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HOUSE BILL NO. 300**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Health, Welfare and Institutions
on January 19, 2006)

(Patron Prior to Substitute—Delegate Jones, S.C.)

A BILL to amend and reenact §§ 2.2-2818, 22.1-178, 32.1-46, 32.1-50, 32.1-60, 32.1-138, 32.1-325, 45.1-161.70, 45.1-161.292:43, 46.2-208, 46.2-322, 54.1-3812, 59.1-297, 59.1-298, 63.2-1716 and 63.2-1808 of the Code of Virginia relating to licensed physician assistants.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2818, 22.1-178, 32.1-46, 32.1-50, 32.1-60, 32.1-138, 32.1-325, 45.1-161.70, 45.1-161.292:43, 46.2-208, 46.2-322, 54.1-3812, 59.1-297, 59.1-298, 63.2-1716 and 63.2-1808 of the Code of Virginia are amended and reenacted as follows:

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

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

Such contribution shall be financed through appropriations provided by law.

B. The plan shall:

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

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

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

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

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

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

2. Include coverage for the treatment of breast cancer by dose-intensive chemotherapy with autologous bone marrow transplants or stem cell support when performed at a clinical program authorized to provide such therapies as a part of clinical trials sponsored by the National Cancer Institute. For persons previously covered under the plan, there shall be no denial of coverage due to the existence of a preexisting condition.

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

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60 of such Guidelines or Standards or any official amendment thereto.

61 4. Include an appeals process for resolution of written complaints concerning denials or partial
62 denials of claims that shall provide reasonable procedures for resolution of such written complaints and
63 shall be published and disseminated to all covered state employees. The appeals process shall include a
64 separate expedited emergency appeals procedure that shall provide resolution within one business day of
65 receipt of a complaint concerning situations requiring immediate medical care. For appeals involving
66 adverse decisions as defined in § 32.1-137.7, the Department shall contract with one or more impartial
67 health entities to review such decisions. Impartial health entities may include medical peer review
68 organizations and independent utilization review companies. The Department shall adopt regulations to
69 assure that the impartial health entity conducting the reviews has adequate standards, credentials and
70 experience for such review. The impartial health entity shall examine the final denial of claims to
71 determine whether the decision is objective, clinically valid, and compatible with established principles
72 of health care. The decision of the impartial health entity shall (i) be in writing, (ii) contain findings of
73 fact as to the material issues in the case and the basis for those findings, and (iii) be final and binding if
74 consistent with law and policy.

75 Prior to assigning an appeal to an impartial health entity, the Department shall verify that the
76 impartial health entity conducting the review of a denial of claims has no relationship or association
77 with (i) the covered employee; (ii) the treating health care provider, or any of its employees or affiliates;
78 (iii) the medical care facility at which the covered service would be provided, or any of its employees or
79 affiliates; or (iv) the development or manufacture of the drug, device, procedure or other therapy that is
80 the subject of the final denial of a claim. The impartial health entity shall not be a subsidiary of, nor
81 owned or controlled by, a health plan, a trade association of health plans, or a professional association
82 of health care providers. There shall be no liability on the part of and no cause of action shall arise
83 against any officer or employee of an impartial health entity for any actions taken or not taken or
84 statements made by such officer or employee in good faith in the performance of his powers and duties.

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

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

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

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

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

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

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

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

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

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

133 14. Permit any individual covered under the plan direct access to the health care services of a
134 participating specialist (i) authorized to provide services under the plan and (ii) selected by the covered
135 individual. The plan shall have a procedure by which an individual who has an ongoing special
136 condition may, after consultation with the primary care physician, receive a referral to a specialist for
137 such condition who shall be responsible for and capable of providing and coordinating the individual's
138 primary and specialty care related to the initial specialty care referral. If such an individual's care would
139 most appropriately be coordinated by such a specialist, the plan shall refer the individual to a specialist.
140 For the purposes of this subdivision, "special condition" means a condition or disease that is (i)
141 life-threatening, degenerative, or disabling and (ii) requires specialized medical care over a prolonged
142 period of time. Within the treatment period authorized by the referral, such specialist shall be permitted
143 to treat the individual without a further referral from the individual's primary care provider and may
144 authorize such referrals, procedures, tests, and other medical services related to the initial referral as the
145 individual's primary care provider would otherwise be permitted to provide or authorize. The plan shall
146 have a procedure by which an individual who has an ongoing special condition that requires ongoing
147 care from a specialist may receive a standing referral to such specialist for the treatment of the special
148 condition. If the primary care provider, in consultation with the plan and the specialist, if any,
149 determines that such a standing referral is appropriate, the plan or issuer shall make such a referral to a
150 specialist. Nothing contained herein shall prohibit the plan from requiring a participating specialist to
151 provide written notification to the covered individual's primary care physician of any visit to such
152 specialist. Such notification may include a description of the health care services rendered at the time of
153 the visit.

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

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

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

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

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

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

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

183 For purposes of this subdivision:

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

188 "FDA" means the Federal Food and Drug Administration.

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

193 "NCI" means the National Cancer Institute.

194 "NIH" means the National Institutes of Health.

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

196 "Patient cost" means the cost of a medically necessary health care service that is incurred as a result
197 of the treatment being provided to a patient for purposes of a clinical trial. "Patient cost" does not
198 include (i) the cost of nonhealth care services that a patient may be required to receive as a result of the
199 treatment being provided for purposes of a clinical trial, (ii) costs associated with managing the research
200 associated with the clinical trial, or (iii) the cost of the investigational drug or device.

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

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

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

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

214 Coverage under this subdivision shall apply only if:

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

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

227 18. Include coverage for biologically based mental illness.

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

234 Coverage for biologically based mental illnesses shall neither be different nor separate from coverage
235 for any other illness, condition or disorder for purposes of determining deductibles, benefit year or
236 lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits,
237 copayment and coinsurance factors, and benefit year maximum for deductibles and copayment and
238 coinsurance factors.

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

244 In no case, however, shall coverage for mental disorders provided pursuant to this section be

diminished or reduced below the coverage in effect for such disorders on January 1, 1999.

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

20. Include coverage for colorectal cancer screening, specifically screening with an annual fecal occult blood test, flexible sigmoidoscopy or colonoscopy, or in appropriate circumstances radiologic imaging, in accordance with the most recently published recommendations established by the American College of Gastroenterology, in consultation with the American Cancer Society, for the ages, family histories, and frequencies referenced in such recommendations. The coverage for colorectal cancer screening shall not be more restrictive than or separate from coverage provided for any other illness, condition or disorder for purposes of determining deductibles, benefit year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayments and coinsurance factors.

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

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

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

D. For the purposes of this section:

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

"Standard reference compendia" means the American Medical Association Drug Evaluations, the American Hospital Formulary Service Drug Information, or the United States Pharmacopoeia Dispensing Information.

"State employee" means state employee as defined in § 51.1-124.3; employee as defined in § 51.1-201; the Governor, Lieutenant Governor and Attorney General; judge as defined in § 51.1-301 and judges, clerks and deputy clerks of regional juvenile and domestic relations, county juvenile and domestic relations, and district courts of the Commonwealth; and interns and residents employed by the School of Medicine and Hospital of the University of Virginia, and interns, residents, and employees of the Virginia Commonwealth University Health System Authority as provided in § 23-50.16:24.

306 "Part-time state employees" means classified or similarly situated employees in legislative, executive,
307 judicial or independent agencies who are compensated on a salaried basis and work at least 20 hours,
308 but less than 32 hours, per week.

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

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

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

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

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

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

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

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

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

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

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

349 The Ombudsman shall:

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

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

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

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

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

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

361 7. Upon request, assist covered employees in using the procedures and processes available to them
362 from their health plan, including all appeal procedures. Such assistance may require the review of health
363 care records of a covered employee, which shall be done only with that employee's express written
364 consent. The confidentiality of any such medical records shall be maintained in accordance with the
365 confidentiality and disclosure laws of the Commonwealth.

366 8. Ensure that covered employees have access to the services provided by the Ombudsman and that
367 the covered employees receive timely responses from the Ombudsman or his representatives to the

inquiries.

