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HOUSE BILL NO. 2076

Offered January 12, 2011

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A *BILL to amend and reenact §§ 2.2-3705.3, 2.2-3705.6, 2.2-4344, 32.1-127.1:03, and 32.1-283 of the Code of Virginia; to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 3.2, containing articles numbered 1 through 5, consisting of sections numbered 2.2-307 through 2.2-323; and to repeal Article 3 (§§ 37.2-423 through 37.2-425) of Chapter 4 of Title 37.2 and §§ 53.1-16 and 66-3.1 of the Code of Virginia, relating to the creation of the State Office of the Inspector General; consolidation of certain inspectors general.*

Patrons—Landes, Brink, Athey, Bell, Richard P., Cox, J.A., Crockett-Stark, Lingamfelter, Merricks, Rust and Wilt

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.3, 2.2-3705.6, 2.2-4344, 32.1-127.1:03, and 32.1-283 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 2.2 a chapter numbered 3.2, containing articles numbered 1 through 5, consisting of sections numbered 2.2-307 through 2.2-323 as follows:

**CHAPTER 3.2.
OFFICE OF THE INSPECTOR GENERAL.**

Article 1.

General Provisions.

§ 2.2-307. Definitions.

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

"Employee" means any person who is regularly employed full time on either a salaried or wage basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, no more often than biweekly, in whole or in part, by a state agency.

"Office" means the Office of the Inspector General.

"Officer" means any person who is elected or appointed to a public office in a state agency.

"State agency" means any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act.

§ 2.2-308. Office created; appointment of State Inspector General.

A. There is hereby created the Office of the Inspector General, which shall be headed by a State Inspector General appointed by the Governor, subject to confirmation by the General Assembly. The State Inspector General shall be appointed for a six-year term and shall report directly to the Governor's chief of staff. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until 30 days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of such term.

B. The State Inspector General shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor. The State Inspector General shall be responsible for the overall supervision of the Office's divisions, programs and personnel. The head of each division shall, under the direction and control of the State Inspector General, exercise the powers and perform the duties conferred by this chapter as they pertain to his division and perform such other duties as required by the State Inspector General.

C. Whenever in this title and in the Code of Virginia, reference is made to a division, department or agency transferred to the Office of the Inspector General, it shall mean the Office of the Inspector General through the division to which the powers and duties of that division, department or agency are assigned. Notwithstanding anything in this section to the contrary, the State Inspector General shall have the authority to create new divisions within the Office and to assign or reassign the duties of the Office's divisions to whatever divisions as may best perform them.

§ 2.2-309. Powers and duties of Inspector General.

The State Inspector General shall have power and duty to:

1. Operate and manage the Office of the Inspector General and employ such personnel as may be required to carry out the provisions of this chapter.

2. Make and enter contracts and agreements as may be necessary and incidental to carry out the provisions of this chapter, and apply for and accept grants from the United States government and

58 agencies and instrumentalities thereof, and any other source, in furtherance of the provisions of this
59 chapter.

60 3. Receive complaints alleging fraud, waste, abuse, corruption, or mistreatment of a citizen by a
61 state agency, officer or employee and determine whether the complaints give reasonable cause to
62 investigate.

63 4. Investigate the management and operations of state agencies to determine whether acts of fraud,
64 waste, abuse, corruption, or mistreatment have been committed or are being committed by state officers
65 or employees, including any allegations of criminal acts affecting the operations of state agencies.

66 5. Prepare a detailed report of each investigation stating whether fraud, waste, abuse, corruption, or
67 mistreatment has been detected. If fraud, waste, abuse, corruption, or mistreatment is detected, the
68 report shall (i) identify the person committing the wrongful act or omission, (ii) describe the wrongful
69 act or omission, and (iii) describe corrective measures taken by the state agency in which the wrongful
70 act or omission was committed to prevent recurrences of similar actions.

71 6. Provide timely notification to the appropriate attorney for the Commonwealth whenever the State
72 Inspector General has reasonable grounds to believe there has been a violation of state criminal law.

73 7. Assist citizens in understanding their rights and the processes available to them to express
74 grievances regarding the activities of a state agency, officer, or employee.

75 8. Answer inquiries from citizens.

76 9. Provide to citizens information concerning state agencies.

77 10. Maintain data on inquiries received, the types of assistance requested, any actions taken and the
78 disposition of each such matter.

79 11. Upon request, assist citizens in using the procedures and processes available to express
80 grievances regarding the activities of a state agency, officer or employee.

81 12. Ensure that citizens have access to the services provided by the State Inspector General and that
82 the citizens receive timely responses from the State Inspector General or his representatives to the
83 inquiries.

84 § 2.2-310. Subpoenas.

85 A. The State Inspector General or a designated subordinate may issue a subpoena for the
86 appearance of an individual before any hearing conducted by the Office. The subpoena shall be served
87 by the appropriate sheriff's officer and enforced by the court of that jurisdiction.

88 B. The State Inspector General may make an *ex parte* application to the circuit court for the city or
89 county wherein evidence sought is kept, for the issuance of a subpoena duces tecum in furtherance of an
90 investigation or to request production of any relevant records, documents, and physical or other
91 evidence of any person, partnership, association or corporation located in the Commonwealth. The court
92 may issue and compel compliance with such a subpoena upon a showing of reasonable cause. Upon
93 determining that reasonable cause exists to believe that evidence may be destroyed or altered, the court
94 may issue a subpoena duces tecum requiring the immediate production of evidence.

95 § 2.2-311. Cooperation of state agencies and officers.

96 A. Each state agency and every officer and employee shall (i) promptly report any allegations of
97 criminal acts or acts of fraud, waste, abuse, corruption, or mistreatment and (ii) cooperate with, and
98 provide assistance to, the State Inspector General in the performance of any investigation. Each state
99 agency shall make its premises, equipment, personnel, books, records, and papers readily available to
100 the State Inspector General upon request.

101 B. The State Inspector General may enter upon the premises of any state agency at any time, without
102 prior announcement, if necessary to the successful completion of an investigation. In the course of an
103 investigation, the State Inspector General may question any officer or employee serving in, and any
104 person transacting business with, the state agency and may inspect and copy any books, records, or
105 papers in the possession of the state agency. The State Inspector General shall preserve the
106 confidentiality of any information obtained from a state agency during the course of an investigation as
107 required by applicable state and federal law.

108 § 2.2-312. Reports.

109 A. The State Inspector General shall prepare an annual report summarizing the activities of the
110 Office. Such report shall include, but need not be limited to: (i) a description of any significant
111 problems, abuses, and deficiencies related to the management or operation of state agencies during the
112 reporting period; (ii) a description of the recommendations for corrective actions made by the Office
113 during the reporting period with respect to significant problems, abuses, or deficiencies identified; (iii) a
114 summary of matters referred to the attorneys for the Commonwealth and law-enforcement agencies and
115 actions taken on them during the reporting period; and (iv) information concerning the numbers of
116 complaints received and types of investigations completed by the Office during the reporting period.

117 B. The State Inspector General shall report immediately to the Governor's chief of staff whenever the
118 Office becomes aware of particularly serious problems, abuses, or deficiencies relating to the
119 management or operation of a state agency.

120 C. The State Inspector General shall keep the Secretaries of Health and Human Resources, Public
121 Safety, and Transportation advised of the Office's activities as it relates to each respective Secretary on
122 at least a quarterly basis. The Secretaries of Health and Human Resources, Public Safety, and
123 Transportation shall report to the Governor's chief of staff any serious problems, abuses, or deficiencies
124 relating to the management or operation of a state agency within each such Secretary's area of
125 responsibility.

