subsection B (iv), the guardian ad litem shall address the following major areas of concern: (i) whether the court has jurisdiction; (ii) whether or not a guardian or conservator is needed; (iii) the extent of the duties and powers of the guardian or conservator, such as personal supervision, financial management, or medical consent only; (iv) the propriety and suitability of the person selected as guardian or conservator, after consideration of geographic location, familial or other relationship with the respondent, ability to carry out the powers and duties of the office, commitment to promoting the respondent's welfare, any potential conflicts of interests, wishes of the respondent, and recommendations of relatives; (v) a recommendation as to the amount of surety on the conservator's bond, if any; and (vi) consideration of proper residential placement of the respondent.*

*D. A health care provider shall disclose or make available to the guardian ad litem, upon request, any information, records, and reports concerning the respondent that the guardian ad litem determines necessary to perform his duties under this section.*

*§ 37.2-1004. Notice of hearing; jurisdictional.*

*A. Upon the filing of the petition, the court shall promptly set a date, time, and location for a hearing. The respondent shall be given reasonable notice of the hearing. The respondent may not waive notice, and a failure to properly notify the respondent shall be jurisdictional.*

*B. A respondent, whether or not he resides in the Commonwealth, shall be personally served with the notice, a copy of the petition, and a copy of the order appointing a guardian ad litem pursuant to*

§ 37.2-1003. A certification, in the guardian ad litem's report required by subsection B of § 37.2-1003, that the guardian ad litem personally served the respondent with the notice, a copy of the petition, and a copy of the order appointing a guardian ad litem shall constitute valid personal service for purposes of this section.

C. A copy of the notice, together with a copy of the petition, shall be mailed by first class mail by the petitioner at least seven days before the hearing to all adult individuals and to all entities whose names and post office addresses appear in the petition. For good cause shown, the court may waive the advance notice required by this subsection. If the advance notice is waived, the petitioner shall promptly mail by first class mail a copy of the petition and any order entered to those individuals and entities.

D. The notice to the respondent shall include a brief statement in at least 14-point type of the purpose of the proceedings and shall inform the respondent of the right to be represented by counsel pursuant to § 37.2-1006 and to a hearing pursuant to § 37.2-1007. Additionally, the notice shall include the following statement in conspicuous, bold print.

**WARNING**

**AT THE HEARING YOU MAY LOSE MANY OF YOUR RIGHTS. A GUARDIAN MAY BE APPOINTED TO MAKE PERSONAL DECISIONS FOR YOU. A CONSERVATOR MAY BE APPOINTED TO MAKE DECISIONS CONCERNING YOUR PROPERTY AND FINANCES. THE APPOINTMENT MAY AFFECT CONTROL OF HOW YOU SPEND YOUR MONEY, HOW YOUR PROPERTY IS MANAGED AND CONTROLLED, WHO MAKES YOUR MEDICAL DECISIONS, WHERE YOU LIVE, WHETHER YOU ARE ALLOWED TO VOTE, AND OTHER IMPORTANT RIGHTS.**

E. The petitioner shall file with the clerk of the circuit court a statement of compliance with subsections B, C and D.

§ 37.2-1005. Evaluation report.

A. A report evaluating the condition of the respondent shall be filed with the court and provided to the guardian ad litem within a reasonable time prior to the hearing on the petition. The report shall be prepared by one or more licensed physicians or psychologists or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the respondent as alleged in the petition. If a report is not available, the court may proceed to hold the hearing without the report for good cause shown and absent objection by the guardian ad litem or may order a report and delay the hearing until the report is prepared, filed, and provided to the guardian ad litem.

B. The report shall evaluate the condition of the respondent and shall contain, to the best information and belief of its signatory:

1. A description of the nature, type, and extent of the respondent's incapacity, including the respondent's specific functional impairments;

2. A diagnosis or assessment of the respondent's mental and physical condition, including a statement as to whether the individual is on any medications that may affect his actions or demeanor, and, where appropriate and consistent with the scope of the evaluator's license, an evaluation of the respondent's ability to learn self-care skills, adaptive behavior, and social skills and a prognosis for improvement;

3. The date or dates of the examinations, evaluations, and assessments upon which the report is based; and

4. The signature of the person conducting the evaluation and the nature of the professional license held by that person.

C. In the absence of bad faith or malicious intent, a person performing the evaluation shall be immune from civil liability for any breach of patient confidentiality made in furtherance of his duties under this section.

D. A report prepared pursuant to this section shall be admissible as evidence of the facts stated therein and the results of the examination or evaluation referred to therein, unless counsel for the respondent or the guardian ad litem objects.

§ 37.2-1006. Counsel for respondent.

The respondent has the right to be represented by counsel of the respondent's choice. If the respondent is not represented by counsel, the court may appoint legal counsel, upon the filing of the petition or at any time prior to the entry of the order upon request of the respondent or the guardian ad litem, if the court determines that counsel is needed to protect the respondent's interest. Counsel appointed by the court shall be paid a fee that is fixed by the court to be taxed as part of the costs of the proceeding.

A health care provider shall disclose or make available to the attorney, upon request, any information, records, and reports concerning the respondent that the attorney determines necessary to perform his duties under this section, including a copy of the evaluation report required under § 37.2-1005.

§ 37.2-1007. Hearing on petition to appoint.

The respondent is entitled to a jury trial, upon request, and may compel the attendance of witnesses, present evidence on his own behalf, and confront and cross-examine witnesses.

*The court or, if one is requested, the jury shall hear the petition for the appointment of a guardian or conservator. The hearing may be held at such convenient place as the court directs, including the place where the respondent is located. The proposed guardian or conservator shall attend the hearing except for good cause shown and, where appropriate, shall provide the court with a recommendation as to living arrangements and a treatment plan for the respondent. The respondent is entitled to be present at the hearing and all other stages of the proceedings. The respondent shall be present if he so requests or if his presence is requested by the guardian ad litem. Whether or not present, the respondent shall be regarded as having denied the allegations in the petition.*

*In determining the need for a guardian or a conservator and the powers and duties of any needed guardian or conservator, consideration shall be given to the following factors: the limitations of the respondent; the development of the respondent's maximum self-reliance and independence; the availability of less restrictive alternatives, including advance directives and durable powers of attorney; the extent to which it is necessary to protect the respondent from neglect, exploitation, or abuse; the actions needed to be taken by the guardian or conservator; and the suitability of the proposed guardian or conservator.*

*If, after considering the evidence presented at the hearing, the court or jury determines on the basis of clear and convincing evidence that the respondent is incapacitated and in need of a guardian or conservator, the court shall appoint a suitable person to be the guardian or the conservator or both, giving due deference to the wishes of the respondent.*

*The court in its order shall make specific findings of fact and conclusions of law in support of each provision of any orders entered.*

*§ 37.2-1008. Fees and costs.*

*The petitioner shall pay the filing fee, as provided in subdivision A 43 of § 17.1-275, and costs. Service fees and court costs may be waived by the court if it is alleged under oath that the estate of the respondent is unavailable or insufficient. If a guardian or conservator is appointed and the estate of the incapacitated person is available and sufficient therefor, the court shall order that the petitioner be reimbursed from the estate for all costs and fees. If a guardian or conservator is not appointed and the court nonetheless finds that the petition is brought in good faith and for the benefit of the respondent, the court may direct the respondent's estate, if available and sufficient, to reimburse the petitioner for all costs and fees.*

*In any proceeding filed pursuant to this article, if the adult subject of the petition is determined to be indigent, any fees and costs of the proceeding that are fixed by the court or taxed as costs shall be borne by the Commonwealth.*

*§ 37.2-1009. Court order of appointment; limited guardianships and conservatorships.*

*The court's order appointing a guardian or conservator shall: (i) state the nature and extent of the person's incapacity; (ii) define the powers and duties of the guardian or conservator so as to permit the incapacitated person to care for himself and manage property to the extent he is capable; (iii) specify whether the appointment of a guardian or conservator is limited to a specified length of time, as the court in its discretion may determine; (iv) specify the legal disabilities, if any, of the person in connection with the finding of incapacity, including but not limited to mental competency for purposes of Article II, Section 1 of the Constitution of Virginia or Title 24.2; (v) include any limitations deemed appropriate following consideration of the factors specified in § 37.2-1007; and (vi) set the bond of the guardian and the bond and surety, if any, of the conservator.*

*The court may appoint a limited guardian for an incapacitated person who is capable of addressing some of the essential requirements for his care for the limited purpose of medical decision making, decisions about place of residency, or other specific decisions regarding his personal affairs.*

*A guardian need not be appointed for a person who has appointed an agent under an advance directive executed in accordance with the provisions of Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title 54.1, unless the court determines that the agent is not acting in accordance with the wishes of the principal or there is a need for decision making outside the purview of the advance directive.*

*The court may appoint a limited conservator for an incapacitated person who is capable of managing some of his property and financial affairs for limited purposes specified in the order.*

*A conservator need not be appointed for a person (i) who has appointed an agent under a durable power of attorney, unless the court determines pursuant to § 37.2-1018 that the agent is not acting in the best interests of the principal or there is a need for decision making outside the purview of the durable power of attorney or (ii) whose only or major source of income is from the Social Security Administration or other government program and who has a representative payee.*

*§ 37.2-1010. Eligibility for public guardian or conservator.*

*The circuit court may appoint a local or regional program authorized by the Department for the Aging pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 as the guardian or conservator for any resident of the Commonwealth who is found to be incapacitated if the court finds that (i) the incapacitated person's resources are insufficient to fully compensate a private guardian and pay court costs and fees associated with the appointment proceeding and (ii) there is no other proper and suitable person willing and able to serve in such capacity. The guidelines for determining indigency set forth in*

§ 19.2-159 shall be used by the court in determining the sufficiency of the respondent's estate. If the respondent would be eligible for the appointment of counsel pursuant to § 19.2-159, he shall be eligible for the appointment of a public guardian or conservator pursuant to this section.