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

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

For purposes of this subsection, "assignment of benefits" means the transfer of dental care coverage reimbursement benefits or other rights under the plan. The assignment of benefits shall not be effective until the covered employee notifies the plan in writing of the assignment.

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

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

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

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

§ 22.1-178. Requirements for persons employed to drive school buses.

A. No school board shall hire, employ, or enter into any agreement with any person for the purposes of operating a school bus transporting pupils unless the person proposed to so operate such school bus shall:

1. Have a physical examination of a scope prescribed by the Board of Education with the advice of the Medical Society of Virginia and furnish a form prescribed by the Board of Education showing the results of such examination.

2. Furnish a statement or copy of records from the Department of Motor Vehicles showing that the records of such Department do not disclose that the person, within the preceding five years, has been convicted upon a charge of driving under the influence of alcohol or drugs, convicted of a felony or assigned to any alcohol safety action program or driver alcohol rehabilitation program pursuant to § 18.2-271.1 or, within the preceding twelve months, has been convicted of two or more moving traffic violations or required to attend a driver improvement clinic by the Commissioner of the Department of Motor Vehicles pursuant to § 46.2-498.

3. Furnish a statement signed by two reputable persons who reside in the school division or in the applicant's community that the person is of good moral character.

4. Exhibit a license showing the person has successfully undertaken the examination prescribed by § 46.2-339.

5. Have reached the age of eighteen on the first day of the school year.

B. Any school board may require successful completion of the American National Red Cross first-aid course or its equivalent as a condition to employment to operate a school bus transporting pupils.

C. School boards may require persons accepting employment after July 1, 1994, as a driver of a school bus transporting pupils to agree, as a condition of employment, to submit to alcohol and controlled substance testing. Any such tests shall be conducted in compliance with Board of Education regulations.

D. The documents required pursuant to subdivisions A 1 and A 2 of this section shall be furnished annually prior to the anniversary date of the employment agreement as a condition to continuing

429 employment to operate a school bus.

430 E. The documents required pursuant to this section shall be filed with, and made a part of, the
431 records of the school board employing such person as a school bus operator.

432 F. The State Department of Education shall furnish to the several division superintendents the
433 necessary forms to be used by applicants in furnishing the information required by this section. Insofar
434 as practicable, such forms shall be designed to limit paperwork, avoid the possibility of mistake, and
435 furnish all parties involved with a complete and accurate record of the information required.

436 G. The physical examination required by subsection A may be performed and the report of the
437 results signed by a licensed nurse practitioner *or physician assistant*.

438 § 32.1-46. Immunization of patients against certain diseases.

439 A. The parent, guardian or person standing in loco parentis of each child within this Commonwealth
440 shall cause such child to be immunized by vaccine against diphtheria, tetanus, whooping cough and
441 poliomyelitis before such child attains the age of one year, against *Haemophilus influenzae* type b before
442 he attains the age of 30 months, and against measles (rubeola), German measles (rubella) and mumps
443 before such child attains the age of two years. All children born on or after January 1, 1994, shall be
444 required to receive immunization against hepatitis B before their first birthday. All children shall also be
445 required to receive a second dose of measles (rubeola) vaccine in accordance with the regulations of the
446 Board. The Board's regulations shall require that all children receive a second dose of measles (rubeola)
447 vaccine prior to first entering kindergarten or first grade and that all children who have not yet received
448 a second dose of measles (rubeola) vaccine receive such second dose prior to entering the sixth grade.
449 All children born on or after January 1, 1997, shall be required to receive immunization against varicella
450 zoster (chicken pox), not earlier than the age of 12 months. Children who have evidence of immunity as
451 demonstrated by laboratory confirmation of immunity or a reliable medical history of disease are exempt
452 from such requirement. After July 1, 2001, all children who have not yet received immunization against
453 hepatitis B shall receive such immunization prior to entering sixth grade.

454 The parent, guardian or person standing in loco parentis may have such child immunized by a
455 physician or registered nurse or may present the child to the appropriate local health department, which
456 shall administer the required vaccines without charge.

457 B. A physician, registered nurse or local health department administering a vaccine required by this
458 section shall provide to the person who presents the child for immunizations a certificate that shall state
459 the diseases for which the child has been immunized, the numbers of doses given, the dates when
460 administered and any further immunizations indicated.

461 C. The vaccines required by this section shall meet the standards prescribed in, and be administered
462 in accordance with, regulations of the Board.

463 D. The provisions of this section shall not apply if:

464 1. The parent or guardian of the child objects thereto on the grounds that the administration of
465 immunizing agents conflicts with his religious tenets or practices, unless an emergency or epidemic of
466 disease has been declared by the Board, or

467 2. The parent or guardian presents a statement from a physician licensed to practice medicine in
468 Virginia, or a licensed nurse practitioner, that states that the physical condition of the child is such that
469 the administration of one or more of the required immunizing agents would be detrimental to the health
470 of the child.

471 E. For the purpose of protecting the public health by ensuring that each child receives
472 age-appropriate immunizations, any physician, *physician assistant*, nurse practitioner, licensed
473 institutional health care provider, local or district health department, the Virginia Immunization
474 Information System, and the Department of Health may share immunization and patient locator
475 information without parental authorization, including, but not limited to, the month, day, and year of
476 each administered immunization; the patient's name, address, telephone number, birth date, and social
477 security number; and the parents' names. The immunization information; the patient's name, address,
478 telephone number, birth date, and social security number; and the parents' names shall be confidential
479 and shall only be shared for the purposes set out in this subsection.

480 § 32.1-50. Examination of persons suspected of having active tuberculosis disease; reporting; report
481 forms; report schedule; laboratory reports and required samples.

482 A. Any local health director may request any person having or reasonably suspected of having active
483 tuberculosis disease to be examined immediately for the purpose of ascertaining the presence or absence
484 of the disease. Such examination may be made by any licensed physician or licensed nurse practitioner
485 selected by such person at his own expense and approved by the local health director or by the local
486 health director at no cost to such person.

487 B. Each physician or nurse practitioner practicing in the Commonwealth who diagnoses or treats a
488 person for active tuberculosis disease, *or a physician assistant who treats a person for active*
489 *tuberculosis disease*, as defined in § 32.1-49.1 and each person in charge of a medical care facility
490 providing inpatient or outpatient diagnosis or treatment for active tuberculosis disease shall report to the

local health director within such time period and in such manner as may be prescribed by regulations of the Board. Such report, at a minimum, shall include an initial report when there are reasonable grounds to believe that a person has active tuberculosis disease, and a subsequent report when a person ceases treatment for tuberculosis disease. Cessation of treatment may be inferred when the person (i) fails to keep a scheduled appointment, (ii) relocates without transferring care, or (iii) discontinues care either upon or against the advice of the treating physician, *physician assistant*, or nurse practitioner.

C. The initial disease report shall include the following: the affected person's name; date of birth; gender; address; pertinent clinical, radiographic, microbiologic, and pathologic reports, whether final or pending; such other information as is needed to locate the patient for follow-up; and any other information as prescribed by regulations of the Board.

D. Subsequent reports shall be submitted within such time, at such frequency, and in such manner as may be prescribed by regulations of the Board and shall provide updated clinical status, bacteriologic and radiographic results, assessment of treatment adherence, name of current care provider, and any other information as prescribed by the Board.

E. Every director of any laboratory doing business in the Commonwealth shall, according to the manner and schedule as determined by the Board, report any result diagnostic of or highly correlated with active tuberculosis disease, whether testing is done in-house or referred to an out-of-state laboratory, including cultures positive for tubercle bacilli and smears suggestive of tubercle bacilli, and shall report the results of tests for antimicrobial susceptibility performed on cultures positive for tubercle bacilli. Each director of any laboratory shall also submit a representative and viable sample of the initial culture to the Virginia Division of Consolidated Laboratory Services or other laboratory designated by the Board to receive such specimen in order to ensure testing for antimicrobial susceptibility on each initial isolate from a person with active tuberculosis disease; however, this requirement may be fulfilled by submission to the local health director of a report of antimicrobial drug susceptibilities performed by a laboratory certified by existing state or national agencies to perform such testing. The intention to file a written report shall be communicated to the local health director at the time the finding of a culture positive for tubercle bacilli is initially reported.