126 D. The State Inspector General may conduct such additional investigations and make such reports
127 relating to the management and operation of state agencies as are, in the judgment of the State
128 Inspector General, necessary or desirable.

129 E. Notwithstanding any other provision of law, the reports, information, or documents required by or
130 under this section shall be transmitted directly to the Governor's chief of staff and the General Assembly
131 by the State Inspector General.

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

134 Article 2.

135 Division of Behavioral Health and Developmental Services.

136 § 2.2-313. Division of Behavioral Health and Developmental Services.

137 Within the Office shall be created the Division of Behavioral Health and Developmental Services (the
138 Division), which shall inspect, monitor, and review the quality of services provided in state facilities and
139 by providers as defined in § 37.2-403, including licensed mental health treatment units in state
140 correctional facilities.

141 § 2.2-314. Definitions.

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

143 § 2.2-315. Additional powers and duties of Inspector General.

144 In addition to the duties as may be assigned to it by the State Inspector General, the Division shall
145 have the following powers and duties to:

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

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

163 3. Keep the General Assembly and the Joint Commission on Health Care fully and currently
164 informed by means of reports required by § 2.2-312 concerning significant problems, abuses, and
165 deficiencies relating to the administration of the programs and services of state facilities and of
166 providers, including licensed mental health treatment units in state correctional facilities, to recommend
167 corrective actions concerning the problems, abuses, and deficiencies, and to report on the progress
168 made in implementing the corrective actions.

169 4. Review, comment on, and make recommendations about, as appropriate, any reports prepared by
170 the Department and the critical incident data collected by the Department in accordance with
171 regulations adopted under § 37.2-400 to identify issues related to quality of care, seclusion and
172 restraint, medication usage, abuse and neglect, staff recruitment and training, and other systemic issues.

173 5. Monitor and participate in the adoption of regulations by the Board.

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

178 Article 3.

179 Division of Corrections.

180 § 2.2-316. Division of Corrections.

181 Within the Office shall be created the Division of Corrections (the Division), which shall exercise the
182 powers and duties assigned to it by the State Inspector General as they relate to matters described in
183 this article.

184 § 2.2-317. Definitions.

185 The definitions found in § 53.1-1 shall apply mutatis mutandis to the terms used in this article.

186 § 2.2-318. Additional powers and duties.

187 A. In addition to the duties as may be assigned to it by the State Inspector General, the Division
188 shall have the following powers and duties to:

189 1. Review, comment on, and make recommendations about, as appropriate, any reports prepared by
190 the Department and any critical incident data collected by the Department in accordance with
191 regulations adopted to identify issues related to quality of care, seclusion and restraint, medication
192 usage, abuse and neglect, staff recruitment and training, and other systemic issues.

193 2. Monitor and participate in the adoption of regulations by the Board.

194 B. The Division and no more than 30 members of the investigations unit of the Office shall be
195 law-enforcement officers as defined in § 9.1-101. Investigators so designated shall receive the training
196 required by the Department of Criminal Justice Services for law-enforcement personnel before exercising
197 such powers.

198 Nothing in this section shall be construed to grant the Office any authority over the operation and
199 security of local jails which is not specified in other provisions of law.

200 Article 4.

201 Division of Juvenile Justice.

202 § 2.2-319. Division of Juvenile Justice.

203 Within the Office shall be created the Division of Juvenile Justice (the Division), which shall exercise
204 the powers and duties assigned to it by the State Inspector General as they relate to matters described
205 in this article.

206 § 2.2-320. Definitions.

207 The definitions found in § 66-12 shall apply mutatis mutandis to the terms used in this article.

208 § 2.2-321. Additional powers and duties.

209 A. In addition to the duties as may be assigned to it by the State Inspector General, the Division
210 shall have the following powers and duties to:

211 1. Review, comment on, and make recommendations about, as appropriate, any reports prepared by
212 the Department and any critical incident data collected by the Department in accordance with
213 regulations adopted to identify issues related to quality of care, seclusion and restraint, medication
214 usage, abuse and neglect, staff recruitment and training, and other systemic issues.

215 2. Monitor and participate in the adoption of regulations by the Board.

216 B. The Division and no more than 10 members of the investigations unit of the Office shall be
217 law-enforcement officers as defined in § 9.1-101. Investigators so designated shall receive the training
218 required by the Department of Criminal Justice Services for law-enforcement personnel before exercising
219 such powers.

220 Nothing in this section shall be construed to grant the Office any authority over the operation and
221 security of detention homes which is not specified in other provisions of law.

222 Article 5.

223 Division of Transportation.

224 § 2.2-322. Division of Transportation.

225 Within the Office shall be created the Division of Transportation (the Division), which shall exercise
226 the powers and duties assigned to it by the State Inspector General as they relate to matters described
227 in this article.

228 § 2.2-323. Additional powers and duties.

229 A. The Division shall (i) assess the condition of agency accounting, financial and administrative
230 controls; (ii) conduct investigations to resolve allegations of fraudulent, illegal, or inappropriate
231 activities; (iii) prevent and detect fraud, waste, and abuse; and (iv) coordinate with federal and state
232 law enforcement and prosecutorial agencies. The Division shall also promote integrity, accountability,
233 and process improvements in the Department of Transportation. The Division shall manage special
234 projects and provide advisory services and technical assistance to management; as well as conduct
235 business performance reviews, and coordinate and monitor Department of Transportation action plans
236 in response to external audits and reviews.

237 B. The Division and no more than 30 members of the investigations unit of the Office shall be
238 law-enforcement officers as defined in § 9.1-101. Investigators so designated shall receive the training
239 required by the Department of Criminal Justice Services for law-enforcement personnel before exercising
240 such powers.

241 § 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.

242 The following records are excluded from the provisions of this chapter but may be disclosed by the

243 custodian in his discretion, except where such disclosure is prohibited by law:

244 1. Confidential records of all investigations of applications for licenses and permits, and of all
 245 licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State
 246 Lottery Department, the Virginia Racing Commission, the Department of Agriculture and Consumer
 247 Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of
 248 Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice
 249 Services.

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

252 3. Investigator notes, and other correspondence and information, furnished in confidence with respect
 253 to an active investigation of individual employment discrimination complaints made to the Department
 254 of Human Resource Management or to such personnel of any local public body, including local school
 255 boards as are responsible for conducting such investigations in confidence. However, nothing in this
 256 section shall prohibit the disclosure of information taken from inactive reports in a form that does not
 257 reveal the identity of charging parties, persons supplying the information or other individuals involved in
 258 the investigation.

259 4. Records of active investigations being conducted by the Department of Medical Assistance
 260 Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

261 5. Investigative notes and other correspondence and information furnished in confidence with respect
 262 to an investigation or conciliation process involving an alleged unlawful discriminatory practice under
 263 the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance
 264 with the authority specified in § 2.2-2638, or adopted pursuant to § 15.2-965, or adopted prior to July 1,
 265 1987, in accordance with applicable law, relating to local human rights or human relations commissions.
 266 However, nothing in this section shall prohibit the distribution of information taken from inactive reports
 267 in a form that does not reveal the identity of the parties involved or other persons supplying
 268 information.