§ 37.2-1011. Qualification of guardian or conservator; clerk to record order and issue certificate; reliance on certificate.

A guardian or conservator appointed in the court order shall qualify before the clerk upon the following:

1. Subscribing to an oath promising to faithfully perform the duties of the office in accordance with all provisions of this chapter;
2. Posting of bond, but no surety shall be required on the bond of the guardian, and the conservator's bond may be with or without surety, as ordered by the court; and
3. Acceptance in writing by the guardian or conservator of any educational materials provided by the court.

Upon qualification, the clerk shall issue to the guardian or conservator a certificate with a copy of the order appended thereto. The clerk shall record the order in the same manner as a power of attorney would be recorded and shall, in addition to the requirements of § 37.2-1014, provide a copy of the order to the commissioner of accounts. It shall be the duty of a conservator having the power to sell real estate to record the order in the office of the clerk of any jurisdiction where the respondent owns real property. If the order appoints a guardian, the clerk shall promptly forward a copy of the order to the local department of social services in the jurisdiction where the respondent then resides.

A conservator shall have all powers granted pursuant to § 37.2-1022 as are necessary and proper for the performance of his duties in accordance with this chapter, subject to the limitations that are prescribed in the order. The powers granted to a guardian include only those powers enumerated in the court order.

Any individual or entity conducting business in good faith with a guardian or conservator who presents a currently effective certificate of qualification may presume that the guardian or conservator is properly authorized to act as to any matter or transaction, except to the extent of any limitations upon the fiduciary's powers contained in the court's order of appointment.

§ 37.2-1012. Petition for restoration, modification or termination; effects.

A. Upon petition by the incapacitated person, the guardian or conservator, or any other person or upon motion of the court, the court may declare the incapacitated person restored to capacity; modify the type of appointment or the areas of protection, management, or assistance previously granted or require a new bond; terminate the guardianship or conservatorship; order removal of the guardian or conservator as provided in § 26-3; or order other appropriate relief. The fee for filing the petition shall be as provided in subdivision A 43 of § 17.1-275.

B. In the case of a petition for modification to expand the scope of a guardianship or conservatorship, the incapacitated person shall be entitled to a jury, upon request. Notice of the hearing and a copy of the petition shall be personally served on the incapacitated person and mailed to other persons entitled to notice pursuant to § 37.2-1004. The court shall appoint a guardian ad litem for the incapacitated person and may appoint one or more licensed physicians or psychologists or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the incapacitated person, as alleged in the petition, to conduct an evaluation. Upon the filing of any other such petition or upon the motion of the court and after reasonable notice to the incapacitated person, any guardian or conservator, any attorney of record, any person entitled to notice of the filing of an original petition as provided in § 37.2-1004, and any other person or entity as the court may require, the court shall hold a hearing.

C. Revocation, modification, or termination may be ordered upon a finding that it is in the best interests of the incapacitated person and that:

1. The incapacitated person is no longer in need of the assistance or protection of a guardian or conservator;
2. The extent of protection, management, or assistance previously granted is either excessive or insufficient considering the current need therefor;
3. The incapacitated person's understanding or capacity to manage the estate and financial affairs or to provide for his health, care, or safety has so changed as to warrant such action; or
4. Circumstances are such that the guardianship or conservatorship is no longer necessary or is insufficient.

D. If, on the basis of evidence offered at the hearing, the court finds by a preponderance of the evidence that the incapacitated person has, in the case of a guardianship, substantially regained his ability to care for his person or, in the case of a conservatorship, to manage and handle his estate, it shall declare the person restored to capacity and discharge the guardian or conservator.

In the case of a petition for modification of a guardianship or conservatorship, if the court finds by a preponderance of the evidence that it is in the best interests of the incapacitated person to limit or reduce the powers of the guardian or conservator, it shall so order; if the court finds by clear and convincing evidence that it is in the best interests of the incapacitated person to increase or expand the

*powers of the guardian or conservator, it shall so order.*

*The court may order a new bond or other appropriate relief upon finding by a preponderance of the evidence that the guardian or conservator is not acting in the best interests of the incapacitated person or of the estate.*

*E. The powers of a guardian or conservator shall terminate upon the death, resignation, or removal of the guardian or conservator or upon the termination of the guardianship or conservatorship.*

*A guardianship or conservatorship shall terminate upon the death of the incapacitated person or, if ordered by the court, following a hearing on the petition of any interested person.*

*F. The court may allow reasonable compensation from the estate of the incapacitated person to any guardian ad litem, attorney, or evaluator appointed pursuant to this section. Any compensation allowed shall be taxed as costs of the proceeding.*

*§ 37.2-1013. Standby guardianship or conservatorship for incapacitated persons.*

*A. For purposes of this section, the term "person" includes a child or a parent sharing a biological relationship with one another or having a relationship established by adoption, a relationship established pursuant to Chapter 9 (§ 20-156 et seq.) of Title 20, or a relationship established by a judicial proceeding that establishes parentage or orders legal guardianship. The term includes persons 18 years of age and over.*

*B. On petition of one or both parents, one or more children, or the legal guardian of an incapacitated person made to the circuit court in which the parent, parents, child, children, or legal guardian resides, the court may appoint a standby guardian of the person or a standby conservator of the property, or both, of the incapacitated person. The appointment of the standby fiduciary shall be affirmed biennially by the parent, parents, child, children, or legal guardian of the person and by the standby fiduciary prior to his assuming his position as fiduciary by filing with the court an affidavit that states that the appointee remains available and capable to fulfill his duties.*

*The standby fiduciary shall be authorized without further proceedings to assume the duties of his office immediately upon the death or adjudication of incapacity of the last surviving of the parents or children of the incapacitated person or of his legal guardian, subject to confirmation of his appointment by the circuit court within 60 days following assumption of his duties. If the incapacitated person is 18 years of age or older, the court, before confirming the appointment of the standby fiduciary, shall conduct a hearing pursuant to this article. The requirements of the court and the powers, duties, and liabilities that pertain to guardians and conservators govern the confirmation of the standby fiduciary and shall apply to the standby fiduciary upon the assumption of his duties.*

*§ 37.2-1014. Clerk to index findings of incapacity or restoration; notice to Commissioner, commissioner of accounts, Secretary of Board of Elections, and CCRE.*

*A. A copy of the findings of the court, if the person is found to be incapacitated or restored to capacity, shall be filed by the judge with the clerk of the circuit court. The clerk shall properly index the findings in the index to deed books by reference to the order book and page whereon the order is spread and shall immediately notify the Commissioner in accordance with § 37.2-1029, the commissioner of accounts in order to ensure compliance by a conservator with the duties imposed pursuant to §§ 37.2-1022 through 37.2-1024 and § 37.2-1027, and the Secretary of the State Board of Elections with the information required by § 24.2-410. If a guardian is appointed, the clerk shall forward a copy of the court order to the local department of social services of the jurisdiction where the person then resides. If a guardianship is terminated or otherwise modified, the clerk shall forward a copy of the court order to the local department of social services to which the original order of appointment was forwarded and, if different, to the local department of social services in the jurisdiction where the person then resides.*

*B. The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order adjudicating a person incapacitated under this article and any order of restoration of capacity under § 37.2-1012. The copy of the form and the order shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm.*

*§ 37.2-1015. When no guardian or conservator appointed within one month of adjudication.*

*If no guardian or conservator is appointed within one month from the adjudication, the court, on motion of any interested person, may appoint a guardian or conservator.*

*If any person appointed as a fiduciary under this title refuses the trust or fails to give bond as required within one month from the date of his appointment, the court, on motion of any interested person, may appoint some other person as fiduciary, taking from the fiduciary the bond required, or shall commit the estate of the respondent to the sheriff of the county or city of which the respondent is an inhabitant; the sheriff shall be the fiduciary, and he and the sureties in his official bond shall be bound for the faithful performance of the trust.*

*§ 37.2-1016. Trustees for incapacitated ex-service persons and their beneficiaries.*

*Whenever any ex-service person of the United States or the beneficiary of any ex-service person is found to be incapacitated by the medical authorities of the U.S. Department of Veterans Affairs, on motion of the U.S. Department of Veterans Affairs or any person in interest, accompanied by a*

certificate of the Secretary of Veterans Affairs or his duly authorized representative certifying that the person has been rated incapacitated by the U.S. Department of Veterans Affairs and that the appointment of a trustee is a condition precedent to the payment of any moneys due the ex-service person or any beneficiary of the ex-service person, and after reasonable notice to the person, the circuit court of the county or the city in which the ex-service person or beneficiary resides, in lieu of appointing a conservator or finding him to be incapacitated, shall appoint a trustee for the ex-service person or the beneficiary of the ex-service person where it appears to the court that a trustee is needed for the purpose of receiving and administering pension, compensation, insurance, or other benefits that might be paid by the United States government. Upon his qualification, the trustee, in addition to administering the funds payable through the U.S. Department of Veterans Affairs, shall administer the entire estate of the ex-service person or the beneficiary regardless of the source from which it is derived and, in such administration, shall have the same powers and duties and be subject to the same liabilities as are vested in or imposed upon a conservator pursuant to this chapter. The trustee, in addition to the duties and obligations imposed upon him under his trust by the federal government, shall be subject to the state laws that are applicable to the appointment and administration of conservators for incapacitated persons.