§ 32.1-60. Prenatal tests required.

Every physician, *physician assistant*, or nurse practitioner attending a pregnant woman during gestation shall examine and test such woman for such venereal diseases as the Board may designate within 15 days after beginning such attendance. Every other person permitted by law to attend upon pregnant women but not permitted by law to make such examinations and tests, shall cause such examinations and tests to be made by a licensed physician licensed nurse practitioner, or clinic. Serological tests required by this section may be performed by the Department of General Services, Division of Consolidated Laboratory Services (DCLS).

§ 32.1-138. Enumeration; posting of policies; staff training; responsibilities devolving on guardians, etc.; exceptions; certification of compliance.

A. The governing body of a nursing home facility required to be licensed under the provisions of Article 1 (§ 32.1-123 et seq.) of this chapter, through the administrator of such facility, shall cause to be promulgated policies and procedures to ensure that, at the minimum, each patient admitted to such facility:

1. Is fully informed, as evidenced by the patient's written acknowledgment, prior to or at the time of admission and during his stay, of his rights and of all rules and regulations governing patient conduct and responsibilities;

2. Is fully informed, prior to or at the time of admission and during his stay, of services available in the facility and of related charges, including any charges for services not covered under Titles XVIII or XIX of the United States Social Security Act or not covered by the facility's basic per diem rate;

3. Is fully informed in summary form of the findings concerning the facility in federal Health Care Financing Administration surveys and investigations, if any;

4. Is fully informed by a physician, *physician assistant*, or nurse practitioner of his medical condition unless medically contraindicated as documented by a physician, *physician assistant*, or nurse practitioner in his medical record and is afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research;

5. Is transferred or discharged only for medical reasons, or for his welfare or that of other patients, or for nonpayment for his stay except as prohibited by Titles XVIII or XIX of the United States Social Security Act, and is given reasonable advance notice as provided in § 32.1-138.1 to ensure orderly transfer or discharge, and such actions are documented in his medical record;

6. Is encouraged and assisted, throughout the period of his stay, to exercise his rights as a patient and as a citizen and to this end may voice grievances and recommend changes in policies and services to facility staff and to outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;

7. May manage his personal financial affairs, or may have access to records of financial transactions made on his behalf at least once a month and is given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility to the facility for any period of time in conformance with state law;

8. Is free from mental and physical abuse and free from chemical and, except in emergencies, physical restraints except as authorized in writing by a physician for a specified and limited period of time or when necessary to protect the patient from injury to himself or to others;

9. Is assured confidential treatment of his personal and medical records and may approve or refuse their release to any individual outside the facility, except in case of his transfer to another health care institution or as required by law or third-party payment contract;

10. Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;

11. Is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care;

12. May associate and communicate privately with persons of his choice and send and receive his personal mail unopened, unless medically contraindicated as documented by his physician in his medical record;

13. May meet with and participate in activities of social, religious and community groups at his discretion, unless medically contraindicated as documented by his physician, *physician assistant*, or nurse practitioner in his medical record;

14. May retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other patients and unless medically contraindicated as documented by his physician, *physician assistant*, or nurse practitioner in his medical record; and

15. If married, is assured privacy for visits by his or her spouse and if both are inpatients in the facility, is permitted to share a room with such spouse unless medically contraindicated as documented by the attending physician, *physician assistant*, or nurse practitioner in the medical record.

B. All established policies and procedures regarding the rights and responsibilities of patients shall be printed in at least 12-point type and posted conspicuously in a public place in all nursing home facilities required to be licensed under the provisions of Article 1 (§ 32.1-123 et seq.) of this chapter. These policies and procedures shall include the name and telephone number of the complaint coordinator in the Division of Licensure and Certification of the Virginia Department of Health, the Adult Protective Services' toll-free telephone number, as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program and any substate ombudsman program serving the area. Copies of such policies and procedures shall be given to patients upon admittance to the facility and made available to patients currently in residence, to any guardians, next of kin, or sponsoring agency or agencies, and to the public.

C. The provisions of this section shall not be construed to restrict any right that any patient in residence has under law.

D. Each facility shall provide appropriate staff training to implement each patient's rights included in subsection A hereof.

E. All rights and responsibilities specified in subsection A hereof and § 32.1-138.1 as they pertain to (i) a patient adjudicated incapacitated in accordance with state law, (ii) a patient who is found, by his physician, to be medically incapable of understanding these rights, or (iii) a patient who is unable to communicate with others shall devolve to such patient's guardian, next of kin, sponsoring agency or agencies, or representative payee, except when the facility itself is representative payee, selected pursuant to section 205(j) of Title II of the United States Social Security Act.

F. Nothing in this section shall be construed to prescribe, regulate, or control the remedial care and treatment or nursing service provided to any patient in a nursing institution to which the provisions of § 32.1-128 are applicable.

G. It shall be the responsibility of the Commissioner to insure that the provisions of this section and the provisions of § 32.1-138.1 are observed and implemented by nursing home facilities. Each nursing home facility to which this section and § 32.1-138.1 are applicable shall certify to the Commissioner that it is in compliance with the provisions of this section and the provisions of § 32.1-138.1 as a condition to the issuance or renewal of the license required by Article 1 (§ 32.1-123 et seq.) of this chapter.

§ 32.1-325. Board to submit plan for medical assistance services to Secretary of Health and Human Services pursuant to federal law; administration of plan; contracts with health care providers.

A. The Board, subject to the approval of the Governor, is authorized to prepare, amend from time to time and submit to the Secretary of the United States Department of Health and Human Services a state plan for medical assistance services pursuant to Title XIX of the United States Social Security Act and any amendments thereto. The Board shall include in such plan:

1. A provision for payment of medical assistance on behalf of individuals, up to the age of 21, placed in foster homes or private institutions by private, nonprofit agencies licensed as child-placing

agencies by the Department of Social Services or placed through state and local subsidized adoptions to the extent permitted under federal statute;

2. A provision for determining eligibility for benefits for medically needy individuals which disregards from countable resources an amount not in excess of \$3,500 for the individual and an amount not in excess of \$3,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by (i) the face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources and (ii) the amount of any other revocable or irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial expenses;

3. A requirement that, in determining eligibility, a home shall be disregarded. For those medically needy persons whose eligibility for medical assistance is required by federal law to be dependent on the budget methodology for Aid to Families with Dependent Children, a home means the house and lot used as the principal residence and all contiguous property. For all other persons, a home shall mean the house and lot used as the principal residence, as well as all contiguous property, as long as the value of the land, exclusive of the lot occupied by the house, does not exceed \$5,000. In any case in which the definition of home as provided here is more restrictive than that provided in the state plan for medical assistance services in Virginia as it was in effect on January 1, 1972, then a home means the house and lot used as the principal residence and all contiguous property essential to the operation of the home regardless of value;

4. A provision for payment of medical assistance on behalf of individuals up to the age of 21, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission;

5. A provision for deducting from an institutionalized recipient's income an amount for the maintenance of the individual's spouse at home;

6. A provision for payment of medical assistance on behalf of pregnant women which provides for payment for inpatient postpartum treatment in accordance with the medical criteria outlined in the most current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards for Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and Gynecologists. Payment shall be made for any postpartum home visit or visits for the mothers and the children which are within the time periods recommended by the attending physicians in accordance with and as indicated by such Guidelines or Standards. For the purposes of this subdivision, such Guidelines or Standards shall include any changes thereto within six months of the publication of such Guidelines or Standards or any official amendment thereto;

7. A provision for the payment for family planning services on behalf of women who were Medicaid-eligible for prenatal care and delivery as provided in this section at the time of delivery. Such family planning services shall begin with delivery and continue for a period of 24 months, if the woman continues to meet the financial eligibility requirements for a pregnant woman under Medicaid. For the purposes of this section, family planning services shall not cover payment for abortion services and no funds shall be used to perform, assist, encourage or make direct referrals for abortions;

