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SENATE BILL NO. 1477

Offered January 21, 2011

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.

Patron—Stosch

Referred to Committee on General Laws and Technology

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

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

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

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

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

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

74 8. Answer inquiries from citizens.

75 9. Provide to citizens information concerning state agencies.

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

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

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

83 § 2.2-310. Subpoenas.

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

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

94 § 2.2-311. Cooperation of state agencies and officers.

95 A. Each state agency and every officer and employee shall cooperate with, and provide assistance to,
96 the State Inspector General in the performance of any investigation. Each state agency shall make its
97 premises, equipment, personnel, books, records, and papers readily available to the State Inspector
98 General upon request.

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

106 § 2.2-312. Reports.

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

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

118 C. The State Inspector General shall keep the Secretaries of Health and Human Resources, Public
119 Safety, and Transportation advised of the Office's activities as it relates to each respective Secretary on
120 at least a quarterly basis. The Secretaries of Health and Human Resources, Public Safety, and

121 Transportation shall report to the Governor's chief of staff any serious problems, abuses, or deficiencies
122 relating to the management or operation of a state agency within each such Secretary's area of
123 responsibility.

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

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

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

132 Article 2.

133 Division of Behavioral Health and Developmental Services.

134 § 2.2-313. Division of Behavioral Health and Developmental Services.

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

139 § 2.2-314. Definitions.

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

141 § 2.2-315. Additional powers and duties of Inspector General.

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

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

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

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

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

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

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

176 Article 3.

177 Division of Corrections.

178 § 2.2-316. Division of Corrections.

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

182 § 2.2-317. *Definitions.*

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

184 § 2.2-318. *Additional powers and duties.*

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

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

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

192 B. *The Division and no more than 30 members of the internal investigations unit of the Office shall*
193 *have the same powers as a sheriff or a law-enforcement officer in the investigation of allegations of*
194 *criminal behavior affecting the operations of the Department. Investigators so designated shall receive*
195 *the training required by the Department of Criminal Justice Services for law-enforcement personnel*
196 *before exercising such powers.*

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

199 *Article 4.*

200 *Division of Juvenile Justice.*

201 § 2.2-319. *Division of Juvenile Justice.*

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

205 § 2.2-320. *Definitions.*

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

207 § 2.2-321. *Additional powers and duties.*

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

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

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

215 B. *The Division and no more than 10 members of the internal investigations unit of the Office shall*
216 *have the same powers as a sheriff or a law-enforcement officer in the investigation of allegations of*
217 *criminal behavior affecting the operations of the Department. Investigators so designated shall receive*
218 *the training required by the Department of Criminal Justice Services for law-enforcement personnel*
219 *before exercising 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 internal investigations unit of the Office shall*
238 *have the same powers as a sheriff or a law-enforcement officer in the investigation of allegations of*
239 *fraud, waste or abuse affecting the operations of the Department of Transportation. Investigators so*
240 *designated shall receive the training required by the Department of Criminal Justice Services for*
241 *law-enforcement personnel before exercising such powers.*

242 § 2.2-3705.3. *Exclusions to application of chapter; records relating to administrative investigations.*

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

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

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

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

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

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

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

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

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

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

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

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

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

313 11. Records of active investigations being conducted by the Department of Criminal Justice Services
314 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.),
315 and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

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

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

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

345 § 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

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

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

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

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

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

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

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

367 Administration.

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

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

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

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

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

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

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

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

409 3. Stating the reasons why protection is necessary.

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

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

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

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

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

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

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

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

456 14. Documents and other information of a proprietary nature furnished by a supplier of charitable
457 gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of
458 § 18.2-340.34.

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

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

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

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

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

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

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

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

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

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

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

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

511 3. Stating the reasons why protection is necessary.

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

516 23. Records submitted as a grant application, or accompanying a grant application, to the Virginia
517 Tobacco Indemnification and Community Revitalization Commission to the extent such records contain
518 (i) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii) financial records
519 of a grant applicant that is not a public body, including balance sheets and financial statements, that are
520 not generally available to the public through regulatory disclosure or otherwise, or (iii) research-related
521 information produced or collected by the applicant in the conduct of or as a result of study or research
522 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information
523 has not been publicly released, published, copyrighted, or patented, if the disclosure of such information
524 would be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or
525 other records prepared by the Commission or its staff exclusively for the evaluation of grant
526 applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the
527 powers of and in furtherance of the performance of the duties of the Commission pursuant to
528 § 3.2-3103.

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

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

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

534 3. Stating the reasons why protection is necessary.

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

539 § 2.2-4344. Exemptions from competition for certain transactions.