Any person for whom a trustee has been appointed under the provisions of this section may thereafter be adjudged restored to capacity by the court that appointed the trustee.

*§ 37.2-1017. Payments from U.S. Department of Veterans Affairs.*

Monthly payments of pension, compensation, insurance, or other benefits from the U.S. Department of Veterans Affairs made to a trustee or other fiduciary shall be considered as income and not principal, but the accumulation of such monthly payments received by a trustee or other fiduciary and in his hands at the end of the accounting year may be carried over as principal and converted into the corpus of the estate when the accumulation amounts to \$200 or more.

*§ 37.2-1018. Discovery of information and records regarding actions of certain agents and attorneys-in-fact.*

*A. For purposes of this section:*

"Member of the principal's family" means an adult who is a parent, brother or sister, niece or nephew, child or other descendent, spouse of a child of the principal, and spouse or surviving spouse of the principal.

"Person interested in the welfare of a principal" means any member of the principal's family; a person who is a co-agent or co-attorney-in-fact, an alternate agent or attorney-in-fact, or a successor agent or attorney-in-fact designated under the power of attorney or other writing described in § 11-9.1; and, if none of these persons is reasonably available and willing to act, the adult protective services unit of the local department of social services for the city or county where the principal resides or is located at the time of the request.

"Principal believed to be unable to properly attend to his affairs" means an individual believed in good faith by the petitioner to be a person who is impaired by reason of mental illness, mental retardation, physical illness or disability, substance abuse, or other causes to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.

B. After having first made a request to an agent or attorney-in-fact for disclosure under § 11-9.6, any person interested in the welfare of a principal believed to be unable to properly attend to his affairs may, for the purpose of obtaining information pertinent to the need or propriety of (i) instituting a proceeding under this chapter or (ii) terminating, suspending, or limiting the authority of an attorney-in-fact or other agent, petition a circuit court for discovery from the attorney-in-fact or other agent of information and records pertaining to actions taken within the past two years from the date the request under § 11-9.6 was made pursuant to powers or authority conferred by a power of attorney or other writing described in § 11-9.1.

C. The petition may be filed in the circuit court of the county or city in which the attorney-in-fact or agent resides or has his principal place of employment, or, if a nonresident, in any court in which a determination of incompetency or incapacity of the principal is proper under this title, or, if a conservator or guardian has been appointed for the principal, in the court that made the appointment. The court, after reasonable notice to the attorney-in-fact or agent and to the principal, if no guardian or conservator has been appointed, may conduct a hearing on the petition. The court, upon the hearing on the petition and upon consideration of the interest of the principal and his estate, may dismiss the petition or may enter such order or orders respecting discovery as it may deem appropriate, including an order that the attorney-in-fact or agent respond to all discovery methods that the petitioner might employ in a civil action or suit subject to the Rules of the Supreme Court of Virginia. Upon the failure of the agent or attorney-in-fact to make discovery, the court may make and enforce further orders respecting discovery that would be proper in a civil action subject to such Rules and may award expenses, including reasonable attorney's fees, as therein provided. Furthermore, upon completion of discovery, the court, if satisfied that prior to filing the petition the petitioner had requested the information or records that are the subject of ordered discovery pursuant to § 11-9.6, may, upon finding that the failure to comply with the request for information was unreasonable, order the attorney-in-fact



or agent to pay the petitioner's expenses in obtaining discovery, including reasonable attorney's fees.

D. A determination to grant or deny in whole or in part discovery sought hereunder shall not be considered a finding regarding the competence, capacity, or impairment of the principal, nor shall the granting or denial of discovery hereunder preclude the availability of other remedies involving protection of the person or estate of the principal or the rights and duties of the attorney-in-fact or other agent.

## Article 2.

### *Powers, Duties and Liabilities.*

#### *§ 37.2-1019. Taking of bond by clerk of court.*

Whenever in this title provision is made for the appointment of a fiduciary by a circuit court, the clerk of the court also shall have the authority to take the required bond, set the penalty thereof, and pass upon the sufficiency of the surety thereon.

#### *§ 37.2-1020. Duties and powers of guardian.*

A. A guardian stands in a fiduciary relationship to the incapacitated person for whom he was appointed guardian and may be held personally liable for a breach of any fiduciary duty to the incapacitated person. A guardian shall not be liable for the acts of the incapacitated person, unless the guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of the incapacitated person.

B. A guardian's duties and authority shall not extend to decisions addressed in a valid advance directive or durable power of attorney previously executed by the incapacitated person. A guardian may seek court authorization to revoke, suspend, or otherwise modify a durable power of attorney, as provided by § 11-9.1. Notwithstanding the provisions of the Health Care Decisions Act (§ 54.1- 2981 *et seq.*) and in accordance with the procedures of § 37.2-1012, a guardian may seek court authorization to modify the designation of an agent under an advance directive, but the modification shall not in any way affect the incapacitated person's directives concerning the provision or refusal of specific medical treatments or procedures.

C. A guardian shall maintain sufficient contact with the incapacitated person to know of his capabilities, limitations, needs, and opportunities. The guardian shall visit the incapacitated person as often as necessary.

D. A guardian shall be required to seek prior court authorization to change the incapacitated person's residence to another state, to terminate or consent to a termination of the person's parental rights, or to initiate a change in the person's marital status.

E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the incapacitated person to the extent known and shall otherwise act in the incapacitated person's best interest and exercise reasonable care, diligence, and prudence.

#### *§ 37.2-1021. Annual reports by guardians.*

A. A guardian shall file an annual report in compliance with the filing deadlines in § 26-17.4 with the local department of social services for the jurisdiction in which he was appointed. It shall be the duty of that local department to forward the report to the local department of the jurisdiction where the incapacitated person then resides. The report shall be on a form prepared by the Office of the Executive Secretary of the Supreme Court and shall be accompanied by a filing fee of \$5. The local department shall retain the fee in the jurisdiction where the fee is collected for use in the provision of services to adults in need of protection. Within 60 days of receipt of the annual report, the local department shall file a copy of the report with the clerk of the circuit court that appointed the guardian, to be placed with the court papers pertaining to the guardianship case. Twice each year the local department shall file with the clerk of the circuit court a list of all guardians who are more than 90 days delinquent in filing an annual report as required by this section. If the guardian is also a conservator, a settlement of accounts shall also be filed with the commissioner of accounts as provided in § 26-17.4.

B. The report to the local department of social services shall include:

1. A description of the current mental, physical, and social condition of the incapacitated person;
  2. A description of the person's living arrangements during the reported period;
  3. The medical, educational, vocational, and other professional services provided to the person and the guardian's opinion as to the adequacy of the person's care;
  4. A statement of the frequency and nature of the guardian's visits with and activities on behalf of the person;
  5. A statement of whether the guardian agrees with the current treatment or habilitation plan;
  6. A recommendation as to the need for continued guardianship, any recommended changes in the scope of the guardianship, and any other information useful in the opinion of the guardian; and
  7. The compensation requested and the reasonable and necessary expenses incurred by the guardian.
- The guardian shall certify that the information contained in the report is true and correct to the best of his knowledge.

#### *§ 37.2-1022. General duties and liabilities of conservator.*

A. At all times, the conservator shall exercise reasonable care, diligence, and prudence and shall act in the best interest of the incapacitated person. To the extent known to him, a conservator shall consider the expressed desires and personal values of the incapacitated person.

B. Subject to any conditions or limitations set forth in the conservatorship order, the conservator shall take care of and preserve the estate of the incapacitated person and manage it to the best advantage. The conservator shall apply the income from the estate, or so much as may be necessary, to the payment of the debts of the incapacitated person, including payment of reasonable compensation to himself and to any guardian appointed, and to the maintenance of the person and of his legal dependents, if any, and, to the extent that the income is not sufficient, he shall so apply the corpus of the estate.

C. A conservator shall, to the extent feasible, encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage the estate and his financial affairs. A conservator also shall consider the size of the estate, the probable duration of the conservatorship, the incapacitated person's accustomed manner of living, other resources known to the conservator to be available, and the recommendations of the guardian.

D. A conservator stands in a fiduciary relationship to the incapacitated person for whom he was appointed conservator and may be held personally liable for a breach of any fiduciary duty. Unless otherwise provided in the contract, a conservator is personally liable on a contract entered into in a fiduciary capacity in the course of administration of the estate, unless he reveals the representative capacity and identifies the estate in the contract. Claims based upon contracts entered into by a conservator in a fiduciary capacity, obligations arising from ownership or control of the estate, or torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable therefor. A successor conservator is not personally liable for the contracts or actions of a predecessor.

E. A conservator shall comply with and be subject to the requirements imposed upon fiduciaries generally under Title 26, specifically including the duty to account set forth in § 26-17.4.