8. A provision for payment of medical assistance for high-dose chemotherapy and bone marrow transplants on behalf of individuals over the age of 21 who have been diagnosed with lymphoma, breast cancer, myeloma, or leukemia and have been determined by the treating health care provider to have a performance status sufficient to proceed with such high-dose chemotherapy and bone marrow transplant. Appeals of these cases shall be handled in accordance with the Department's expedited appeals process;

9. A provision identifying entities approved by the Board to receive applications and to determine eligibility for medical assistance;

10. A provision for breast reconstructive surgery following the medically necessary removal of a breast for any medical reason. Breast reductions shall be covered, if prior authorization has been obtained, for all medically necessary indications. Such procedures shall be considered noncosmetic;

11. A provision for payment of medical assistance for annual pap smears;

12. A provision for payment of medical assistance services for prostheses following the medically necessary complete or partial removal of a breast for any medical reason;

13. A provision for payment of medical assistance which provides for payment for 48 hours of inpatient treatment for a patient following a radical or modified radical mastectomy and 24 hours of inpatient care following a total mastectomy or a partial mastectomy with lymph node dissection for treatment of disease or trauma of the breast. Nothing in this subdivision shall be construed as requiring the provision of inpatient coverage where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate;

14. A requirement that certificates of medical necessity for durable medical equipment and any

675 supporting verifiable documentation shall be signed, dated, and returned by the physician, *physician*
676 *assistant*, or nurse practitioner and in the durable medical equipment provider's possession within 60
677 days from the time the ordered durable medical equipment and supplies are first furnished by the
678 durable medical equipment provider;

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

685 16. A provision for payment of medical assistance for low-dose screening mammograms for
686 determining the presence of occult breast cancer. Such coverage shall make available one screening
687 mammogram to persons age 35 through 39, one such mammogram biennially to persons age 40 through
688 49, and one such mammogram annually to persons age 50 and over. The term "mammogram" means an
689 X-ray examination of the breast using equipment dedicated specifically for mammography, including but
690 not limited to the X-ray tube, filter, compression device, screens, film and cassettes, with an average
691 radiation exposure of less than one rad mid-breast, two views of each breast;

692 17. A provision, when in compliance with federal law and regulation and approved by the Centers
693 for Medicare & Medicaid Services (CMS), for payment of medical assistance services delivered to
694 Medicaid-eligible students when such services qualify for reimbursement by the Virginia Medicaid
695 program and may be provided by school divisions;

696 18. A provision for payment of medical assistance services for liver, heart and lung transplantation
697 procedures for individuals over the age of 21 years when (i) there is no effective alternative medical or
698 surgical therapy available with outcomes that are at least comparable; (ii) the transplant procedure and
699 application of the procedure in treatment of the specific condition have been clearly demonstrated to be
700 medically effective and not experimental or investigational; (iii) prior authorization by the Department of
701 Medical Assistance Services has been obtained; (iv) the patient selection criteria of the specific
702 transplant center where the surgery is proposed to be performed have been used by the transplant team
703 or program to determine the appropriateness of the patient for the procedure; (v) current medical therapy
704 has failed and the patient has failed to respond to appropriate therapeutic management; (vi) the patient is
705 not in an irreversible terminal state; and (vii) the transplant is likely to prolong the patient's life and
706 restore a range of physical and social functioning in the activities of daily living;

707 19. A provision for payment of medical assistance for colorectal cancer screening, specifically
708 screening with an annual fecal occult blood test, flexible sigmoidoscopy or colonoscopy, or in
709 appropriate circumstances radiologic imaging, in accordance with the most recently published
710 recommendations established by the American College of Gastroenterology, in consultation with the
711 American Cancer Society, for the ages, family histories, and frequencies referenced in such
712 recommendations;

713 20. A provision for payment of medical assistance for custom ocular prostheses;

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

721 22. A provision for payment of medical assistance, pursuant to the Breast and Cervical Cancer
722 Prevention and Treatment Act of 2000 (P.L. 106-354), for certain women with breast or cervical cancer
723 when such women (i) have been screened for breast or cervical cancer under the Centers for Disease
724 Control and Prevention (CDC) Breast and Cervical Cancer Early Detection Program established under
725 Title XV of the Public Health Service Act; (ii) need treatment for breast or cervical cancer, including
726 treatment for a precancerous condition of the breast or cervix; (iii) are not otherwise covered under
727 creditable coverage, as defined in § 2701 (c) of the Public Health Service Act; (iv) are not otherwise
728 eligible for medical assistance services under any mandatory categorically needy eligibility group; and
729 (v) have not attained age 65. This provision shall include an expedited eligibility determination for such
730 women;

731 23. A provision for the coordinated administration, including outreach, enrollment, re-enrollment and
732 services delivery, of medical assistance services provided to medically indigent children pursuant to this
733 chapter, which shall be called Family Access to Medical Insurance Security (FAMIS) Plus and the
734 FAMIS Plan program in § 32.1-351. A single application form shall be used to determine eligibility for
735 both programs; and

736 24. A provision, consistent with federal law, to establish a long-term care partnership program that

shall encourage the private purchase of long-term care insurance as the primary source of funding the participant's long-term care. Such program shall provide protection from estate recovery as authorized by federal law.

B. In preparing the plan, the Board shall:

1. Work cooperatively with the State Board of Health to ensure that quality patient care is provided and that the health, safety, security, rights and welfare of patients are ensured.

2. Initiate such cost containment or other measures as are set forth in the appropriation act.

3. Make, adopt, promulgate and enforce such regulations as may be necessary to carry out the provisions of this chapter.

4. Examine, before acting on a regulation to be published in the Virginia Register of Regulations pursuant to § 2.2-4007, the potential fiscal impact of such regulation on local boards of social services. For regulations with potential fiscal impact, the Board shall share copies of the fiscal impact analysis with local boards of social services prior to submission to the Registrar. The fiscal impact analysis shall include the projected costs/savings to the local boards of social services to implement or comply with such regulation and, where applicable, sources of potential funds to implement or comply with such regulation.

5. Incorporate sanctions and remedies for certified nursing facilities established by state law, in accordance with 42 C.F.R. § 488.400 et seq. "Enforcement of Compliance for Long-Term Care Facilities With Deficiencies."

6. On and after July 1, 2002, require that a prescription benefit card, health insurance benefit card, or other technology that complies with the requirements set forth in § 38.2-3407.4:2 be issued to each recipient of medical assistance services, and shall upon any changes in the required data elements set forth in subsection A of § 38.2-3407.4:2, either reissue the card or provide recipients such corrective information as may be required to electronically process a prescription claim.

C. In order to enable the Commonwealth to continue to receive federal grants or reimbursement for medical assistance or related services, the Board, subject to the approval of the Governor, may adopt, regardless of any other provision of this chapter, such amendments to the state plan for medical assistance services as may be necessary to conform such plan with amendments to the United States Social Security Act or other relevant federal law and their implementing regulations or constructions of these laws and regulations by courts of competent jurisdiction or the United States Secretary of Health and Human Services.

In the event conforming amendments to the state plan for medical assistance services are adopted, the Board shall not be required to comply with the requirements of Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2. However, the Board shall, pursuant to the requirements of § 2.2-4002, (i) notify the Registrar of Regulations that such amendment is necessary to meet the requirements of federal law or regulations or because of the order of any state or federal court, or (ii) certify to the Governor that the regulations are necessitated by an emergency situation. Any such amendments that are in conflict with the Code of Virginia shall only remain in effect until July 1 following adjournment of the next regular session of the General Assembly unless enacted into law.

D. The Director of Medical Assistance Services is authorized to:

1. Administer such state plan and receive and expend federal funds therefor in accordance with applicable federal and state laws and regulations; and enter into all contracts necessary or incidental to the performance of the Department's duties and the execution of its powers as provided by law.

2. Enter into agreements and contracts with medical care facilities, physicians, dentists and other health care providers where necessary to carry out the provisions of such state plan. Any such agreement or contract shall terminate upon conviction of the provider of a felony. In the event such conviction is reversed upon appeal, the provider may apply to the Director of Medical Assistance Services for a new agreement or contract. Such provider may also apply to the Director for reconsideration of the agreement or contract termination if the conviction is not appealed, or if it is not reversed upon appeal.