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

276 7. Investigative notes, correspondence and information furnished in confidence, and records otherwise
 277 exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the ~~(i)~~ Auditor of
 278 Public Accounts; (ii) *the* Joint Legislative Audit and Review Commission; (iii) an appropriate authority
 279 as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and
 280 Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) *the* Department of the State Internal
 281 Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse
 282 Hotline; (v) *the Office of the Inspector General*; (vi) *the* committee or the auditor with respect to an
 283 investigation or audit conducted pursuant to § 15.2-825; or ~~(vi)~~ (vii) *the* auditors, appointed by the local
 284 governing body of any county, city or town or a school board, who by charter, ordinance, or statute
 285 have responsibility for conducting an investigation of any officer, department or program of such body.
 286 Records of completed investigations shall be disclosed in a form that does not reveal the identity of the
 287 complainants or persons supplying information to investigators. Unless disclosure is prohibited by this
 288 section, the records disclosed shall include, but not be limited to, the agency involved, the identity of
 289 the person who is the subject of the complaint, the nature of the complaint, and the actions taken to
 290 resolve the complaint. If an investigation does not lead to corrective action, the identity of the person
 291 who is the subject of the complaint may be released only with the consent of the subject person. Local
 292 governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

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

302 9. Information furnished in confidence to the Department of Employment Dispute Resolution with
 303 respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title,

304 and memoranda, correspondence and other records resulting from any such investigation, consultation or
305 mediation. However, nothing in this section shall prohibit the distribution of information taken from
306 inactive reports in a form that does not reveal the identity of the parties involved or other persons
307 supplying information.

308 10. The names, addresses and telephone numbers of complainants furnished in confidence with
309 respect to an investigation of individual zoning enforcement complaints or complaints relating to the
310 Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et
311 seq.) made to a local governing body.

312 11. Records of active investigations being conducted by the Department of Criminal Justice Services
313 pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.),
314 and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

315 12. Records furnished to or prepared by the Board of Education pursuant to subsection D of
316 § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,
317 unauthorized alteration, or improper administration of tests by local school board employees responsible
318 for the distribution or administration of the tests. However, this section shall not prohibit the disclosure
319 of records to (i) a local school board or division superintendent for the purpose of permitting such board
320 or superintendent to consider or to take personnel action with regard to an employee or (ii) any
321 requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity
322 of any person making a complaint or supplying information to the Board on a confidential basis and (b)
323 does not compromise the security of any test mandated by the Board.

324 13. Investigator notes, and other correspondence and information, furnished in confidence with
325 respect to an active investigation conducted by or for the Board of Education related to the denial,
326 suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure
327 of records to a local school board or division superintendent for the purpose of permitting such board or
328 superintendent to consider or to take personnel action with regard to an employee. Records of completed
329 investigations shall be disclosed in a form that does not reveal the identity of any complainant or person
330 supplying information to investigators. The records disclosed shall include information regarding the
331 school or facility involved, the identity of the person who was the subject of the complaint, the nature
332 of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a
333 complaint or does not lead to corrective action, the identity of the person who was the subject of the
334 complaint may be released only with the consent of the subject person. No personally identifiable
335 information in the records regarding a current or former student shall be released except as permitted by
336 state or federal law.

337 14. Records, notes and information provided in confidence and related to an investigation by the
338 Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of
339 Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2,
340 or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that
341 has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is
342 not otherwise prohibited by law and does not reveal the identity of charging parties, complainants,
343 persons supplying information, witnesses or other individuals involved in the investigation.

344 § 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

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

347 1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4
348 or 62.1-134.1.

349 2. Financial statements not publicly available filed with applications for industrial development
350 financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

351 3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of
352 confidentiality from a public body, used by the public body for business, trade and tourism development
353 or retention; and memoranda, working papers or other records related to businesses that are considering
354 locating or expanding in Virginia, prepared by a public body, where competition or bargaining is
355 involved and where, if such records are made public, the financial interest of the public body would be
356 adversely affected.

357 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239
358 et seq.), as such Act existed prior to July 1, 1992.

359 5. Fisheries data that would permit identification of any person or vessel, except when required by
360 court order as specified in § 28.2-204.

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

366 Administration.

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

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

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

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

386 11. a. Memoranda, staff evaluations, or other records prepared by the responsible public entity, its
387 staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed
388 under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public Private Education
389 Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were made public
390 prior to or after the execution of an interim or a comprehensive agreement, § 56-573.1:1 or 56-575.17
391 notwithstanding, the financial interest or bargaining position of the public entity would be adversely
392 affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the
393 responsible public entity; and

394 b. Records provided by a private entity to a responsible public entity, affected jurisdiction, or
395 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 or
396 the Public-Private Education Facilities and Infrastructure Act of 2002, to the extent that such records
397 contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
398 seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that
399 are not generally available to the public through regulatory disclosure or otherwise; or (iii) other
400 information submitted by the private entity, where, if the records were made public prior to the
401 execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining
402 position of the public or private entity would be adversely affected. In order for the records specified in
403 clauses (i), (ii) and (iii) to be excluded from the provisions of this chapter, the private entity shall make
404 a written request to the responsible public entity:

405 1. Invoking such exclusion upon submission of the data or other materials for which protection from
406 disclosure is sought;

407 2. Identifying with specificity the data or other materials for which protection is sought; and

408 3. Stating the reasons why protection is necessary.

409 The responsible public entity shall determine whether the requested exclusion from disclosure is
410 necessary to protect the trade secrets or financial records of the private entity. To protect other records
411 submitted by the private entity from disclosure, the responsible public entity shall determine whether
412 public disclosure prior to the execution of an interim agreement or a comprehensive agreement would
413 adversely affect the financial interest or bargaining position of the public or private entity. The
414 responsible public entity shall make a written determination of the nature and scope of the protection to
415 be afforded by the responsible public entity under this subdivision. Once a written determination is made
416 by the responsible public entity, the records afforded protection under this subdivision shall continue to
417 be protected from disclosure when in the possession of any affected jurisdiction or affected local
418 jurisdiction.

419 Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to
420 authorize the withholding of (a) procurement records as required by § 56-573.1:1 or 56-575.17; (b)
421 information concerning the terms and conditions of any interim or comprehensive agreement, service
422 contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity
423 and the private entity; (c) information concerning the terms and conditions of any financing arrangement
424 that involves the use of any public funds; or (d) information concerning the performance of any private
425 entity developing or operating a qualifying transportation facility or a qualifying project.

426 For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction,"

427 "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation
428 facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined
429 in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and
430 Infrastructure Act of 2002.

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

437 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential
438 proprietary records that are not generally available to the public through regulatory disclosure or
439 otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21
440 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of
441 confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's,
442 or franchisee's financial capacity or provision of new services, adoption of new technologies or
443 implementation of improvements, where such new services, technologies or improvements have not been
444 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such
445 records were made public, the competitive advantage or financial interests of the franchisee would be
446 adversely affected.

447 In order for trade secrets or confidential proprietary information to be excluded from the provisions
448 of this chapter, the bidder, applicant, or franchisee shall (i) invoke such exclusion upon submission of
449 the data or other materials for which protection from disclosure is sought, (ii) identify the data or other
450 materials for which protection is sought, and (iii) state the reason why protection is necessary.

451 No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the
452 bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the
453 applicable franchising authority serves on the management board or as an officer of the bidder,
454 applicant, or franchisee.

455 14. Documents and other information of a proprietary nature furnished by a supplier of charitable
456 gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of
457 § 18.2-340.34.

458 15. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple
459 Board pursuant to § 3.2-1215.

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

463 17. Records submitted as a grant or loan application, or accompanying a grant or loan application, to
464 the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of
465 Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22
466 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or research-related
467 information produced or collected by the applicant in the conduct of or as a result of study or research
468 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information
469 has not been publicly released, published, copyrighted, or patented, if the disclosure of such information
470 would be harmful to the competitive position of the applicant.