#### § 37.2-1023. Management powers and duties of conservator.

A. A conservator, in managing the estate, shall have the following powers and the powers set forth in § 64.1-57 as of the date the conservator acts, which may be exercised without prior court authorization except as otherwise specifically provided in the court's order of appointment:

1. To ratify or reject a contract entered into by an incapacitated person;
2. To pay any sum distributable for the benefit of the incapacitated person or for the benefit of a legal dependent by paying the sum directly to the distributee, to the provider of goods and services, to any individual or facility that is responsible for or has assumed responsibility for care and custody, or to a distributee's custodian under a Uniform Gifts or Transfers to Minors Act of any applicable jurisdiction or by paying the sum to the guardian of the incapacitated person or, in the case of a dependent, to the dependent's guardian or conservator;
3. To maintain life, health, casualty, and liability insurance for the benefit of the incapacitated person or his legal dependents;
4. To manage the estate following the termination of the conservatorship until its delivery to the incapacitated person or successors in interest;
5. To execute and deliver all instruments and to take all other actions that will serve in the best interests of the incapacitated person;
6. To initiate a proceeding (i) to revoke a power of attorney under the provisions of § 11-9.1 or (ii) to make an augmented estate election under § 64.1-13; and
7. To borrow money for periods of time and upon terms and conditions for rates, maturities, renewals, and security that to the conservator shall seem advisable, including the power to borrow from the conservator, if the conservator is a bank, for any purpose; to mortgage or pledge the portion of the incapacitated person's estate that may be required to secure the loan or loans; and, as maker or endorser, to renew existing loans.

B. The court may impose requirements to be satisfied by the conservator prior to the conveyance of any interest in real estate, including (i) increasing the amount of the conservator's bond, (ii) securing an appraisal of the real estate or interest, (iii) giving notice to interested parties as the court deems proper, and (iv) consulting by the conservator with the commissioner of accounts and, if one has been appointed, with the guardian. If the court imposes any such requirements, the conservator shall make a report of his compliance with each requirement, to be filed with the commissioner of accounts. Promptly following receipt of the conservator's report, the commissioner shall file a report with the court indicating whether the requirements imposed have been met and whether the sale is otherwise consistent with the conservator's duties. The conveyance shall not be closed until a report by the commissioner of accounts is filed with the court and confirmed as provided in §§ 26-33, 26-34 and 26-35.

#### § 37.2-1024. Estate planning.

A. In the order appointing a conservator entered pursuant to § 37.2-1009 or in a separate proceeding brought on petition, the court may authorize a conservator to: (i) make gifts from income and principal not necessary for the incapacitated person's maintenance to those persons to whom the

incapacitated person would, in the judgment of the court, have made gifts if he had been of sound mind or (ii) disclaim property as provided in Chapter 8.1 (§ 64.1-196.1 et seq.) of Title 64.1. A guardian ad litem shall be appointed to represent the interest of the incapacitated person, and reasonable notice of the hearing shall be given to the incapacitated person and to all persons who would be heirs or distributees of the incapacitated person, if he were dead as of the date of the filing of the petition, or beneficiaries under any known will of the incapacitated person. The court may authorize the hearing to proceed without notice to any beneficiary who would not be substantially affected by the proposed gift or disclaimer. The court shall determine the amounts, recipients, and proportions of any gifts of the estate and the advisability of any disclaimer after considering: (i) the size and composition of the estate; (ii) the nature and probable duration of the incapacity; (iii) the effect of the gifts or disclaimers on the estate's financial ability to meet the incapacitated person's foreseeable health, medical care, and maintenance needs; (iv) the incapacitated person's estate plan; (v) prior patterns of assistance or gifts to the proposed donees; (vi) the tax effect of the proposed gifts or disclaimers; (vii) the effect of any transfer of assets or disclaimer on the establishment or retention of eligibility for medical assistance services; and (viii) other factors that the court may deem relevant.

B. The conservator may make a gift, not to exceed \$100 to each donee in a calendar year and not to exceed a total of \$500 per calendar year from such income and principal, without the requirements of a court-appointed guardian ad litem, of notification to the incapacitated person or to any person who would be an heir or distributee of the incapacitated person, if he were dead, or a beneficiary under any known will of the incapacitated person, and of a court hearing. Prior to the making of such a gift, the conservator must consider conditions (i) through (viii) as set forth in subsection A of this section and must also find that the incapacitated person has shown a history of giving the same or a similar gift to a specific donee for the previous three years prior to the appointment of the conservator.

C. The conservator may transfer assets of an incapacitated person or an incapacitated person's estate into an irrevocable trust where the transfer has been designated solely for burial of the incapacitated person or spouse of the incapacitated person in accordance with conditions set forth in subdivision A 2 of § 32.1-325. The conservator also may contractually bind an incapacitated person or an incapacitated person's estate by executing a preneed funeral contract, described in Chapter 28 (§ 54.1-2800 et seq.) of Title 54.1, for the benefit of the incapacitated person.

D. A conservator may exercise the incapacitated person's power to revoke or amend a trust or to withdraw or demand distribution of trust assets only with the approval of the court for good cause shown, unless the trust instrument expressly provides otherwise.

§ 37.2-1025. Taking possession of incapacitated person's estate and suits relative thereto; retaining for his own debt.

Subject to any conditions or limitations set forth in the order appointing him, the fiduciary shall take possession of the incapacitated person's estate and may sue and be sued in respect to all claims or demands of every nature in favor of or against the incapacitated person and any other of the incapacitated person's estate, and he shall have the same right of retaining for his own debt as an administrator would have.

§ 37.2-1026. Fiduciary to prosecute and defend.

All actions or suits to which the incapacitated person is a party at the time of qualification of the fiduciary and all such actions or suits subsequently instituted shall, subject to any conditions or limitations set forth in the order appointing him, be prosecuted or defended, as the case may be, by the fiduciary, after 10 days' notice of the pendency thereof, which notice shall be given by the clerk of the court in which the same are pending.

§ 37.2-1027. Surrender of incapacitated person's estate.

The fiduciary shall surrender the incapacitated person's estate or that portion for which he is accountable to the incapacitated person, if the incapacitated person is restored to capacity.

If the incapacitated person dies prior to the restoration, the fiduciary shall surrender the real estate to the incapacitated person's heirs or devisees and the personal estate to his executors or administrators. If, upon the death of the incapacitated person, (i) the value of the personal estate in the custody of the fiduciary is \$15,000 or less, (ii) a personal representative has not qualified within 60 days of the incapacitated person's death, and (iii) the fiduciary does not anticipate that anyone will qualify, the fiduciary may pay the balance of the incapacitated person's estate to the incapacitated person's surviving spouse or, if there is no surviving spouse, to the distributees of the incapacitated person or other persons entitled thereto, including any person or entity entitled to payment for funeral or burial services provided. The distribution shall be noted in the fiduciary's final accounting submitted to the Commissioner of Accounts.

§ 37.2-1028. Surrender of incapacitated person's estate not limited by provisions relating to expenses.

Nothing in §§ 37.2-715 through 37.2-721 shall be construed to relieve the fiduciary of any consumer in a state facility from paying to the state facility a sum for extra comforts or to make it unlawful for the fiduciary to make voluntary gifts that the fiduciary may deem conducive to the happiness and comfort of the consumer.

§ 37.2-1029. Department to be notified in certain cases.

*In any suit or action for the appointment of a fiduciary who is to have the management and control of funds belonging to any person who has been admitted to any state facility, the Department shall receive notice of the suit or action, and the clerk of any court in which the suit or action is pending shall notify the Commissioner of that fact.*

#### CHAPTER 11. JUDICIAL AUTHORIZATION OF TREATMENT.

##### § 37.2-1100. Definitions.

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

*"Disorder" includes any physical or mental disorder or impairment, whether caused by injury, disease, genetics, or other cause.*

*"Incapable of making an informed decision" means unable to understand the nature, extent, or probable consequences of a proposed treatment or unable to make a rational evaluation of the risks and benefits of the proposed treatment as compared with the risks and benefits of alternatives to that treatment. Persons with dysphasia or other communication disorders who are mentally competent and able to communicate shall not be considered incapable of giving informed consent.*

##### § 37.2-1101. Judicial authorization of treatment.

*A. An appropriate circuit court or district court judge or special justice may authorize on behalf of an adult person, in accordance with this section, the provision, withholding, or withdrawal of a specific treatment or course of treatment for a mental or physical disorder, if it finds upon clear and convincing evidence that (i) the person is either incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder and (ii) the proposed action is in the best interest of the person.*

*B. Any person may request authorization of the provision, withholding, or withdrawal of a specific treatment or course of treatment for an adult person by filing a petition in the circuit court or district court or with a special justice of the county or city in which the allegedly incapable person resides or is located or in the county or city in which the proposed place of treatment is located. Upon filing the petition, the petitioner or the court shall deliver or send a certified copy of the petition to the person who is the subject of the petition and, if the identity and whereabouts of the person's next of kin are known, to the next of kin.*

*C. As soon as reasonably possible after the filing of the petition, the court shall appoint an attorney to represent the interests of the allegedly incapable person at the hearing. However, the appointment shall not be required in the event that the person or another interested person on behalf of the person elects to retain private counsel at his own expense to represent the interests of the person at the hearing. If the allegedly incapable person is indigent, his counsel shall be paid by the Commonwealth as provided in § 37.2-804 from funds appropriated to reimburse expenses incurred in the involuntary admission process. However, this provision shall not be construed to prohibit the direct payment of an attorney's fee by the person or an interested person on his behalf, which fee shall be subject to the review and approval of the court.*

*D. Following the appointment of an attorney pursuant to subsection C above, the court shall schedule an expedited hearing of the matter. The court shall notify the person who is the subject of the petition, his next of kin, if known, the petitioner, and their respective counsel of the date and time for the hearing. In scheduling the hearing, the court shall take into account the type and severity of the alleged physical or mental disorder, as well as the need to provide the person's attorney with sufficient time to adequately prepare his client's case.*