3. Refuse to enter into or renew an agreement or contract with any provider who has been convicted of a felony.

4. Refuse to enter into or renew an agreement or contract with a provider who is or has been a principal in a professional or other corporation when such corporation has been convicted of a felony.

E. In any case in which a Medicaid agreement or contract is denied to a provider on the basis of his interest in a convicted professional or other corporation, the Director shall, upon request, conduct a hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) regarding the provider's participation in the conduct resulting in the conviction.

The Director's decision upon reconsideration shall be consistent with federal and state laws. The Director may consider the nature and extent of any adverse impact the agreement or contract denial or termination may have on the medical care provided to Virginia Medicaid recipients.

F. When the services provided for by such plan are services which a marriage and family therapist,

798 clinical psychologist, clinical social worker, professional counselor, or clinical nurse specialist is licensed
799 to render in Virginia, the Director shall contract with any duly licensed marriage and family therapist,
800 duly licensed clinical psychologist, licensed clinical social worker, licensed professional counselor or
801 licensed clinical nurse specialist who makes application to be a provider of such services, and thereafter
802 shall pay for covered services as provided in the state plan. The Board shall promulgate regulations
803 which reimburse licensed marriage and family therapists, licensed clinical psychologists, licensed clinical
804 social workers, licensed professional counselors and licensed clinical nurse specialists at rates based
805 upon reasonable criteria, including the professional credentials required for licensure.

806 G. The Board shall prepare and submit to the Secretary of the United States Department of Health
807 and Human Services such amendments to the state plan for medical assistance services as may be
808 permitted by federal law to establish a program of family assistance whereby children over the age of 18
809 years shall make reasonable contributions, as determined by regulations of the Board, toward the cost of
810 providing medical assistance under the plan to their parents.

811 H. The Department of Medical Assistance Services shall:

812 1. Include in its provider networks and all of its health maintenance organization contracts a
813 provision for the payment of medical assistance on behalf of individuals up to the age of 21 who have
814 special needs and who are Medicaid eligible, including individuals who have been victims of child abuse
815 and neglect, for medically necessary assessment and treatment services, when such services are delivered
816 by a provider which specializes solely in the diagnosis and treatment of child abuse and neglect, or a
817 provider with comparable expertise, as determined by the Director.

818 2. Amend the Medallion II waiver and its implementing regulations to develop and implement an
819 exception, with procedural requirements, to mandatory enrollment for certain children between birth and
820 age three certified by the Department of Mental Health, Mental Retardation and Substance Abuse
821 Services as eligible for services pursuant to Part C of the Individuals with Disabilities Education Act (20
822 U.S.C. § 1471 et seq.).

823 I. The Director is authorized to negotiate and enter into agreements for services rendered to eligible
824 recipients with special needs. The Board shall promulgate regulations regarding these special needs
825 patients, to include persons with AIDS, ventilator-dependent patients, and other recipients with special
826 needs as defined by the Board.

827 J. Except as provided in subdivision A 1 of § 2.2-4345, the provisions of the Virginia Public
828 Procurement Act (§ 2.2-4300 et seq.) shall not apply to the activities of the Director authorized by
829 subsection I of this section. Agreements made pursuant to this subsection shall comply with federal law
830 and regulation.

831 § 45.1-161.70. Qualification for crew membership; direction of crews.

832 A. To qualify for membership in mine rescue crews an applicant shall be an experienced miner and
833 shall pass a physical examination by a licensed physician, *physician assistant*, or licensed nurse
834 practitioner at least annually. A record that such examination was taken shall be kept on file by the
835 operator who employs the crew members and a copy shall be furnished to the Director.

836 B. All rescue or recovery work performed by these crews shall be under the jurisdiction of the
837 Department. The Department shall consult with company officials, representatives of the Mine Safety
838 and Health Administration and representatives of the miners, and all should be in agreement as far as
839 possible on the proper procedure for rescue and recovery; however, the Chief in his discretion may take
840 full responsibility in directing such work. Procedures for use of apparatus or equipment shall be guided
841 by the mine rescue apparatus and auxiliary equipment manuals.

842 § 45.1-161.292:43. Qualification for crew membership; direction of crews.

843 A. To qualify for membership in mine rescue crews, an applicant shall (i) be an experienced miner,
844 (ii) be not more than 50 years of age, and (iii) pass a physical examination by a licensed physician,
845 *licensed physician assistant*, or licensed nurse practitioner at least annually. A record that such
846 examination was taken shall be kept on file by the operator who employs the crew members and a copy
847 shall be furnished to the Director.

848 B. All rescue or recovery work performed by these crews shall be under the jurisdiction of the
849 Department. The Department shall consult with company officials, representatives of the Mine Safety
850 and Health Administration and representatives of the miners, and all should be in agreement as far as
851 possible on the proper procedure for rescue and recovery; however, the Director in his discretion may
852 take full responsibility in directing such work. In all instances, procedures shall be guided by the mine
853 rescue apparatus and auxiliary equipment manuals.

854 § 46.2-208. Records of Department; when open for inspection; release of privileged information.

855 A. All records in the office of the Department containing the specific classes of information outlined
856 below shall be considered privileged records:

- 857 1. Personal information, including all data defined as "personal information" in § 2.2-3801;
- 858 2. Driver information, including all data that relates to driver's license status and driver activity; and
- 859 3. Vehicle information, including all descriptive vehicle data and title, registration, and vehicle

activity data.

B. The Commissioner shall release such information only under the following conditions:

1. Notwithstanding other provisions of this section, medical data included in personal data shall be released only to a physician, *physician assistant*, or nurse practitioner as provided in § 46.2-322.

2. Insurance data may be released as specified in §§ 46.2-372, 46.2-380, and 46.2-706.

3. Notwithstanding other provisions of this section, information disclosed or furnished shall be assessed a fee as specified in § 46.2-214.

4. When the person requesting the information is (i) the subject of the information, (ii) the parent or guardian of the subject of the information, (iii) the authorized representative of the subject of the information, or (iv) the owner of the vehicle that is the subject of the information, the Commissioner shall provide him with the requested information and a complete explanation of it. Requests for such information need not be made in writing or in person and may be made orally or by telephone, provided that the Department is satisfied that there is adequate verification of the requester's identity. When so requested in writing by (a) the subject of the information, (b) the parent or guardian of the subject of the information, (c) the authorized representative of the subject of the information, or (d) the owner of the vehicle that is the subject of the information, the Commissioner shall verify and, if necessary, correct the personal information provided and furnish driver and vehicle information in the form of an abstract of the record.

5. On the written request of any insurance carrier, surety, or representative of an insurance carrier or surety, the Commissioner shall furnish such insurance carrier, surety, or representative an abstract of the record of any person subject to the provisions of this title. The abstract shall include any record of any conviction of a violation of any provision of any statute or ordinance relating to the operation or ownership of a motor vehicle or of any injury or damage in which he was involved and a report of which is required by § 46.2-372. No such report of any conviction or accident shall be made after 60 months from the date of the conviction or accident unless the Commissioner or court used the conviction or accident as a reason for the suspension or revocation of a driver's license or driving privilege, in which case the revocation or suspension and any conviction or accident pertaining thereto shall not be reported after 60 months from the date that the driver's license or driving privilege has been reinstated. This abstract shall not be admissible in evidence in any court proceedings.

6. On the written request of any business organization or its agent, in the conduct of its business, the Commissioner shall compare personal information supplied by the business organization or agent with that contained in the Department's records and, when the information supplied by the business organization or agent is different from that contained in the Department's records, provide the business organization or agent with correct information as contained in the Department's records. Personal information provided under this subdivision shall be used solely for the purpose of pursuing remedies that require locating an individual.

7. The Commissioner shall provide vehicle information to any business organization or agent on such business' or agent's written request. Disclosures made under this subdivision shall not include any personal information and shall not be subject to the limitations contained in subdivision 6 of this subsection.