471 18. Confidential proprietary records and trade secrets developed and held by a local public body (i)
472 providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television
473 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that
474 disclosure of such records would be harmful to the competitive position of the locality. In order for
475 confidential proprietary information or trade secrets to be excluded from the provisions of this chapter,
476 the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the
477 records or portions thereof for which protection is sought, and (iii) state the reasons why protection is
478 necessary.

479 19. Confidential proprietary records and trade secrets developed by or for a local authority created in
480 accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide
481 qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of
482 Title 56, where disclosure of such information would be harmful to the competitive position of the
483 authority, except that records required to be maintained in accordance with § 15.2-2160 shall be
484 released.

485 20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial
486 records of a business, including balance sheets and financial statements, that are not generally available
487 to the public through regulatory disclosure or otherwise, provided to the Department of Minority
488 Business Enterprise as part of an application for (i) certification as a small, women-owned, or

489 minority-owned business in accordance with Chapter 14 (§ 2.2-1400 et seq.) of this title or (ii) a claim
 490 made by a disadvantaged business or an economically disadvantaged individual against the Capital
 491 Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311. In order for such trade
 492 secrets or financial records to be excluded from the provisions of this chapter, the business shall (a)
 493 invoke such exclusion upon submission of the data or other materials for which protection from
 494 disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) state
 495 the reasons why protection is necessary.

496 21. Documents and other information of a proprietary or confidential nature disclosed by a carrier to
 497 the State Health Commissioner pursuant to § 32.1-276.5:1.

498 22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but
 499 not limited to, financial records, including balance sheets and financial statements, that are not generally
 500 available to the public through regulatory disclosure or otherwise, and revenue and cost projections
 501 supplied by a private or nongovernmental entity to the *Office of the Inspector General of the Virginia*
 502 *Department, Division of Transportation* for the purpose of an audit, special investigation, or any study
 503 requested by the *State Inspector General's Office* in accordance with law.

504 In order for the records specified in this subdivision to be excluded from the provisions of this
 505 chapter, the private or nongovernmental entity shall make a written request to the *Department State*
 506 *Inspector General*:

507 1. Invoking such exclusion upon submission of the data or other materials for which protection from
 508 disclosure is sought;

509 2. Identifying with specificity the data or other materials for which protection is sought; and

510 3. Stating the reasons why protection is necessary.

511 The *State Inspector General of the Virginia Department of Transportation* shall determine whether the
 512 requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the
 513 private entity. The *Virginia Department of Transportation State Inspector General* shall make a written
 514 determination of the nature and scope of the protection to be afforded by it under this subdivision.

515 23. Records submitted as a grant application, or accompanying a grant application, to the Virginia
 516 Tobacco Indemnification and Community Revitalization Commission to the extent such records contain
 517 (i) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii) financial records
 518 of a grant applicant that is not a public body, including balance sheets and financial statements, that are
 519 not generally available to the public through regulatory disclosure or otherwise, or (iii) research-related
 520 information produced or collected by the applicant in the conduct of or as a result of study or research
 521 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information
 522 has not been publicly released, published, copyrighted, or patented, if the disclosure of such information
 523 would be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or
 524 other records prepared by the Commission or its staff exclusively for the evaluation of grant
 525 applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the
 526 powers of and in furtherance of the performance of the duties of the Commission pursuant to
 527 § 3.2-3103.

528 In order for the records specified in this subdivision to be excluded from the provisions of this
 529 chapter, the applicant shall make a written request to the Commission:

530 1. Invoking such exclusion upon submission of the data or other materials for which protection from
 531 disclosure is sought;

532 2. Identifying with specificity the data, records or other materials for which protection is sought; and

533 3. Stating the reasons why protection is necessary.

534 The Commission shall determine whether the requested exclusion from disclosure is necessary to
 535 protect the trade secrets, financial records or research-related information of the applicant. The
 536 Commission shall make a written determination of the nature and scope of the protection to be afforded
 537 by it under this subdivision.

538 § 2.2-4344. Exemptions from competition for certain transactions.

539 A. Any public body may enter into contracts without competition for:

540 1. The purchase of goods or services that are produced or performed by:

541 a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the
 542 Blind and Vision Impaired; or

543 b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported
 544 employment services serving the handicapped.

545 2. The purchase of legal services, provided that the pertinent provisions of Chapter 5 (§ 2.2-500 et
 546 seq.) of this title remain applicable, or expert witnesses or other services associated with litigation or
 547 regulatory proceedings.

548 B. An industrial development authority or regional industrial facility authority may enter into
 549 contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as

550 defined in § 15.2-4902 or "facility" as defined in § 15.2-6400.

551 C. A community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter
552 51 of Title 15.2, with members selected pursuant to such article, may enter into contracts without
553 competition with respect to the exercise of any of its powers permitted by § 15.2-5158. However, this
554 exception shall not apply in cases where any public funds other than special assessments and
555 incremental real property taxes levied pursuant to § 15.2-5158 are used as payment for such contract.

556 D. The ~~Inspector General~~ for *Division of Behavioral Health and Developmental Services of the Office*
557 *of the Inspector General* may enter into contracts without competition to obtain the services of licensed
558 health care professionals or other experts to assist in carrying out the duties of the Office of the
559 ~~Inspector General for Behavioral Health and Developmental Services.~~

560 § 32.1-127.1:03. Health records privacy.

561 A. There is hereby recognized an individual's right of privacy in the content of his health records.
562 Health records are the property of the health care entity maintaining them, and, except when permitted
563 or required by this section or by other provisions of state law, no health care entity, or other person
564 working in a health care setting, may disclose an individual's health records.

565 Pursuant to this subsection:

566 1. Health care entities shall disclose health records to the individual who is the subject of the health
567 record, except as provided in subsections E and F of this section and subsection B of § 8.01-413.

568 2. Health records shall not be removed from the premises where they are maintained without the
569 approval of the health care entity that maintains such health records, except in accordance with a court
570 order or subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with
571 the regulations relating to change of ownership of health records promulgated by a health regulatory
572 board established in Title 54.1.

573 3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health
574 records of an individual, beyond the purpose for which such disclosure was made, without first
575 obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall
576 not, however, prevent (i) any health care entity that receives health records from another health care
577 entity from making subsequent disclosures as permitted under this section and the federal Department of
578 Health and Human Services regulations relating to privacy of the electronic transmission of data and
579 protected health information promulgated by the United States Department of Health and Human
580 Services as required by the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C.
581 § 1320d et seq.) or (ii) any health care entity from furnishing health records and aggregate or other data,
582 from which individually identifying prescription information has been removed, encoded or encrypted, to
583 qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or
584 contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health
585 services research.

586 B. As used in this section:

587 "Agent" means a person who has been appointed as an individual's agent under a power of attorney
588 for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

589 "Certification" means a written representation that is delivered by hand, by first-class mail, by
590 overnight delivery service, or by facsimile if the sender obtains a facsimile-machine-generated
591 confirmation reflecting that all facsimile pages were successfully transmitted.

592 "Guardian" means a court-appointed guardian of the person.

593 "Health care clearinghouse" means, consistent with the definition set out in 45 C.F.R. § 160.103, a
594 public or private entity, such as a billing service, repricing company, community health management
595 information system or community health information system, and "value-added" networks and switches,
596 that performs either of the following functions: (i) processes or facilitates the processing of health
597 information received from another entity in a nonstandard format or containing nonstandard data content
598 into standard data elements or a standard transaction; or (ii) receives a standard transaction from another
599 entity and processes or facilitates the processing of health information into nonstandard format or
600 nonstandard data content for the receiving entity.