*E. Notwithstanding the provisions of subsections B and D regarding delivery or service of the petition and notice of the hearing to the next of kin of any person who is the subject of the petition, if the person is a patient in any hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123, at the time the petition is filed, the court may dispense with the requirement of any notice to the next of kin. This subsection shall not be construed to interfere with any decision made pursuant to the Health Care Decisions Act (§ 54.1-2981 et seq.).*

*F. Prior to the hearing, the attorney shall investigate the risks and benefits of the treatment decision for which authorization is sought and of alternatives to the proposed decision. The attorney shall make a reasonable effort to inform the person of this information and to ascertain the person's religious beliefs and basic values and the views and preferences of the person's next of kin. A health care provider shall disclose or make available to the attorney, upon request, any information, records, and reports concerning the person that the attorney determines necessary to perform his duties under this section. Evidence presented at the hearing may be submitted by affidavit in the absence of objection by the person who is the subject of the petition, the petitioner, either of their respective counsel, or by any other interested party.*

*G. Prior to authorizing the provision, withholding, or withdrawal of treatment pursuant to this section, the court shall find:*

- 1. That there is no legally authorized person available to give consent;*
- 2. That the person who is the subject of the petition is incapable of making an informed decision regarding a specific treatment or course of treatment or is physically or mentally incapable of*

*communicating such a decision;*

*3. That the person who is the subject of the petition is unlikely to become capable of making an informed decision or of communicating an informed decision within the time required for decision; and*

*4. That the proposed course of treatment is in the best interest of the person. However, the court shall not authorize a proposed course of treatment that is proven by a preponderance of the evidence to be contrary to the person's religious beliefs or basic values, unless the treatment is necessary to prevent death or a serious irreversible condition. The court shall take into consideration the right of the person to rely on nonmedical, remedial treatment in the practice of religion in lieu of medical treatment.*

*H. Any order authorizing the provision, withholding, or withdrawal of treatment pursuant to subsection A shall describe any treatment or course of treatment authorized and may authorize generally such related examinations, tests, or services as the court may determine to be reasonably related to the treatment authorized. The order shall require the treating physician to review and document the appropriateness of the continued administration of antipsychotic medications not less frequently than every 30 days. The order shall require the treating physician or other service provider to report to the court and the person's attorney any change in the person's condition resulting in probable restoration or development of the person's capacity to make and to communicate an informed decision prior to completion of any authorized course of treatment and related services. The order may further require the treating physician or other service provider to report to the court and the person's attorney any change in circumstances regarding any authorized course of treatment or related services or the withholding or withdrawal of treatment or services that may indicate that such authorization is no longer in the person's best interests. Upon receipt of such report or upon the petition of any interested party, the court may enter an order withdrawing or modifying its prior authorization as it deems appropriate. Any petition or order under this section may be orally presented or entered, provided a written order shall be subsequently executed.*

*§ 37.2-1102. Certain actions may not be authorized.*

*The following actions may not be authorized under this chapter:*

*1. Nontherapeutic sterilization, abortion, or psychosurgery.*

*2. Admission to a training center or a hospital. However, the court may issue an order under § 37.2-1101 authorizing the provision, withholding, or withdrawal of a specific treatment or course of treatment of a person whose admission to a training center or hospital has been or is simultaneously being authorized under § 37.2-805, 37.2-806, 37.2-807, or §§ 37.2-809 through 37.2-813, or of a person who is subject to an order of involuntary admission previously or simultaneously issued under §§ 37.2-814 through 37.2-819 or of Chapter 9 (§ 37.2-900 et seq.) of this title.*

*3. Administration of antipsychotic medication for a period to exceed 180 days or electroconvulsive therapy for a period to exceed 60 days pursuant to any petition filed under this section. The court may authorize electroconvulsive therapy only if it is demonstrated by clear and convincing evidence, which shall include the testimony of a licensed psychiatrist, that all other reasonable forms of treatment have been considered and that electroconvulsive therapy is the most effective treatment for the person. Even if the court has authorized administration of antipsychotic medication or electroconvulsive therapy hereunder, these treatments may be administered over the person's objection only if he is subject to an order of involuntary admission, including involuntary outpatient treatment, previously or simultaneously issued under §§ 37.2-814 through 37.2-819 or Chapter 9 (§ 37.2-900 et seq.) of this title, or the provisions of Chapter 11 (§ 19.2-167 et seq.) or Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2.*

*4. Restraint or transportation of the person, unless it finds upon clear and convincing evidence that restraint or transportation is necessary to the provision of an authorized treatment for a physical disorder.*

*§ 37.2-1103. Emergency custody orders for adult persons who are incapable of making an informed decision as a result of physical injury or illness.*

*A. Based upon the opinion of a licensed physician that an adult person is incapable of making an informed decision as a result of a physical injury or illness and that the medical standard of care indicates that testing, observation, and treatment are necessary to prevent imminent and irreversible harm, a magistrate may issue, for good cause shown, an emergency custody order for the adult person to be taken into custody and transported to a hospital emergency room for testing, observation, or treatment.*

*B. Prior to issuance of an emergency custody order pursuant to this section, the magistrate shall ascertain that there is no legally authorized person available to give consent to necessary treatment for the adult person and that the adult person (i) is incapable of making an informed decision regarding obtaining necessary treatment, (ii) has refused transport to obtain such necessary treatment, (iii) has indicated an intention to resist such transport, and (iv) is unlikely to become capable of making an informed decision regarding obtaining necessary treatment within the time required for such decision.*

*C. An opinion by the licensed physician that an adult person is incapable of making an informed decision as a result of physical injury or illness shall only be rendered after the licensed physician has communicated electronically or personally with the emergency medical services personnel on the scene and has attempted to communicate electronically or personally with the adult person to obtain*

information and medical data concerning the cause of the adult person's incapacity, has attempted to obtain consent from the adult person, and has failed to obtain consent.

D. If there is a change in the person's condition, the emergency medical services personnel shall contact the licensed physician. If at any time the licensed physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further observation, testing, or treatment.

E. Upon reaching the emergency room, the person shall be evaluated by a licensed physician. If the physician determines that the person meets the requirements of § 37.2-1104, the physician may apply for a temporary detention order pursuant to that section. If the physician determines that the person does not meet the requirements of § 37.2-1104, the person shall be released from custody immediately. The person shall remain in custody until this evaluation is performed, but in no event shall the period of custody under this section exceed four hours.

F. The law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city or town in which he serves to any point in the Commonwealth for the purpose of executing an emergency custody order pursuant to this section. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

G. If an emergency custody order is not executed within four hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate thereof.

**§ 37.2-1104. Temporary detention in hospital for testing, observation or treatment.**

Upon the advice of a licensed physician who has attempted to obtain consent and upon a finding of probable cause to believe that an adult person within the court's or a magistrate's jurisdiction is incapable of making an informed decision regarding treatment of a physical or mental disorder or is incapable of communicating such a decision due to a physical or mental disorder and that the medical standard of care calls for testing, observation, or treatment of the disorder within the next 24 hours to prevent death, disability, or a serious irreversible condition, the court or, if the court is unavailable, a magistrate may issue an order authorizing temporary detention of the person by a hospital emergency room or other appropriate facility and authorizing such testing, observation, or treatment. The detention may not be for a period exceeding 24 hours, unless extended by the court as part of an order authorizing treatment under § 37.2-1101. If, before completion of authorized testing, observation, or treatment, the physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further testing, observation, or treatment. If, before issuance of an order under this subsection or during its period of effectiveness, the physician learns of an objection by a member of the person's immediate family to the testing, observation, or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining whether to issue, modify, or terminate the order.

**§ 37.2-1105. Appeal from order.**

Any order of a judge or special justice under § 37.2-1101, or of a judge, special justice or magistrate under § 37.2-1104, may be appealed de novo within 10 days to the circuit court for the jurisdiction where the order was entered, and any order of a circuit court hereunder, either originally or on appeal, may be appealed within 10 days to the Court of Appeals.

**§ 37.2-1106. When health professional or licensed hospital not liable.**

Any licensed health professional or licensed hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123, providing, withholding, or withdrawing treatment, testing, or detention pursuant to the court's or magistrate's authorization as provided in this chapter shall have no liability arising out of a claim to the extent the claim is based on lack of consent to the course of treatment, testing, or detention or the withholding or withdrawal of the treatment, testing, or detention. Any such professional or hospital providing, withholding, or withdrawing treatment with the consent of the person receiving or being offered treatment shall have no liability arising out of a claim to the extent it is based on lack of capacity to consent, if a court or a magistrate has denied a petition hereunder to authorize the treatment and the denial was based on an affirmative finding that the person was capable of making and communicating an informed decision regarding the proposed provision, withholding, or withdrawal of treatment.

**§ 37.2-1107. Fees and expenses.**

The provisions of § 37.2-804 relating to payment by the Commonwealth shall not apply to the cost of detention, testing, or treatment under this chapter.

**§ 37.2-1108. Effect of chapter on other laws.**

A. Nothing in this chapter shall be deemed to affect the right to use and the authority conferred by any other applicable statutory or regulatory procedure relating to consent or to diminish any common law authority of a physician or other treatment provider to provide, withhold, or withdraw services to a person unable to give or to communicate informed consent to those actions, with or without the consent

of the person's relative, including common law or other authority to provide treatment in an emergency situation; nor shall anything in this chapter be construed to affect the law defining the conditions under which consent shall be obtained for medical treatment or the nature of the consent required.