8. On the written request of any motor vehicle rental or leasing company or its designated agent, the Commissioner shall (i) compare personal information supplied by the company or agent with that contained in the Department's records and, when the information supplied by the company or agent is different from that contained in the Department's records, provide the company or agent with correct information as contained in the Department's records and (ii) provide the company or agent with driver information in the form of an abstract of any person subject to the provisions of this title. Such abstract shall include any record of any conviction of a violation of any provision of any statute or ordinance relating to the operation or ownership of a motor vehicle or of any injury or damage in which the subject of the abstract was involved and a report of which is required by § 46.2-372. No such abstract shall include any record of any conviction or accident more than 60 months after the date of such conviction or accident unless the Commissioner or court used the conviction or accident as a reason for the suspension or revocation of a driver's license or driving privilege, in which case the revocation or suspension and any conviction or accident pertaining thereto shall cease to be included in such abstract after 60 months from the date on which the driver's license or driving privilege was reinstated. No abstract released under this subdivision shall be admissible in evidence in any court proceedings.

9. On the request of any federal, state, or local governmental entity, law-enforcement officer, attorney for the Commonwealth, court, or the authorized agent of any of the foregoing, the Commissioner shall (i) compare personal information supplied by the governmental entity, officer, attorney for the Commonwealth, court, or the authorized agent of any of the foregoing, with that contained in the Department's records and, when the information supplied by the governmental entity, officer, attorney for the Commonwealth, court, or the authorized agent of any of the foregoing, is different from that

921 contained in the Department's records, provide the governmental entity, officer, attorney for the
922 Commonwealth, court, or the authorized agent of any of the foregoing, with correct information as
923 contained in the Department's records and (ii) provide driver and vehicle information in the form of an
924 abstract of the record showing all convictions, accidents, driver's license suspensions or revocations, and
925 other appropriate information as the governmental entity, officer, attorney for the Commonwealth, court,
926 or the authorized agent of any of the foregoing, may require in order to carry out its official functions.

927 10. On request of the driver licensing authority in any other state or foreign country, the
928 Commissioner shall provide whatever classes of information the requesting authority shall require in
929 order to carry out its official functions.

930 11. On the written request of any employer, prospective employer, or authorized agent of either, and
931 with the written consent of the individual concerned, the Commissioner shall (i) compare personal
932 information supplied by the employer, prospective employer, or agent with that contained in the
933 Department's records and, when the information supplied by the employer, prospective employer, or
934 agent is different from that contained in the Department's records, provide the employer, prospective
935 employer, or agent with correct information as contained in the Department's records and (ii) provide the
936 employer, prospective employer, or agent with driver information in the form of an abstract of an
937 individual's record showing all convictions, accidents, driver's license suspensions or revocations, and
938 any type of driver's license that the individual currently possesses, provided that the individual's position
939 or the position that the individual is being considered for involves the operation of a motor vehicle.

940 12. On the written request of any member of or applicant for membership in a volunteer fire
941 company or volunteer rescue squad, the Commissioner shall (i) compare personal information supplied
942 by the volunteer fire company or volunteer rescue squad with that contained in the Department's records
943 and, when the information supplied by the volunteer fire company or volunteer rescue squad is different
944 from that contained in the Department's records, provide the volunteer fire company or volunteer rescue
945 squad with correct information as contained in the Department's records and (ii) provide driver
946 information in the form of an abstract of the member's or applicant's record showing all convictions,
947 accidents, license suspensions or revocations, and any type of driver's license that the individual
948 currently possesses. Such abstract shall be provided free of charge if the request is accompanied by
949 appropriate written evidence that the person is a member of or applicant for membership in a volunteer
950 fire company or volunteer rescue squad and the abstract is needed by a volunteer fire company or
951 volunteer rescue squad to establish the qualifications of the member or applicant to operate equipment
952 owned by the volunteer fire company or volunteer rescue squad.

953 13. On the written request of any person who has applied to be a volunteer with a Virginia affiliate
954 of Big Brothers/Big Sisters of America, the Commissioner shall (i) compare personal information
955 supplied by a Virginia affiliate of Big Brothers/Big Sisters of America with that contained in the
956 Department's records and, when the information supplied by a Virginia affiliate of Big Brothers/Big
957 Sisters of America is different from that contained in the Department's records, provide the Virginia
958 affiliate of Big Brothers/Big Sisters of America with correct information as contained in the
959 Department's records and (ii) provide driver information in the form of an abstract of the applicant's
960 record showing all convictions, accidents, license suspensions or revocations, and any type of driver's
961 license that the individual currently possesses. Such abstract shall be provided free of charge if the
962 request is accompanied by appropriate written evidence that the person has applied to be a volunteer
963 with a Virginia affiliate of Big Brothers/Big Sisters of America.

964 14. On the written request of any person who has applied to be a volunteer with a court-appointed
965 special advocate program pursuant to § 9.1-153, the Commissioner shall provide an abstract of the
966 applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of
967 driver's license that the individual currently possesses. Such abstract shall be provided free of charge if
968 the request is accompanied by appropriate written evidence that the person has applied to be a volunteer
969 with a court-appointed special advocate program pursuant to § 9.1-153.

970 15. Upon the request of any employer, prospective employer, or authorized representative of either,
971 the Commissioner shall (i) compare personal information supplied by the employer, prospective
972 employer, or agent with that contained in the Department's records and, when the information supplied
973 by the employer, prospective employer, or agent is different from that contained in the Department's
974 records, provide the employer, prospective employer, or agent with correct information as contained in
975 the Department's records and (ii) provide driver information in the form of an abstract of the driving
976 record of any individual who has been issued a commercial driver's license, provided that the
977 individual's position or the position that the individual is being considered for involves the operation of
978 a commercial motor vehicle. Such abstract shall show all convictions, accidents, license suspensions,
979 revocations, or disqualifications, and any type of driver's license that the individual currently possesses.

980 16. Upon the receipt of a completed application and payment of applicable processing fees, the
981 Commissioner may enter into an agreement with any governmental authority or business to exchange
982 information specified in this section by electronic or other means.

17. Upon the request of an attorney representing a person in a motor vehicle accident, the Commissioner shall provide vehicle information, including the owner's name and address, to the attorney.

18. Upon the request, in the course of business, of any authorized representative of an insurance company or of any not-for-profit entity organized to prevent and detect insurance fraud, or perform rating and underwriting activities, the Commissioner shall provide to such person (i) all vehicle information, including the owner's name and address, descriptive data and title, registration, and vehicle activity data as requested or (ii) all driver information including name, license number and classification, date of birth, and address information for each driver under the age of 22 licensed in the Commonwealth of Virginia meeting the request criteria designated by such person, with such request criteria consisting of driver's license number or address information. No such information shall be used for solicitation of sales, marketing, or other commercial purposes.

19. Upon the request of an officer authorized to issue criminal warrants, for the purpose of issuing a warrant for arrest for unlawful disposal of trash or refuse in violation of § 33.1-346, the Commissioner shall provide vehicle information, including the owner's name and address.

20. Upon written request of the compliance agent of a private security services business, as defined in § 9.1-138, which is licensed by the Department of Criminal Justice Services, the Commissioner shall provide the name and address of the owner of the vehicle under procedures determined by the Commissioner.

21. Upon the request of the operator of a toll facility, or an authorized agent or employee of a toll facility operator, for the purpose of obtaining vehicle owner data under subsection I of § 46.2-819.1.

22. On the written request of any person who has applied to be a volunteer with a Virginia affiliate of Compeer, the Commissioner shall (i) compare personal information supplied by a Virginia affiliate of Compeer with that contained in the Department's records and, when the information supplied by a Virginia affiliate of Compeer is different from that contained in the Department's records, provide the Virginia affiliate of Compeer with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person has applied to be a volunteer with a Virginia affiliate of Compeer.

23. Upon the request of the Department of Environmental Quality for the purpose of obtaining vehicle owner data in connection with enforcement actions involving on-road testing of motor vehicles, pursuant to § 46.2-1178.1.

24. On the written request of any person who has applied to be a volunteer vehicle operator with a Virginia chapter of the American Red Cross, the Commissioner shall (i) compare personal information supplied by a Virginia chapter of the American Red Cross with that contained in the Department's records and, when the information supplied by a Virginia chapter of the American Red Cross is different from that contained in the Department's records, provide the Virginia chapter of the American Red Cross with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person has applied to be a volunteer vehicle operator with a Virginia chapter of the American Red Cross.