601 "Health care entity" means any health care provider, health plan or health care clearinghouse.

602 "Health care provider" means those entities listed in the definition of "health care provider" in
603 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the
604 purposes of this section. Health care provider shall also include all persons who are licensed, certified,
605 registered or permitted or who hold a multistate licensure privilege issued by any of the health
606 regulatory boards within the Department of Health Professions, except persons regulated by the Board of
607 Funeral Directors and Embalmers or the Board of Veterinary Medicine.

608 "Health plan" means an individual or group plan that provides, or pays the cost of, medical care.

609 "Health plan" shall include any entity included in such definition as set out in 45 C.F.R. § 160.103.

610 "Health record" means any written, printed or electronically recorded material maintained by a health
611 care entity in the course of providing health services to an individual concerning the individual and the

612 services provided. "Health record" also includes the substance of any communication made by an
 613 individual to a health care entity in confidence during or in connection with the provision of health
 614 services or information otherwise acquired by the health care entity about an individual in confidence
 615 and in connection with the provision of health services to the individual.

616 "Health services" means, but shall not be limited to, examination, diagnosis, evaluation, treatment,
 617 pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind, as well as
 618 payment or reimbursement for any such services.

619 "Individual" means a patient who is receiving or has received health services from a health care
 620 entity.

621 "Individually identifying prescription information" means all prescriptions, drug orders or any other
 622 prescription information that specifically identifies an individual.

623 "Parent" means a biological, adoptive or foster parent.

624 "Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a
 625 mental health professional, documenting or analyzing the contents of conversation during a private
 626 counseling session with an individual or a group, joint, or family counseling session that are separated
 627 from the rest of the individual's health record. "Psychotherapy notes" shall not include annotations
 628 relating to medication and prescription monitoring, counseling session start and stop times, treatment
 629 modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis,
 630 functional status, treatment plan, or the individual's progress to date.

631 C. The provisions of this section shall not apply to any of the following:

632 1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia
 633 Workers' Compensation Act;

634 2. Except where specifically provided herein, the health records of minors; or

635 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to
 636 § 16.1-248.3.

637 D. Health care entities may, and, when required by other provisions of state law, shall, disclose
 638 health records:

639 1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the
 640 case of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of
 641 minors pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment
 642 pursuant to § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an
 643 individual's written authorization, pursuant to the individual's oral authorization for a health care
 644 provider or health plan to discuss the individual's health records with a third party specified by the
 645 individual;

646 2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant
 647 or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a
 648 subpoena issued pursuant to subsection C of § 8.01-413. Regardless of the manner by which health
 649 records relating to an individual are compelled to be disclosed pursuant to this subdivision, nothing in
 650 this subdivision shall be construed to prohibit any staff or employee of a health care entity from
 651 providing information about such individual to a law-enforcement officer in connection with such
 652 subpoena, search warrant, or court order;

653 3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure
 654 is reasonably necessary to establish or collect a fee or to defend a health care entity or the health care
 655 entity's employees or staff against any accusation of wrongful conduct; also as required in the course of
 656 an investigation, audit, review or proceedings regarding a health care entity's conduct by a duly
 657 authorized law-enforcement, licensure, accreditation, or professional review entity;

658 4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

659 5. In compliance with the provisions of § 8.01-413;

660 6. As required or authorized by law relating to public health activities, health oversight activities,
 661 serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,
 662 public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,
 663 those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283,
 664 32.1-283.1, 37.2-710, 37.2-839, 53.1-40.10, 54.1-2400.6, 54.1-2400.7, 54.1-2403.3, 54.1-2506,
 665 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and 63.2-1606;

666 7. Where necessary in connection with the care of the individual;

667 8. In connection with the health care entity's own health care operations or the health care operations
 668 of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in
 669 accordance with accepted standards of practice within the health services setting; however, the
 670 maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a
 671 pharmacy registered or permitted in Virginia shall only be accomplished in compliance with
 672 §§ 54.1-3410, 54.1-3411, and 54.1-3412;

- 673 9. When the individual has waived his right to the privacy of the health records;
674 10. When examination and evaluation of an individual are undertaken pursuant to judicial or
675 administrative law order, but only to the extent as required by such order;
676 11. To the guardian ad litem and any attorney representing the respondent in the course of a
677 guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 10
678 (§ 37.2-1000 et seq.) of Title 37.2;
679 12. To the guardian ad litem and any attorney appointed by the court to represent an individual who
680 is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5
681 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title
682 16.1, or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of
683 Title 37.2;
684 13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et
685 seq.) of Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health
686 authority or a designee of a community services board or behavioral health authority, or a
687 law-enforcement officer participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter
688 11 of Title 16.1, § 19.2-169.6, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of
689 the proceeding, and to any health care provider evaluating or providing services to the person who is the
690 subject of the proceeding or monitoring the person's adherence to a treatment plan ordered under those
691 provisions. Health records disclosed to a law-enforcement officer shall be limited to information
692 necessary to protect the officer, the person, or the public from physical injury or to address the health
693 care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any
694 other purpose, disclosed to others, or retained;
695 14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or
696 administrative proceeding, if the court or administrative hearing officer has entered an order granting the
697 attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the
698 health care entity of such order;
699 15. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health records
700 in accord with § 9.1-156;
701 16. To an agent appointed under an individual's power of attorney or to an agent or decision maker
702 designated in an individual's advance directive for health care or for decisions on anatomical gifts and
703 organ, tissue or eye donation or to any other person consistent with the provisions of the Health Care
704 Decisions Act (§ 54.1-2981 et seq.);
705 17. To third-party payors and their agents for purposes of reimbursement;
706 18. As is necessary to support an application for receipt of health care benefits from a governmental
707 agency or as required by an authorized governmental agency reviewing such application or reviewing
708 benefits already provided or as necessary to the coordination of prevention and control of disease,
709 injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;
710 19. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership
711 or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;
712 20. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and
713 immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;
714 21. Where necessary in connection with the implementation of a hospital's routine contact process for
715 organ donation pursuant to subdivision B 4 of § 32.1-127;
716 22. In the case of substance abuse records, when permitted by and in conformity with requirements
717 of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;
718 23. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the
719 adequacy or quality of professional services or the competency and qualifications for professional staff
720 privileges;
721 24. If the health records are those of a deceased or mentally incapacitated individual to the personal
722 representative or executor of the deceased individual or the legal guardian or committee of the
723 incompetent or incapacitated individual or if there is no personal representative, executor, legal guardian
724 or committee appointed, to the following persons in the following order of priority: a spouse, an adult
725 son or daughter, either parent, an adult brother or sister, or any other relative of the deceased individual
726 in order of blood relationship;
727 25. For the purpose of conducting record reviews of inpatient hospital deaths to promote
728 identification of all potential organ, eye, and tissue donors in conformance with the requirements of
729 applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's
730 designated organ procurement organization certified by the United States Health Care Financing
731 Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association
732 of America or the American Association of Tissue Banks;
733 26. To the Office of the Inspector General ~~for, Division of Behavioral Health and Developmental~~
734 ~~Services pursuant to Article 3 (§ 37.2-423 et seq.) of Chapter 4 of Title 37.2 2 (§ 2.2-306.7 et seq.) of~~

735 *Chapter 3.2 of Title 2.2;*

736 27. To an entity participating in the activities of a local health partnership authority established
737 pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4, pursuant to subdivision 1;