B. Judicial authorization pursuant to this chapter for providing, withholding, or withdrawing treatment need not be obtained for a person for whom consent or authorization has been granted or issued or may be obtained in accordance with the provisions of Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title 54.1 or other applicable statutes or common law of the Commonwealth.

§ 53.1-40.1. Medical and mental health treatment of prisoners incapable of giving consent.

A. The Director or his designee may petition the circuit court or *any district court judge or any special justice*, as defined in § ~~37.1-1~~ 37.2-100, herein referred to as the court, of the county or city in which the prisoner is located for an order authorizing treatment of a prisoner sentenced and committed to the Department of Corrections. The court shall authorize such treatment in a facility designated by the Director upon finding, on the basis of clear and convincing evidence, that the prisoner is incapable, either mentally or physically, of giving informed consent to such treatment and that the proposed treatment is in the best interests of the prisoner.

B. Prior to the court's authorization of such treatment, the court shall appoint an attorney to represent the interests of the prisoner. Evidence shall be presented concerning the prisoner's condition and proposed treatment, which evidence may, in the court's discretion and in the absence of objection by the prisoner or the prisoner's attorney, be submitted by affidavit.

C. Any order authorizing treatment pursuant to subsection A shall describe the treatment authorized and authorize generally such examinations, tests, ~~medication~~ medications, and other ~~treatment~~ treatments as are in the best interests of the prisoner but may not authorize nontherapeutic sterilization, abortion, or psychosurgery. Such order shall require the licensed physician, psychiatrist or clinical psychologist acting within his area of expertise who is treating the prisoner to report to the court and the prisoner's attorney any change in the prisoner's condition resulting in restoration of the prisoner's capability to consent prior to completion of the authorized treatment and related services. Upon receipt of such report, the court may enter such order withdrawing or modifying its prior authorization as it deems appropriate. Any petition or order under this section may be orally presented or entered, provided a written order is subsequently executed.

D. Any order of a judge under subsection A may be appealed de novo within ~~ten~~ 10 days to the circuit court for the jurisdiction where the prisoner is located, and any order of a circuit court hereunder, either originally or on appeal, may be appealed within ~~ten~~ 10 days to the Court of Appeals, which shall give such appeal priority and hear the appeal as soon as possible.

E. Whenever the director of any hospital or facility reasonably believes that treatment is necessary to protect the life, health, or safety of a prisoner, such treatment may be given during the period allowed for any appeal unless prohibited by order of a court of record wherein the appeal is pending.

F. Upon the advice of a licensed physician, psychiatrist, or clinical psychologist acting within his area of expertise who has attempted to obtain consent and upon a finding of probable cause to believe that a prisoner is incapable, due to any physical or mental condition, of giving informed consent to treatment and that the medical standard of care calls for testing, observation, or other treatment within the next ~~twelve~~ 12 hours to prevent death, disability or a serious irreversible condition, the court or, if the court is unavailable, a magistrate shall issue an order authorizing temporary admission of the prisoner to a hospital or other health care facility and authorizing such testing, observation, or other treatment. Such order shall expire after a period of ~~twelve~~ 12 hours unless extended by the court as part of an order authorizing treatment under subsection A.

G. Any licensed health professional or licensed facility providing services pursuant to the court's or magistrate's authorization as provided in this section shall have no liability arising out of a claim to the extent it is based on lack of consent to such services. Any such professional or facility providing services with the consent of the prisoner receiving treatment shall have no liability arising out of a claim to the extent it is based on lack of capacity to consent if a court or a magistrate has denied a petition hereunder to authorize such services, and such denial was based on an affirmative finding that the prisoner was capable of making an informed decision regarding the proposed services.

H. Nothing in this section shall be deemed to limit or repeal any common law rule relating to consent for medical treatment or the right to apply; or the authority conferred by; any other applicable statute or regulation relating to consent.

§ 53.1-40.2. Involuntary admission of prisoners with mental illness.

A. Upon the petition of the Director or his designee, any *district court judge or any special justice*, as defined by § ~~37.1-1~~ 37.2-100, of the county or city where the prisoner is located may issue an order authorizing involuntary admission of a prisoner who is sentenced and committed to the Department of Corrections and who is alleged or reliably reported to ~~be mentally ill~~ have a mental illness to a degree ~~which~~ that warrants hospitalization.

B. Such prisoner may be involuntarily admitted to a hospital or facility for the care and treatment of ~~the mentally ill persons with mental illness~~ by complying with the following admission procedures:

1. A hearing on the petition shall be scheduled as soon as possible, allowing the prisoner an

opportunity to prepare any defenses which he may have, obtain independent evaluation and expert opinion at his own expense, and summons other witnesses.

2. Prior to such hearing, the judge *or special justice* shall fully inform the prisoner of the allegations of the petition, the standard upon which he may be admitted involuntarily, the right of appeal from such hearing to the circuit court, and the right to jury trial on appeal. The judge *or special justice* shall ascertain if the prisoner is represented by counsel, and, if he is not represented by counsel, the judge *or special justice* shall appoint an attorney to represent the prisoner.

3. The judge *or special justice* shall require an examination of such prisoner by a psychiatrist who is licensed in Virginia or a clinical psychologist who is licensed in Virginia or, if such psychiatrist or clinical psychologist is not available, a physician or psychologist who is licensed in Virginia and who is qualified in the diagnosis of mental illness. The judge *or special justice* shall summons the examiner, who shall certify that he has personally examined the individual and has probable cause to believe that ~~he is or is not mentally ill, that such~~ the prisoner *does or does not have mental illness*, does or does not present an imminent danger to himself or others, and ~~requires~~ *does or does not require* involuntary hospitalization. The judge, ~~in his discretion,~~ *or special justice* may accept written certification of the examiner's findings if the examination has been personally made within the preceding five days and if there is no objection to the acceptance of such written certification by the prisoner or his attorney.

4. If the judge *or special justice*, after observing the prisoner and obtaining the necessary positive certification and other relevant evidence, finds specifically that (i) the prisoner presents an imminent danger to himself or others as a result of mental illness; or has been proven to be so seriously mentally ill as to be substantially unable to care for himself, and (ii) alternatives to involuntary admission have been investigated and deemed unsuitable and there is no less restrictive alternative to such admission, the judge *or special justice* shall by written order and specific findings so certify and order that the prisoner be placed in a hospital or other facility designated by the Director for a period not to exceed 180 days from the date of the court order. Such placement shall be in a hospital or other facility for the care and treatment of ~~the mentally ill~~ *which persons with mental illness* that is licensed or operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

5. The judge *or special justice* shall also order that the relevant medical records of such prisoner be released to the hospital, facility, or program in which he is placed upon request of the treating physician or director of the hospital, facility, or program.

6. The Department shall prepare the forms required in procedures for admission as approved by the Attorney General. These forms, which shall be the legal forms used in such admissions, shall be distributed by the Department to the clerks of the general district courts of the various counties and cities of the Commonwealth and to the directors of the respective state hospitals.

#### § 53.1-40.8. Fees and expenses.

A. Any special justice, as defined in ~~§ 37.1-88~~ 37.2-100, and any district court substitute judge who presides over hearings pursuant to the provisions of §§ 53.1-40.1 and 53.1-40.2 shall receive a fee as provided in ~~§ 37.1-89~~ 37.2-804 for each commitment hearing under § 53.1-40.2 and each proceeding under § 53.1-40.1 ruling on competency or treatment, and his necessary mileage. However, if the commitment hearing under § 53.1-40.2 and the proceeding under § 53.1-40.1 are combined for hearing or are heard on the same day, only one fee shall be allowed.

B. Every physician or clinical psychologist who is not regularly employed by the Commonwealth of Virginia who is required to serve as a witness for the Commonwealth in any proceeding under this article shall receive a fee as provided in ~~§ 37.1-89~~ 37.2-804 for each commitment hearing in which he serves. Other witnesses regularly summoned before a judge under the provisions of this article shall receive such compensation for their attendance and mileage as is allowed witnesses summoned to testify before grand juries.

C. Every attorney appointed under this article shall receive a fee as provided in ~~§ 37.1-89~~ 37.2-804 for each commitment hearing under § 53.1-40.2 and each proceeding under § 53.1-40.1 for which he is appointed. However, if the commitment hearing under § 53.1-40.2 and the proceeding under § 53.1-40.1 are combined for hearing or are heard on the same day, only one fee shall be allowed.

D. Except as hereinafter provided, all expenses incurred, including the fees, attendance, and mileage aforesaid, shall be paid by the Commonwealth. Any such fees, costs, and expenses incurred in connection with an examination or hearing for an admission pursuant to § 53.1-40.2 or in connection with a proceeding under § 53.1-40.1, when paid by the Commonwealth, shall be recoverable by the Commonwealth from the prisoner who is the subject of the examination, hearing, or proceeding, or from his estate. Such collection or recovery may be undertaken by the Department. All such fees, costs, and expenses, if collected or recovered by the Department, shall be refunded to the Commonwealth. No such fees or costs shall be recovered, however, from the prisoner or his estate when no good cause for his admission exists or when the recovery would create an undue financial hardship.