C. Whenever the Commissioner issues an order to suspend or revoke the driver's license or driving privilege of any individual, he may notify the National Driver Register Service operated by the United States Department of Transportation and any similar national driver information system and provide whatever classes of information the authority may require.

D. Accident reports may be inspected under the provisions of §§ 46.2-379 and 46.2-380.

E. Whenever the Commissioner takes any licensing action pursuant to the provisions of the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.), he may provide information to the Commercial Driver License Information System, or any similar national commercial driver information system, regarding such action.

F. In addition to the foregoing provisions of this section, vehicle information may also be inspected under the provisions of §§ 43-33, 43-34, 46.2-633, and §§ 46.2-1200.1 through 46.2-1237.

G. The Department may promulgate regulations to govern the means by which personal, vehicle, and driver information is requested and disseminated.

H. Driving records of any person accused of an offense involving the operation of a motor vehicle shall be provided by the Commissioner upon request to any person acting as counsel for the accused. If such counsel is from the public defender's office or has been appointed by the court, such records shall

1044 be provided free of charge.

1045 I. The Department shall maintain the records of persons convicted of violations of § 18.2-36.2,
1046 subsection B of § 29.1-738, and §§ 29.1-738.02, 29.1-738.2, and 29.1-738.4 which shall be forwarded by
1047 every general district court or circuit court or the clerk thereof, pursuant to § 46.2-383. Such records
1048 shall be electronically available to any law-enforcement officer as provided for under clause (ii) of
1049 subdivision B 9.

1050 § 46.2-322. Examination of licensee believed incompetent; suspension, or restriction of license;
1051 license application to include questions as to physical or mental conditions of applicant; false answers;
1052 examination of applicant; physician's, physician assistant's, or nurse practitioner's statement.

1053 A. If the Department has good cause to believe that a driver is incapacitated and therefore unable to
1054 drive a motor vehicle safely, after written notice of at least 15 days to the person, it may require him to
1055 submit to an examination to determine his fitness to drive a motor vehicle. If the driver so requests in
1056 writing, the Department shall give the Department's reasons for the examination, including the identity
1057 of all persons who have supplied information to the Department regarding the driver's fitness to drive a
1058 motor vehicle. However, the Department shall not supply the reasons or information if its source is a
1059 relative of the driver or a physician, *physician assistant*, or nurse practitioner, a pharmacist, or another
1060 licensed medical professional as defined in § 38.2-602 treating, or prescribing medications for, the
1061 driver.

1062 B. As a part of its examination, the Department may require a physical examination by a licensed
1063 physician or licensed nurse practitioner and a report on the results thereof. When it has completed its
1064 examination, the Department shall take whatever action may be appropriate and may suspend the license
1065 or privilege to drive a motor vehicle in the Commonwealth of the person or permit him to retain his
1066 license or privilege to drive a motor vehicle in the Commonwealth, or may issue a license subject to the
1067 restrictions authorized by § 46.2-329. Refusal or neglect of the person to submit to the examination or
1068 comply with restrictions imposed by the Department shall be grounds for suspension of his license or
1069 privilege to drive a motor vehicle in the Commonwealth.

1070 C. The Commissioner shall include, as a part of the application for an original driver's license, or
1071 renewal thereof, questions as to the existence of physical or mental conditions that impair the ability of
1072 the applicant to drive a motor vehicle safely. Any person knowingly giving a false answer to any such
1073 question shall be guilty of a Class 2 misdemeanor. If the answer to any such question indicates the
1074 existence of such condition, the Commissioner shall require an examination of the applicant by a
1075 licensed physician or licensed nurse practitioner as a prerequisite to the issuance of the driver's license.
1076 The report of the examination shall contain a statement that, in the opinion of the physician or nurse
1077 practitioner, the applicant's physical or mental condition at the time of the examination does or does not
1078 preclude his safe driving of motor vehicles.

1079 § 54.1-3812. Release of records.

1080 A. A veterinarian licensed by the Board shall release or authorize the release of rabies immunization
1081 records and other relevant treatment data of an animal under his care to a requesting physician,
1082 *physician assistant*, or nurse practitioner who is contemplating the administration of the rabies treatment
1083 protocol to any person under his care who has been the victim of a bite or traumatic injury to the skin
1084 or body from such animal.

1085 B. Any veterinarian licensed by the Board who in good faith releases or authorizes the release of an
1086 animal's rabies immunization records and other relevant data pursuant to this section shall not be liable
1087 for civil damages resulting from the release of such information.

1088 § 59.1-297. Right of cancellation.

1089 A. Every health spa contract for the sale of health spa services may be cancelled under the following
1090 circumstances:

1091 1. A buyer may cancel the contract without penalty within three business days of its making and,
1092 upon notice to the health spa of the buyer's intent to cancel, shall be entitled to receive a refund of all
1093 moneys paid under the contract.

1094 2. A buyer may cancel the contract if the health spa relocates or goes out of business and fails to
1095 provide comparable alternate facilities within five driving miles of the location designated in the health
1096 spa contract. Upon receipt of notice of the buyer's intent to cancel, the health spa shall refund to the
1097 buyer funds paid or accepted in payment of the contract in an amount computed as prescribed in
1098 § 59.1-297.1.

1099 3. The contract may be cancelled if the buyer dies or becomes physically unable to use a substantial
1100 portion of the services for 30 or more consecutive days. If the buyer becomes physically unable to use a
1101 substantial portion of the services for 30 or more consecutive days and wishes to cancel his contract, he
1102 must provide the health spa with a signed statement from his doctor, *physician assistant*, or nurse
1103 practitioner verifying that he is physically unable to use a substantial portion of the health spa services
1104 for 30 or more consecutive days. Upon receipt of notice of the buyer's intent to cancel, the health spa
1105 shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed as

prescribed in § 59.1-297.1. In the case of disability, the health spa may require the buyer to submit to a physical examination by a doctor, *physician assistant*, or nurse practitioner agreeable to the buyer and the health spa within 30 days of receipt of notice of the buyer's intent to cancel. The cost of the examination shall be borne by the health spa.

B. The buyer shall notify the health spa of cancellation in writing, by certified mail, return receipt requested, or personal delivery, to the address of the health spa as specified in the health spa contract.

C. If the customer has executed any credit or lien agreement with the health spa or its representatives or agents to pay for all or part of health spa services, any such negotiable instrument executed by the buyer shall be returned to the buyer within 30 days after such cancellation.

D. If the spa agrees to allow a consumer to cancel for any other reason not outlined in this section, upon receipt of notice of cancellation by the buyer, the health spa shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed as prescribed in § 59.1-297.1.

§ 59.1-298. Notice to buyer.

A copy of the executed health spa contract shall be delivered to the buyer at the time the contract is executed. All health spa contracts shall (i) be in writing, (ii) be signed by the buyer, (iii) designate the date on which the buyer actually signed the contract, (iv) state the starting and expiration dates of the initial membership period, (v) separately identify any initiation fee, (vi) either in the contract itself or in a separate notice provided to the buyer at the time the contract is executed, notify each buyer that the buyer should attempt to resolve with the health spa any complaint the buyer has with the health spa, and that the Virginia Department of Agriculture and Consumer Services, Office of Consumer Affairs regulates health spas in the Commonwealth pursuant to the provisions of the Virginia Health Spa Act, and (vii) contain the provisions set forth in § 59.1-297 under a conspicuous caption: "BUYER'S RIGHT TO CANCEL" that shall read substantially as follows:

If you wish to cancel this contract, you may cancel by making or delivering written notice to this health spa. The notice must say that you do not wish -
to

be bound by the contract and must be delivered or mailed before midnight of the third business day after you sign this contract. The notice must be delivered or mailed to:
(Health spa shall insert its name and mailing address.)