738 28. To law-enforcement officials by each licensed emergency medical services agency, (i) when the
739 individual is the victim of a crime or (ii) when the individual has been arrested and has received
740 emergency medical services or has refused emergency medical services and the health records consist of
741 the prehospital patient care report required by § 32.1-116.1;

742 29. To law-enforcement officials, in response to their request, for the purpose of identifying or
743 locating a suspect, fugitive, person required to register pursuant to § 9.1-901 of the Sex Offender and
744 Crimes Against Minors Registry Act, material witness, or missing person, provided that only the
745 following information may be disclosed: (i) name and address of the person, (ii) date and place of birth
746 of the person, (iii) social security number of the person, (iv) blood type of the person, (v) date and time
747 of treatment received by the person, (vi) date and time of death of the person, where applicable, (vii)
748 description of distinguishing physical characteristics of the person, and (viii) type of injury sustained by
749 the person;

750 30. To law-enforcement officials regarding the death of an individual for the purpose of alerting law
751 enforcement of the death if the health care entity has a suspicion that such death may have resulted
752 from criminal conduct;

753 31. To law-enforcement officials if the health care entity believes in good faith that the information
754 disclosed constitutes evidence of a crime that occurred on its premises;

755 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a
756 person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article
757 3.02 (§ 32.1-48.05 et seq.) of Chapter 2;

758 33. To the Commissioner of the Department of Labor and Industry or his designee by each licensed
759 emergency medical services agency when the records consist of the prehospital patient care report
760 required by § 32.1-116.1 and the patient has suffered an injury or death on a work site while performing
761 duties or tasks that are within the scope of his employment;

762 34. To notify a family member or personal representative of an individual who is the subject of a
763 proceeding pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or Chapter 8
764 (§ 37.2-800 et seq.) of Title 37.2 of information that is directly relevant to such person's involvement
765 with the individual's health care, which may include the individual's location and general condition,
766 when the individual has the capacity to make health care decisions and (i) the individual has agreed to
767 the notification, (ii) the individual has been provided an opportunity to object to the notification and
768 does not express an objection, or (iii) the health care provider can, on the basis of his professional
769 judgment, reasonably infer from the circumstances that the individual does not object to the notification.
770 If the opportunity to agree or object to the notification cannot practicably be provided because of the
771 individual's incapacity or an emergency circumstance, the health care provider may notify a family
772 member or personal representative of the individual of information that is directly relevant to such
773 person's involvement with the individual's health care, which may include the individual's location and
774 general condition if the health care provider, in the exercise of his professional judgment, determines
775 that the notification is in the best interests of the individual. Such notification shall not be made if the
776 provider has actual knowledge the family member or personal representative is currently prohibited by
777 court order from contacting the individual; and

778 35. To a threat assessment team established by a public institution of higher education pursuant to
779 § 23-9.2:10 when such records concern a student at the public institution of higher education, including
780 a student who is a minor.

781 Notwithstanding the provisions of subdivisions 1 through 35, a health care entity shall obtain an
782 individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by
783 the health care entity is (i) for its own training programs in which students, trainees, or practitioners in
784 mental health are being taught under supervision to practice or to improve their skills in group, joint,
785 family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of
786 wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1,
787 to take precautions to protect third parties from violent behavior or other serious harm; (iv) required in
788 the course of an investigation, audit, review, or proceeding regarding a health care entity's conduct by a
789 duly authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise
790 required by law.

791 E. Requests for copies of health records shall (i) be in writing, dated and signed by the requester; (ii)
792 identify the nature of the information requested; and (iii) include evidence of the authority of the
793 requester to receive such copies and identification of the person to whom the information is to be
794 disclosed. The health care entity shall accept a photocopy, facsimile, or other copy of the original signed
795 by the requestor as if it were an original. Within 15 days of receipt of a request for copies of health

796 records, the health care entity shall do one of the following: (i) furnish such copies to any requester
 797 authorized to receive them; (ii) inform the requester if the information does not exist or cannot be
 798 found; (iii) if the health care entity does not maintain a record of the information, so inform the
 799 requester and provide the name and address, if known, of the health care entity who maintains the
 800 record; or (iv) deny the request (a) under subsection F, (b) on the grounds that the requester has not
 801 established his authority to receive such health records or proof of his identity, or (c) as otherwise
 802 provided by law. Procedures set forth in this section shall apply only to requests for health records not
 803 specifically governed by other provisions of state law.

804 F. Except as provided in subsection B of § 8.01-413, copies of an individual's health records shall
 805 not be furnished to such individual or anyone authorized to act on the individual's behalf when the
 806 individual's treating physician or the individual's treating clinical psychologist has made a part of the
 807 individual's record a written statement that, in the exercise of his professional judgment, the furnishing
 808 to or review by the individual of such health records would be reasonably likely to endanger the life or
 809 physical safety of the individual or another person, or that such health record makes reference to a
 810 person other than a health care provider and the access requested would be reasonably likely to cause
 811 substantial harm to such referenced person. If any health care entity denies a request for copies of health
 812 records based on such statement, the health care entity shall inform the individual of the individual's
 813 right to designate, in writing, at his own expense, another reviewing physician or clinical psychologist,
 814 whose licensure, training and experience relative to the individual's condition are at least equivalent to
 815 that of the physician or clinical psychologist upon whose opinion the denial is based. The designated
 816 reviewing physician or clinical psychologist shall make a judgment as to whether to make the health
 817 record available to the individual.

818 The health care entity denying the request shall also inform the individual of the individual's right to
 819 request in writing that such health care entity designate, at its own expense, a physician or clinical
 820 psychologist, whose licensure, training, and experience relative to the individual's condition are at least
 821 equivalent to that of the physician or clinical psychologist upon whose professional judgment the denial
 822 is based and who did not participate in the original decision to deny the health records, who shall make
 823 a judgment as to whether to make the health record available to the individual. The health care entity
 824 shall comply with the judgment of the reviewing physician or clinical psychologist. The health care
 825 entity shall permit copying and examination of the health record by such other physician or clinical
 826 psychologist designated by either the individual at his own expense or by the health care entity at its
 827 expense.

828 Any health record copied for review by any such designated physician or clinical psychologist shall
 829 be accompanied by a statement from the custodian of the health record that the individual's treating
 830 physician or clinical psychologist determined that the individual's review of his health record would be
 831 reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely
 832 to cause substantial harm to a person referenced in the health record who is not a health care provider.

833 Further, nothing herein shall be construed as giving, or interpreted to bestow the right to receive
 834 copies of, or otherwise obtain access to, psychotherapy notes to any individual or any person authorized
 835 to act on his behalf.

836 G. A written authorization to allow release of an individual's health records shall substantially include
 837 the following information:

838 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS
 839 Individual's Name
 840 Health Care Entity's Name
 841 Person, Agency, or Health Care Entity to whom disclosure is to
 842 be made
 843 Information or Health Records to be disclosed
 844 Purpose of Disclosure or at the Request of the Individual
 845 As the person signing this authorization, I understand that I am giving
 846 my permission to the above-named health care entity for disclosure of
 847 confidential health records. I understand that the health care entity
 848 may not condition treatment or payment on my willingness to sign this
 849 authorization unless the specific circumstances under which such
 850 conditioning is permitted by law are applicable and are set forth in
 851 this authorization. I also understand that I have the right to revoke
 852 This authorization at any time, but that my revocation is not effective
 853 until delivered in writing to the person who is in possession of my
 854 health records and is not effective as to health records already
 855 disclosed under this authorization. A copy of this authorization and a

856 notation concerning the persons or agencies to whom disclosure was made
 857 shall be included with my original health records. I understand that
 858 health information disclosed under this authorization might be
 859 redisclosed by a recipient and may, as a result of such disclosure, no
 860 longer be protected to the same extent as such health information was
 861 protected by law while solely in the possession of the health care
 862 entity.