#### § 53.1-40.9. Civil admission proceeding prior to release.

A prisoner whose release from the custody of the Department of Corrections is imminent and who may ~~be mentally ill~~ *have a mental illness* and *be* in need of hospitalization or treatment may be the subject of a ~~commitment~~ *an involuntary admission* proceeding under ~~§ 37.1-67.3~~ §§ 37.2-814 through



37.2-819 within ~~fifteen~~ 15 days prior to his anticipated release date, and any ~~commitment~~ order entered in such proceedings shall be effective upon the release of the prisoner from the Department of Corrections. If a commitment hearing *for involuntary admission* under ~~§ 37.1-67.3~~ §§ 37.2-814 through 37.2-819 is combined for hearing or is heard on the same day with either a commitment hearing under § 53.1-40.2 or a proceeding under § 53.1-40.1, or both, only one fee shall be allowed for the special justice or district court substitute judge conducting these proceedings and only one fee shall be allowed for the attorney representing the prisoner in these proceedings.

§ 53.1-77. Jurisdiction of judge or magistrate of adopting county or city authorized to issue temporary detention orders.

When the jail of any other county or city has been adopted or designated under the provisions of §§ 53.1-74 and 53.1-76, any judge or ~~justice empowered to act under § 37.1-67.1~~ *magistrate authorized to issue temporary detention orders pursuant to §§ 37.2-809 through 37.2-813* of the adopting county or city shall have concurrent jurisdiction with those of the county or city wherein the adopted or designated jail is located, in proceedings under Chapter 2 8 (~~§ 37.1-63~~ 37.2-800 et seq.) of Title ~~37.1~~ 37.2, with respect to such persons as have been ~~committed~~ *involuntarily admitted* there from the adopting county or city. Such judge or ~~justice~~ *magistrate* may perform any such act or duty at such place as if such person was ~~confined~~ *involuntarily admitted* within the jurisdiction of the adopting county or city.

§ 54.1-2400.1. Mental health service providers; duty to protect third parties; immunity.

A. As used in this section:

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

"Client" or "patient" means any person who is voluntarily or involuntarily receiving mental health services or substance abuse services from any mental health service provider.

"Clinical psychologist" means a person who practices clinical psychology as defined in § 54.1-3600.

"Clinical social worker" means a person who practices social work as defined in § 54.1-3700.

"Licensed practical nurse" means a person licensed to practice practical nursing as defined in § 54.1-3000.

"Licensed substance abuse treatment practitioner" means any person licensed to engage in the practice of substance abuse treatment as defined in § 54.1-3500.

"Marriage and family therapist" means a person licensed to engage in the practice of marriage and family therapy as defined in § 54.1-3500.

"Mental health professional" means a person who by education and experience is professionally qualified and licensed in Virginia to provide counseling interventions designed to facilitate an individual's achievement of human development goals and remediate mental, emotional, or behavioral disorders and associated distresses which interfere with mental health and development.

"Mental health service provider" or "provider" refers to any of the following: (i) a person who provides professional services as a certified substance abuse counselor, clinical psychologist, clinical social worker, licensed substance abuse treatment practitioner, licensed practical nurse, marriage and family therapist, mental health professional, physician, professional counselor, psychologist, registered nurse, school psychologist, or social worker; (ii) a professional corporation, all of whose shareholders or members are so licensed; or (iii) a partnership, all of whose partners are so licensed.

"Professional counselor" means a person who practices counseling as defined in § 54.1-3500.

"Psychologist" means a person who practices psychology as defined in § 54.1-3600.

"Registered nurse" means a person licensed to practice professional nursing as defined in § 54.1-3000.

"School psychologist" means a person who practices school psychology as defined in § 54.1-3600.

"Social worker" means a person who practices social work as defined in § 54.1-3700.

B. A mental health service provider has a duty to take precautions to protect third parties from violent behavior or other serious harm only when the client has orally, in writing, or via sign language, communicated to the provider a specific and immediate threat to cause serious bodily injury or death to an identified or readily identifiable person or persons, if the provider reasonably believes, or should believe according to the standards of his profession, that the client has the intent and ability to carry out that threat immediately or imminently. If the third party is a child, in addition to taking precautions to protect the child from the behaviors in the above types of threats, the provider also has a duty to take precautions to protect the child if the client threatens to engage in behaviors that would constitute physical abuse or sexual abuse as defined in § 18.2-67.10. The duty to protect does not attach unless the threat has been communicated to the provider by the threatening client while the provider is engaged in his professional duties.

C. The duty set forth in subsection B is discharged by a mental health service provider who takes one or more of the following actions:

1. Seeks ~~civil commitment~~ *involuntary admission* of the client under Chapter 2 8 (~~§ 37.1-63~~ 37.2-800 et seq.) of Title ~~37.1~~ 37.2.

2. Makes reasonable attempts to warn the potential victims or the parent or guardian of the potential victim if the potential victim is under the age of ~~eighteen~~ 18.

3. Makes reasonable efforts to notify a law-enforcement official having jurisdiction in the client's or potential victim's place of residence or place of work, or place of work of the parent or guardian if the potential victim is under age ~~eighteen~~ 18, or both.

4. Takes steps reasonably available to the provider to prevent the client from using physical violence or other means of harm to others until the appropriate law-enforcement agency can be summoned and takes custody of the client.

5. Provides therapy or counseling to the client or patient in the session in which the threat has been communicated until the mental health service provider reasonably believes that the client no longer has the intent or the ability to carry out the threat.

D. A mental health service provider shall not be held civilly liable to any person for:

1. Breaching confidentiality with the limited purpose of protecting third parties by communicating the threats described in subsection B made by his clients to potential third party victims or law-enforcement agencies or by taking any of the actions specified in subsection C.

2. Failing to predict, in the absence of a threat described in subsection B, that the client would cause the third party serious physical harm.

3. Failing to take precautions other than those enumerated in subsection C to protect a potential third party victim from the client's violent behavior.

§ 54.1-2986. Procedure in absence of an advance directive; procedure for advance directive without agent; no presumption; persons who may authorize treatment for patients incapable of informed decisions; applicability restricted to nonprotesting patients.

A. Whenever (i) the attending physician of an adult patient has determined after personal examination that such patient, because of mental illness, mental retardation, or any other mental disorder, or a physical disorder which precludes communication or impairs judgment, is incapable of making an informed decision about providing, withholding or withdrawing a specific medical treatment or course of treatment and such adult patient has not made an advance directive in accordance with this article or (ii) the attending physician of an adult patient has determined after personal examination that such patient, because of mental illness, mental retardation, or any other mental disorder, or a physical disorder which precludes communication or impairs judgment, is incapable of making an informed decision about providing, withholding or withdrawing a specific medical treatment or course of treatment and the adult patient has made an advance directive in accordance with this article which does not indicate his wishes with respect to the specific course of treatment at issue and does not appoint an agent to make health care decisions upon his becoming incapable of making an informed decision, the attending physician may, upon compliance with the provisions of this section, provide to, withhold or withdraw from such patient medical or surgical care or treatment, including, but not limited to, life-prolonging procedures, upon the authorization of any of the following persons, in the specified order of priority, if the physician is not aware of any available, willing and competent person in a higher class:

1. A guardian or committee for the patient. This subdivision shall not be construed to require such appointment in order that a treatment decision can be made under this section; or

2. The patient's spouse except where a divorce action has been filed and the divorce is not final; or

3. An adult child of the patient; or

4. A parent of the patient; or

5. An adult brother or sister of the patient; or

6. Any other relative of the patient in the descending order of blood relationship.

If two or more of the persons listed in the same class in subdivisions A 3 through A 6 with equal decision-making priority inform the attending physician that they disagree as to a particular treatment decision, the attending physician may rely on the authorization of a majority of the reasonably available members of that class.

Any person authorized to consent to the providing, withholding or withdrawing of treatment pursuant to this article shall (i) prior to giving consent, make a good faith effort to ascertain the risks and benefits of and alternatives to the treatment and the religious beliefs and basic values of the patient receiving treatment, and to inform the patient, to the extent possible, of the proposed treatment and the fact that someone else is authorized to make a decision regarding that treatment and (ii) base his decision on the patient's religious beliefs and basic values and any preferences previously expressed by the patient regarding such treatment to the extent they are known, and if unknown or unclear, on the patient's best interests. Regardless of the absence of an advance directive, if the patient has expressed his intent to be an organ donor in any written document, no person noted in this section shall revoke, or in any way hinder, such organ donation.

B. The absence of an advance directive by an adult patient shall not give rise to any presumption as to his intent to consent to or refuse life-prolonging procedures.

C. The provisions of this article shall not apply to authorization of nontherapeutic sterilization, abortion, psychosurgery, or admission to a ~~mental retardation~~ facility or ~~psychiatric hospital~~, as defined in § ~~37.1-1~~ 37.2-100; however, the provisions of this article, if otherwise applicable, may be employed to authorize a specific treatment or course of treatment for a person who has been lawfully admitted to

~~such a mental retardation facility or psychiatric hospital.~~

Further, the provisions of this article shall not authorize providing, continuing, withholding or withdrawing of treatment if the provider of the treatment knows that such an action is protested by the patient. No person shall authorize treatment, or a course of treatment, pursuant to this article, that such person knows, or upon reasonable inquiry ought to know, is contrary to the religious beliefs or basic values of the patient unable to make a decision, whether expressed orally or in writing.

D. Prior to withholding or withdrawing treatment for which authorization has been obtained or will be sought pursuant to this article and prior to, or as soon as reasonably practicable thereafter, the initiation of treatment for which authorization has been obtained or will be sought pursuant to this article, and no less frequently than every 180 days while the treatment continues, the attending physician shall obtain written certification that the patient is incapable of making an informed decision regarding the treatment from a licensed physician or clinical psychologist which shall be based on a personal examination of the patient. Whenever the authorization is being sought for treatment of a mental illness, the second physician or licensed clinical psychologist shall not be otherwise currently involved in the treatment of the person assessed. The cost of the assessment shall be considered for all purposes a cost of the patient's treatment.