If canceled within three business days, you will be entitled to a refund of a-
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moneys paid. You may also cancel this contract if this spa goes out of business or relocates and fails to provide comparable alternate facilities within five driving miles of the location designated in this contract. You may

also cancel if you become physically unable to use a substantial portion of the health spa services for 30 or more consecutive days, and your estate may cancel in the event of your death. You must prove you are unable to use a substantial portion of the health spa services by a doctor's, *physician assistant's*, or nurse

practitioner's certificate, and the health spa may also require that you submit to a physical examination, within 30 days of the notice of cancellation, by a doctor, *physician assistant*, or nurse practitioner agreeable to you and the

health spa. If you cancel after the three business days, the health spa may retain or collect a portion of the contract price equal to the proportionate value of the services or use of facilities you have already received. Any refund due to you shall be paid within 30 days of the effective date of cancellation.

§ 63.2-1716. Child day center operated by religious institution exempt from licensure; annual statement and documentary evidence required; enforcement; injunctive relief.

A. Notwithstanding any other provisions of this chapter, a child day center, including a child day center that is a child welfare agency operated or conducted under the auspices of a religious institution shall be exempt from the licensure requirements of this subtitle, but shall comply with the provisions of this section unless it chooses to be licensed. If such religious institution chooses not to be licensed, it shall file with the Commissioner, prior to beginning operation of a child day center and thereafter annually, a statement of intent to operate a child day center, certification that the child day center has disclosed in writing to the parents or guardians of the children in the center the fact that it is exempt

1165 from licensure, the qualifications of the personnel employed therein and documentary evidence that:

1166 1. Such religious institution has tax exempt status as a nonprofit religious institution in accordance
1167 with § 501 (c) of the Internal Revenue Code of 1954, as amended, or that the real property owned and
1168 exclusively occupied by the religious institution is exempt from local taxation.

1169 2. Within the prior 90 days for the initial exemption and within the prior 180 days for exemptions
1170 thereafter, the local health department and local fire marshal or Office of the State Fire Marshal,
1171 whichever is appropriate, have inspected the physical facilities of the child day center and have
1172 determined that the center is in compliance with applicable laws and regulations with regard to food
1173 service activities, health and sanitation, water supply, building codes, and the Statewide Fire Prevention
1174 Code or the Uniform Statewide Building Code.

1175 3. The child day center employs supervisory personnel according to the following ratio of staff to
1176 children:

1177 a. One staff member to four children from zero to twenty-four months.

1178 b. One staff member to ten children from ages twenty-four months to six years.

1179 c. One staff member to twenty-five children ages six years and older.

1180 Staff shall be counted in the required staff-to-children ratios only when they are directly supervising
1181 children. In each grouping of children, at least one adult staff member shall be regularly present. Staff
1182 members shall be at least 16 years of age. Staff members under 18 years of age shall be under the
1183 supervision of an adult staff member. Adult staff members shall supervise no more than two staff
1184 members under 18 years of age at any given time.

1185 4. Each person in a supervisory position has been certified by a practicing physician *or physician*
1186 *assistant* to be free from any disability which would prevent him from caring for children under his
1187 supervision.

1188 5. The center is in compliance with the requirements of:

1189 a. This section.

1190 b. Section 63.2-1724 relating to background checks.

1191 c. Section 63.2-1509 relating to the reporting of suspected cases of child abuse and neglect.

1192 d. Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 regarding a valid Virginia driver's license or
1193 commercial driver's license; of Article 21 (§ 46.2-1157 et seq.) of Chapter 10 of Title 46.2, regarding
1194 vehicle inspections; ensuring that any vehicle used to transport children is an insured motor vehicle as
1195 defined in § 46.2-705; and Article 13 (§ 46.2-1095 et seq.) of Chapter 10 of Title 46.2, regarding child
1196 restraint devices.

1197 6. The following aspects of the child day center's operations are described in a written statement
1198 provided to the parents or guardians of the children in the center and made available to the general
1199 public: physical facilities, enrollment capacity, food services, health requirements for the staff and public
1200 liability insurance.

1201 B. The center shall establish and implement procedures for:

1202 1. Hand washing by staff and children before eating and after toileting and diapering.

1203 2. Appropriate supervision of all children in care, including daily intake and dismissal procedures to
1204 ensure safety of children.

1205 3. A daily simple health screening and exclusion of sick children by a person trained to perform such
1206 screenings.

1207 4. Ensuring that a person trained and certified in first aid is present at the center whenever children
1208 are present.

1209 5. Ensuring that all children in the center are in compliance with the provisions of § 32.1-46
1210 regarding the immunization of children against certain diseases.

1211 6. Ensuring that all areas of the premises accessible to children are free of obvious injury hazards,
1212 including providing and maintaining sand or other cushioning material under playground equipment.

1213 7. Ensuring that all staff are able to recognize the signs of child abuse and neglect.

1214 C. The Commissioner may perform on-site inspections of religious institutions to confirm compliance
1215 with the provisions of this section and to investigate complaints that the religious institution is not in
1216 compliance with the provisions of this section. The Commissioner may revoke the exemption for any
1217 child day center in serious or persistent violation of the requirements of this section. If a religious
1218 institution operates a child day center and does not file the statement and documentary evidence required
1219 by this section, the Commissioner shall give reasonable notice to such religious institution of the nature
1220 of its noncompliance and may thereafter take such action as he determines appropriate, including a suit
1221 to enjoin the operation of the child day center.

1222 D. Any person who has reason to believe that a child day center falling within the provisions of this
1223 section is not in compliance with the requirements of this section may report the same to the local
1224 department, the local health department or the local fire marshal, each of which may inspect the child
1225 day center for noncompliance, give reasonable notice to the religious institution, and thereafter may take
1226 appropriate action as provided by law, including a suit to enjoin the operation of the child day center.

E. Nothing in this section shall prohibit a child day center operated by or conducted under the auspices of a religious institution from obtaining a license pursuant to this chapter.

§ 63.2-1808. Rights and responsibilities of residents of assisted living facilities; certification of licensure.

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

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

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

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

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

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

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

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

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

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

10. Is free from mental, emotional, physical, sexual, and economic abuse or exploitation; is free from forced isolation, threats or other degrading or demeaning acts against him; and his known needs are not neglected or ignored by personnel of the facility;

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

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

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

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

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

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

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

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

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

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

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

c. In communications, in writing or by telephone;

d. During visitations with other persons;

e. In the resident's room or portion thereof; residents shall be permitted to have guests or other

1288 residents in their rooms unless to do so would infringe upon the rights of other residents; staff may not
1289 enter a resident's room without making their presence known except in an emergency or in accordance
1290 with safety oversight requirements included in regulations of the Board;

1291 f. In visits with his spouse; if both are residents of the facility they are permitted but not required to
1292 share a room unless otherwise provided in the residents' agreements; and

1293 18. Is permitted to meet with and participate in activities of social, religious, and community groups
1294 at his discretion unless medically contraindicated as documented by his physician, *physician assistant*, or
1295 nurse practitioner in his medical record.

1296 B. If the resident is unable to fully understand and exercise the rights and responsibilities contained
1297 in this section, the facility shall require that a responsible individual, of the resident's choice when
1298 possible, designated in writing in the resident's record, be made aware of each item in this section and
1299 the decisions that affect the resident or relate to specific items in this section; a resident shall be
1300 assumed capable of understanding and exercising these rights unless a physician determines otherwise
1301 and documents the reasons for such determination in the resident's record.

1302 C. The rights and responsibilities of residents shall be printed in at least 12-point type and posted
1303 conspicuously in a public place in all assisted living facilities. The facility shall also post the name and
1304 telephone number of the regional licensing supervisor of the Department, the Adult Protective Services'
1305 toll-free telephone number, as well as the toll-free telephone number for the Virginia Long-Term Care
1306 Ombudsman Program, any sub-state ombudsman program serving the area, and the toll-free number of
1307 the Virginia Office for Protection and Advocacy.

1308 D. The facility shall make its policies and procedures for implementing this section available and
1309 accessible to residents, relatives, agencies, and the general public.

1310 E. The provisions of this section shall not be construed to restrict or abridge any right that any
1311 resident has under law.

1312 F. Each facility shall provide appropriate staff training to implement each resident's rights included in
1313 this section.

1314 G. The Board shall adopt regulations as necessary to carry out the full intent of this section.

1315 H. It shall be the responsibility of the Commissioner to ensure that the provisions of this section are
1316 observed and implemented by assisted living facilities as a condition to the issuance, renewal, or
1317 continuation of the license required by this article.