863 This authorization expires on (date) or (event)
 864 Signature of Individual or Individual's Legal Representative if
 865 Individual is Unable to Sign
 866 Relationship or Authority of Legal Representative
 867 Date of Signature

868 H. Pursuant to this subsection:

869 1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or
 870 administrative action or proceeding shall request the issuance of a subpoena duces tecum for another
 871 party's health records or cause a subpoena duces tecum to be issued by an attorney unless a copy of the
 872 request for the subpoena or a copy of the attorney-issued subpoena is provided to the other party's
 873 counsel or to the other party if pro se, simultaneously with filing the request or issuance of the
 874 subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces
 875 tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a
 876 copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the
 877 request or issuance of the attorney-issued subpoena.

878 No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date
 879 of the subpoena except by order of a court or administrative agency for good cause shown. When a
 880 court or administrative agency directs that health records be disclosed pursuant to a subpoena duces
 881 tecum earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the
 882 subpoena.

883 Any party requesting a subpoena duces tecum for health records or on whose behalf the subpoena
 884 duces tecum is being issued shall have the duty to determine whether the individual whose health
 885 records are being sought is pro se or a nonparty.

886 In instances where health records being subpoenaed are those of a pro se party or nonparty witness,
 887 the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness
 888 together with the copy of the request for subpoena, or a copy of the subpoena in the case of an
 889 attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall
 890 include the following language and the heading shall be in boldface capital letters:

891 **NOTICE TO INDIVIDUAL**

892 The attached document means that (insert name of party requesting or causing issuance of the
 893 subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has
 894 been issued by the other party's attorney to your doctor, other health care providers (names of health
 895 care providers inserted here) or other health care entity (name of health care entity to be inserted here)
 896 requiring them to produce your health records. Your doctor, other health care provider or other health
 897 care entity is required to respond by providing a copy of your health records. If you believe your health
 898 records should not be disclosed and object to their disclosure, you have the right to file a motion with
 899 the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion
 900 to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued
 901 subpoena. You may contact the clerk's office or the administrative agency to determine the requirements
 902 that must be satisfied when filing a motion to quash and you may elect to contact an attorney to
 903 represent your interest. If you elect to file a motion to quash, you must notify your doctor, other health
 904 care provider(s), or other health care entity, that you are filing the motion so that the health care
 905 provider or health care entity knows to send the health records to the clerk of court or administrative
 906 agency in a sealed envelope or package for safekeeping while your motion is decided.

907 2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued
 908 for an individual's health records shall include a Notice in the same part of the request in which the
 909 recipient of the subpoena duces tecum is directed where and when to return the health records. Such
 910 notice shall be in boldface capital letters and shall include the following language:

911 **NOTICE TO HEALTH CARE ENTITIES**

912 **A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL**
 913 **WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT**
 914 **INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED**
 915 **SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION**

916 WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.

917 YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN
918 CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED
919 THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:

920 NO MOTION TO QUASH WAS FILED; OR

921 ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE
922 ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH
923 SUCH RESOLUTION.

924 IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE
925 BEING REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A
926 MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO
927 THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA
928 OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE
929 FOLLOWING PROCEDURE:

930 PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED
931 ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY
932 WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE
933 HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA.
934 THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER
935 ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE
936 AGENCY.

937 3. Upon receiving a valid subpoena duces tecum for health records, health care entities shall have the
938 duty to respond to the subpoena in accordance with the provisions of subdivisions 4, 5, 6, 7, and 8.

939 4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a
940 sealed envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such
941 health records until they have received a certification as set forth in subdivision 5 or 8 from the party on
942 whose behalf the subpoena duces tecum was issued.

943 If the health care entity has actual receipt of notice that a motion to quash the subpoena has been
944 filed or if the health care entity files a motion to quash the subpoena for health records, then the health
945 care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or
946 administrative agency issuing the subpoena or in whose court or administrative agency the action is
947 pending. The court or administrative agency shall place the health records under seal until a
948 determination is made regarding the motion to quash. The securely sealed envelope shall only be opened
949 on order of the judge or administrative agency. In the event the court or administrative agency grants
950 the motion to quash, the health records shall be returned to the health care entity in the same sealed
951 envelope in which they were delivered to the court or administrative agency. In the event that a judge or
952 administrative agency orders the sealed envelope to be opened to review the health records in camera, a
953 copy of the order shall accompany any health records returned to the health care entity. The health
954 records returned to the health care entity shall be in a securely sealed envelope.

955 5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued
956 subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the
957 subpoenaed health care entity that the time for filing a motion to quash has elapsed and that no motion
958 to quash was filed. Any health care entity receiving such certification shall have the duty to comply
959 with the subpoena duces tecum by returning the specified health records by either the return date on the
960 subpoena or five days after receipt of the certification, whichever is later.

961 6. In the event that the individual whose health records are being sought files a motion to quash the
962 subpoena, the court or administrative agency shall decide whether good cause has been shown by the
963 discovering party to compel disclosure of the individual's health records over the individual's objections.
964 In determining whether good cause has been shown, the court or administrative agency shall consider (i)
965 the particular purpose for which the information was collected; (ii) the degree to which the disclosure of
966 the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the
967 disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or
968 proceeding; and (v) any other relevant factor.

969 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if
970 subpoenaed health records have been submitted by a health care entity to the court or administrative
971 agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no
972 submitted health records should be disclosed, return all submitted health records to the health care entity
973 in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide
974 all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon
975 determining that only a portion of the submitted health records should be disclosed, provide such portion
976 to the party on whose behalf the subpoena was issued and return the remaining health records to the
977 health care entity in a sealed envelope.

978 8. Following the court or administrative agency's resolution of a motion to quash, the party on whose
979 behalf the subpoena duces tecum was issued shall have the duty to certify in writing to the subpoenaed
980 health care entity a statement of one of the following:

981 a. All filed motions to quash have been resolved by the court or administrative agency and the
982 disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the
983 health records previously delivered in a sealed envelope to the clerk of the court or administrative
984 agency will not be returned to the health care entity;

985 b. All filed motions to quash have been resolved by the court or administrative agency and the
986 disclosures sought in the subpoena duces tecum are consistent with such resolution and that, since no
987 health records have previously been delivered to the court or administrative agency by the health care
988 entity, the health care entity shall comply with the subpoena duces tecum by returning the health records
989 designated in the subpoena by the return date on the subpoena or five days after receipt of certification,
990 whichever is later;

991 c. All filed motions to quash have been resolved by the court or administrative agency and the
992 disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no
993 health records shall be disclosed and all health records previously delivered in a sealed envelope to the
994 clerk of the court or administrative agency will be returned to the health care entity;

995 d. All filed motions to quash have been resolved by the court or administrative agency and the
996 disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only
997 limited disclosure has been authorized. The certification shall state that only the portion of the health
998 records as set forth in the certification, consistent with the court or administrative agency's ruling, shall
999 be disclosed. The certification shall also state that health records that were previously delivered to the
1000 court or administrative agency for which disclosure has been authorized will not be returned to the
1001 health care entity; however, all health records for which disclosure has not been authorized will be
1002 returned to the health care entity; or

1003 e. All filed motions to quash have been resolved by the court or administrative agency and the
1004 disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no
1005 health records have previously been delivered to the court or administrative agency by the health care
1006 entity, the health care entity shall return only those health records specified in the certification,
1007 consistent with the court or administrative agency's ruling, by the return date on the subpoena or five
1008 days after receipt of the certification, whichever is later.