E. On petition of any person to the circuit court of the county or city in which any patient resides or is located for whom treatment will be or is currently being provided, withheld or withdrawn pursuant to this article, the court may enjoin such action upon finding by a preponderance of the evidence that the action is not lawfully authorized by this article or by other state or federal law.

§ 58.1-3607. Property exempt from taxation by designation.

A. Pursuant to the authority granted in Article X, Section 6 (a) (6) of the Constitution of Virginia to exempt property from taxation by designation, and notwithstanding the provisions of § 30-19.04, the real and personal property of the following organizations, corporations and associations shall be exempt from taxation:

1. Property of the Association for the Preservation of Virginia Antiquities, the Association for the Preservation of Petersburg Antiquities, Historic Richmond Foundation, the Confederate Memorial Literary Society, the Mount Vernon Ladies' Association of the Union, the Virginia Historical Society, the Thomas Jefferson Memorial Foundation, Incorporated, the Patrick Henry Memorial Foundation, Incorporated, the Stonewall Jackson Memorial, Incorporated, George Washington's Fredericksburg Foundation, Home Demonstration Clubs, 4-H Clubs, the Future Farmers of America, Incorporated, the posts of the American Legion, posts of United Spanish War Veterans, branches of the Fleet Reserve Association, posts of Veterans of Foreign Wars, posts of the Disabled American Veterans, Veterans of World War I, USA, Incorporated, the Society of the Cincinnati in the State of Virginia, the Manassas Battlefield Confederate Park, Incorporated, the Robert E. Lee Memorial Foundation, Incorporated, the Virginia Division of the United Daughters of the Confederacy, the General Organization of the United Daughters of the Confederacy, the Memorial Foundation of the Germanna Colonies in Virginia, Incorporated, the Lynchburg Fine Arts Centers, Incorporated, Norfolk Historic Foundation, National Trust for Historic Preservation in the United States, Historic Alexandria Foundation, and the Lynchburg Historical Foundation.

2. Property of Colonial Williamsburg, Incorporated, used for museum, historical, municipal, benevolent or charitable purposes, as long as such corporation continues to be organized and operated not for profit.

3. Property owned by the Virginia Home (previously Virginia Home for Incurables), incorporated by Chapter 533 of the Acts of Assembly of 1893-4, approved March 1, 1894.

4. The property owned by the Waterford Foundation, Incorporated, so long as it continues to be a nonprofit corporation to encourage and assist in restoration work in Waterford and to stimulate the revival of local arts and crafts.

5. Property of Historic Fredericksburg, Incorporated, and of the Clarke County Historical Association, used by such organizations for historical, benevolent or charitable purposes, as long as such corporation continues to be organized and operated not for profit.

6. Property of the Westmoreland Davis Foundation, Inc., so long as it continues to be a nonprofit corporation.

7. Property owned by the Women's Home Incorporated, in Arlington County and used for the rehabilitation of ~~alcoholic~~ women *with substance abuse*, so long as it continues to be operated not for profit.

B. Property designated to be exempt from taxation in subsection A of this section which was exempt on July 1, 1971, shall continue to be exempt under the rules of statutory construction applicable to exempt property prior to such date.

§ 63.2-1602. Other adult services.

Each local board shall:

1. Participate in nursing home pre-admission screenings of all individuals pursuant to § 32.1-330;
2. Provide assisted living facility assessments of residents and applicants pursuant to § 63.2-1804;
3. Participate in long-term care service coordination pursuant to § 2.2-708;

4. ~~Participate in prescription teams for and~~ Provide social services *or public assistance, as appropriate, to patients consumers* discharged from state hospitals *or training centers* pursuant to §§ ~~37.1-98 and 37.1-197.1~~ 37.2-505 and 37.2-837; and

5. Participate in other programs pursuant to state and federal law.

§ 63.2-1801. Access to assisted living facilities by community services boards and behavioral health authorities.

All assisted living facilities shall provide reasonable access to staff or contractual agents of community services boards, ~~local government departments with policy advisory community services boards~~ or behavioral health authorities as defined in Title 37.1 § 37.2-100 for the purposes of (i) assessing or evaluating, (ii) providing case management or other services or assistance, or (iii) monitoring the care of ~~clients consumers~~ residing in the facility. Such staff or contractual agents also shall be given reasonable access to other facility residents who have previously requested their services.

§ 63.2-1805. Admissions and discharge.

A. The Board shall adopt regulations:

1. Governing admissions to assisted living facilities;

2. Establishing a process to ensure that residents admitted or retained in an assisted living facility receive the appropriate services and that, in order to determine whether a resident's needs can continue to be met by the facility and whether continued placement in the facility is in the best interests of the resident, each resident receives periodic independent reassessments and reassessments in the event of significant deterioration of the resident's condition;

3. Governing appropriate discharge planning for residents whose care needs can no longer be met by the facility;

4. Addressing the involuntary discharge of residents;

5. Requiring that residents are informed of their rights pursuant to § 63.2-1808 at the time of admission;

6. Establishing a process to ensure that any resident temporarily detained in ~~an inpatient~~ a facility pursuant to ~~§ 37.1-67.1~~ §§ 37.2-809 through 37.2-813 is accepted back in the assisted living facility if the resident is not involuntarily ~~committed~~ admitted pursuant to ~~§ 37.1-67.3~~ §§ 37.2-814 through 37.2-819; and

7. Requiring that each assisted living facility train all employees who are mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting procedures and the consequences for failing to make a required report.

B. Assisted living facilities shall not admit or retain individuals with any of the following conditions or care needs:

1. Ventilator dependency.

2. Dermal ulcers III and IV, except those stage III ulcers ~~which~~ that are determined by an independent physician to be healing.

3. Intravenous therapy or injections directly into the vein except for intermittent intravenous therapy managed by a health care professional licensed in Virginia or as permitted in subsection C.

4. Airborne infectious disease in a communicable state; that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold.

5. Psychotropic medications without appropriate diagnosis and treatment plans.

6. Nasogastric tubes.

7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection C.

8. Individuals presenting an imminent physical threat or danger to self or others.

9. Individuals requiring continuous licensed nursing care (seven-days-a-week, 24-hours-a-day).

10. Individuals whose physician certifies that placement is no longer appropriate.

11. Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by the uniform assessment instrument and meet Medicaid nursing facility level-of-care criteria as defined in the State Plan for Medical Assistance. Maximum physical assistance means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

12. Individuals whose health care needs cannot be met in the specific assisted living facility as determined by the facility.

13. Such other medical and functional care needs of residents which the Board determines cannot properly be met in an assisted living facility.

C. Except for auxiliary grant recipients, at the request of the resident, and pursuant to regulations of the Board, care for the conditions or care needs defined in subdivisions B 3 and B 7 may be provided to a resident in an assisted living facility by a licensed physician, a licensed nurse or a nurse holding a multistate licensure privilege under a physician's treatment plan or by a home care organization licensed in Virginia when the resident's independent physician determines that such care is appropriate for the resident.

D. In adopting regulations pursuant to subsections A, B and C, the Board shall consult with the Departments of Health and Mental Health, Mental Retardation and Substance Abuse Services.

2. That whenever any of the conditions, requirements, provisions, or contents of any section or chapter of Title 37.1 or any other title of the Code of Virginia as such titles existed prior to October 1, 2005, are transferred in the same or modified form to a new section or chapter of Title 37.2 or any other title of the Code and whenever any such former section or chapter is given a new number in Title 37.2 or any other title, all references to any such former section or chapter of Title 37.1 or other title appearing in this Code shall be construed to apply to the new or renumbered section or chapter containing such conditions, requirements, provisions, contents, or portions thereof.

3. That the regulations of any department or agency affected by the revision of Title 37.1 or such other titles in effect on the effective date of this act shall continue in effect to the extent that they are not in conflict with this act and shall be deemed to be regulations adopted under this act.

4. That this title revision of Title 37.1 as Title 37.2 shall not be construed to require the reappointment of any officer or any member of a board, council, committee, or other appointed body referred to in Title 37.2 and each such officer and member shall continue to serve for the term for which appointed pursuant to the provisions of Title 37.1.

5. That the provisions of § 30-152 of the Code of Virginia shall apply to the codification of Title 37.2 so as to give effect to other laws enacted by the 2005 session of the General Assembly, notwithstanding the delay in the effective date of this act.

6. That the repeal of Title 37.1, effective as of October 1, 2005, shall not affect any act or offense done or committed, or any penalty incurred, or any right established, accrued, or accruing on or before such date, or any proceeding, prosecution, suit, or action pending on that day. Except as otherwise provided in this act, neither the repeal of Title 37.1 nor the enactment of Title 37.2 shall apply to offenses committed prior to October 1, 2005, and prosecution for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purpose of this enactment, an offense was committed prior to October 1, 2005, if any of the essential elements of the offense occurred prior thereto.

7. That any notice given, recognizance taken, or process or writ issued before October 1, 2005, shall be valid although given, taken, or to be returned to a day after such date, in like manner as if Title 37.2 had been effective before the same was given, taken, or issued.

8. That if any clause, sentence, paragraph, subdivision, or section of Title 37.2 shall be adjudged in any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or section thereof directly involved in the controversy in which the judgment shall have been rendered, and to this end the provisions of Title 37.2 are declared severable.

9. That Title 37.1 (§§ 37.1-1 through 37.1-260) is repealed.

10. That the provisions of this act shall become effective on October 1, 2005.