1009 A copy of the court or administrative agency's ruling shall accompany any certification made
1010 pursuant to this subdivision.

1011 9. The provisions of this subsection have no application to subpoenas for health records requested
1012 under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation,
1013 audit, review or proceedings regarding a health care entity's conduct.

1014 The provisions of this subsection shall apply to subpoenas for the health records of both minors and
1015 adults.

1016 Nothing in this subsection shall have any effect on the existing authority of a court or administrative
1017 agency to issue a protective order regarding health records, including, but not limited to, ordering the
1018 return of health records to a health care entity, after the period for filing a motion to quash has passed.

1019 A subpoena for substance abuse records must conform to the requirements of federal law found in 42
1020 C.F.R. Part 2, Subpart E.

1021 I. Health care entities may testify about the health records of an individual in compliance with
1022 §§ 8.01-399 and 8.01-400.2.

1023 J. If an individual requests a copy of his health record from a health care entity, the health care
1024 entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and
1025 labor of copying the requested information, postage when the individual requests that such information
1026 be mailed, and preparation of an explanation or summary of such information as agreed to by the
1027 individual. For the purposes of this section, "individual" shall subsume a person with authority to act on
1028 behalf of the individual who is the subject of the health record in making decisions related to his health
1029 care.

1030 § 32.1-283. Investigation of deaths; obtaining consent to removal of organs, etc.; fees.

1031 A. Upon the death of any person from trauma, injury, violence, poisoning, accident, suicide or
1032 homicide, or suddenly when in apparent good health, or when unattended by a physician, or in jail,
1033 prison, other correctional institution or in police custody, or who is a patient or resident of a state
1034 mental health or mental retardation facility, or suddenly as an apparent result of fire, or in any
1035 suspicious, unusual or unnatural manner, or the sudden death of any infant less than eighteen months of
1036 age whose death is suspected to be attributable to Sudden Infant Death Syndrome (SIDS), the medical
1037 examiner of the county or city in which death occurs shall be notified by the physician in attendance,
1038 hospital, law-enforcement officer, funeral director or any other person having knowledge of such death.

1039 Good faith efforts shall be made by such person or institution having custody of the dead body to
1040 identify and to notify the next of kin of the decedent. Notification shall include informing the person
1041 presumed to be the next of kin that he has a right to have identification of the decedent confirmed
1042 without due delay and without being held financially responsible for any procedures performed for the
1043 purpose of the identification. Identity of the next of kin, if determined, shall be provided to the Chief
1044 Medical Examiner upon transfer of the dead body.

1045 B. Upon being notified of a death as provided in subsection A, the medical examiner shall take
1046 charge of the dead body, make an investigation into the cause and manner of death, reduce his findings
1047 to writing, and promptly make a full report to the Chief Medical Examiner. In order to facilitate his
1048 investigation, the medical examiner is authorized to inspect and copy the pertinent medical records of
1049 the decedent whose death he is investigating. Full directions as to the nature, character and extent of the
1050 investigation to be made in such cases shall be furnished each medical examiner by the Chief Medical
1051 Examiner, together with appropriate forms for the required reports and instructions for their use. The
1052 facilities and personnel under the Chief Medical Examiner shall be made available to medical examiners
1053 in such investigations. Reports and findings of the Medical Examiner shall be confidential and shall not
1054 under any circumstance be disclosed or made available for discovery pursuant to a court subpoena or
1055 otherwise, except as provided in this chapter. Nothing in this subsection shall prohibit the Chief Medical
1056 Examiner from releasing the cause or manner of death, or prohibit disclosure of reports or findings to
1057 the parties in a criminal case.

1058 C. A copy of each report pursuant to this section shall be delivered to the appropriate attorney for
1059 the Commonwealth and to the appropriate law-enforcement agency investigating the death. A copy of
1060 any such report regarding the death of a victim of a traffic accident shall be furnished upon request to
1061 the State Police and the Highway Safety Commission. In addition, a copy of any autopsy report
1062 concerning a patient or resident of a state mental health or mental retardation facility shall be delivered
1063 to the Commissioner of Behavioral Health and Developmental Services and to the *Office of the Inspector*
1064 *General* ~~for~~, *Division of Behavioral Health and Developmental Services*. A copy of any autopsy report
1065 concerning a prisoner committed to the custody of the Director of the Department of Corrections shall,
1066 upon request of the Director of the Department of Corrections, be delivered to the Director of the
1067 Department of Corrections. A copy of any autopsy report concerning a prisoner committed to any local
1068 correctional facility shall be delivered to the local sheriff or superintendent. Upon request, the Chief
1069 Medical Examiner shall release such autopsy report to the decedent's attending physician and to the
1070 personal representative or executor of the decedent or, if no personal representative or executor is
1071 appointed, then at the discretion of the Chief Medical Examiner, to the following persons in the
1072 following order of priority: (i) the spouse of the decedent, (ii) an adult son or daughter of the decedent,
1073 (iii) either parent of the decedent, (iv) an adult sibling of the decedent, (v) any other adult relative of the
1074 decedent in order of blood relationship, or (vi) any appropriate health facility quality assurance program.

1075 D. For each investigation under this article, including the making of the required reports, the medical
1076 examiner shall receive a fee established by the Board within the limitations of appropriations for the
1077 purpose. Such fee shall be paid by the Commonwealth, if the deceased is not a legal resident of the
1078 county or city in which his death occurred. In the event the deceased is a legal resident of the county or
1079 city in which his death occurred, such county or city shall be responsible for the fee up to \$20. If the
1080 deceased is a patient or resident of a state mental health or mental retardation facility, the fee shall be
1081 paid by the Department of Behavioral Health and Developmental Services.

1082 E. Nothing herein shall be construed to interfere with the autopsy procedure or with the routine
1083 obtaining of consent for removal of organs as conducted by surgical teams or others.

1084 **2. That Article 3 (§§ 37.2-423 through 37.2-425) of Chapter 4 of Title 37.2 and §§ 53.1-16 and**
1085 **66-3.1 of the Code of Virginia are repealed.**

1086 **3. That, effective July 1, 2011, the Office of the Inspector General created by this act shall be**
1087 **deemed the successor in interest to the (i) Office of the Inspector General for Behavioral Health**
1088 **and Developmental Services, (ii) Inspector General for the Department of Corrections, (iii)**
1089 **Inspector General of the Department of Juvenile Justice, and (iv) the Inspector General of the**
1090 **Department of Transportation to the extent that this act transfers powers and duties. All rights,**
1091 **title and interest in and to any real or tangible personal property vested in the Inspector General**
1092 **for Behavioral Health and Developmental Services, the Inspector General for the Department of**
1093 **Corrections, Inspector General of the Department of Juvenile Justice, or the Inspector General of**
1094 **the Department of Transportation to the extent that this act transfers powers and duties as July 1,**
1095 **2011, shall be transferred to and taken as standing in the name of the Office of the Inspector**
1096 **General created by this act.**

1097 **4. That the Governor may transfer an appropriation or any portion thereof within a state agency**
1098 **established, abolished or otherwise affected by the provisions of this act, or from one such agency**
1099 **to another, to support the changes in organization or responsibility resulting from or required by**
1100 **the provisions of this act.**