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

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

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

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

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

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

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

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

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

561 § 32.1-127.1:03. Health records privacy.

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

566 Pursuant to this subsection:

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

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

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

587 B. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

636 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to
637 § 16.1-248.3.

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

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

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

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

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

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

661 6. As required or authorized by law relating to public health activities, health oversight activities,
662 serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,
663 public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,
664 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,
665 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,
666 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and 63.2-1606;

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

668 8. In connection with the health care entity's own health care operations or the health care operations
669 of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in
670 accordance with accepted standards of practice within the health services setting; however, the
671 maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a
672 pharmacy registered or permitted in Virginia shall only be accomplished in compliance with
673 §§ 54.1-3410, 54.1-3411, and 54.1-3412;

- 674 9. When the individual has waived his right to the privacy of the health records;
675 10. When examination and evaluation of an individual are undertaken pursuant to judicial or
676 administrative law order, but only to the extent as required by such order;
677 11. To the guardian ad litem and any attorney representing the respondent in the course of a
678 guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 10
679 (§ 37.2-1000 et seq.) of Title 37.2;
680 12. To the guardian ad litem and any attorney appointed by the court to represent an individual who
681 is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5
682 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title
683 16.1, or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of
684 Title 37.2;
685 13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et
686 seq.) of Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health
687 authority or a designee of a community services board or behavioral health authority, or a
688 law-enforcement officer participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter
689 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
690 the proceeding, and to any health care provider evaluating or providing services to the person who is the
691 subject of the proceeding or monitoring the person's adherence to a treatment plan ordered under those
692 provisions. Health records disclosed to a law-enforcement officer shall be limited to information
693 necessary to protect the officer, the person, or the public from physical injury or to address the health
694 care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any
695 other purpose, disclosed to others, or retained;
696 14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or
697 administrative proceeding, if the court or administrative hearing officer has entered an order granting the
698 attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the
699 health care entity of such order;
700 15. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health records
701 in accord with § 9.1-156;
702 16. To an agent appointed under an individual's power of attorney or to an agent or decision maker
703 designated in an individual's advance directive for health care or for decisions on anatomical gifts and
704 organ, tissue or eye donation or to any other person consistent with the provisions of the Health Care
705 Decisions Act (§ 54.1-2981 et seq.);
706 17. To third-party payors and their agents for purposes of reimbursement;
707 18. As is necessary to support an application for receipt of health care benefits from a governmental
708 agency or as required by an authorized governmental agency reviewing such application or reviewing
709 benefits already provided or as necessary to the coordination of prevention and control of disease,
710 injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;
711 19. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership
712 or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;
713 20. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and
714 immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;
715 21. Where necessary in connection with the implementation of a hospital's routine contact process for
716 organ donation pursuant to subdivision B 4 of § 32.1-127;
717 22. In the case of substance abuse records, when permitted by and in conformity with requirements
718 of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;
719 23. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the
720 adequacy or quality of professional services or the competency and qualifications for professional staff
721 privileges;
722 24. If the health records are those of a deceased or mentally incapacitated individual to the personal
723 representative or executor of the deceased individual or the legal guardian or committee of the
724 incompetent or incapacitated individual or if there is no personal representative, executor, legal guardian
725 or committee appointed, to the following persons in the following order of priority: a spouse, an adult
726 son or daughter, either parent, an adult brother or sister, or any other relative of the deceased individual
727 in order of blood relationship;
728 25. For the purpose of conducting record reviews of inpatient hospital deaths to promote
729 identification of all potential organ, eye, and tissue donors in conformance with the requirements of
730 applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's
731 designated organ procurement organization certified by the United States Health Care Financing
732 Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association
733 of America or the American Association of Tissue Banks;
734 26. To the Office of the Inspector General ~~for~~, *Division of Behavioral Health and Developmental*
735 *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

736 Chapter 3.2 of Title 2.2;

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

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

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

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

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

756 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a
757 person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article
758 3.02 (§ 32.1-48.05 et seq.) of Chapter 2;

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

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

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

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

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

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

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

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

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

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

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

839 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

840 Individual's Name

841 Health Care Entity's Name

842 Person, Agency, or Health Care Entity to whom disclosure is to
 843 be made

844 Information or Health Records to be disclosed

845 Purpose of Disclosure or at the Request of the Individual

846 As the person signing this authorization, I understand that I am giving
 847 my permission to the above-named health care entity for disclosure of
 848 confidential health records. I understand that the health care entity
 849 may not condition treatment or payment on my willingness to sign this
 850 authorization unless the specific circumstances under which such
 851 conditioning is permitted by law are applicable and are set forth in
 852 this authorization. I also understand that I have the right to revoke
 853 This authorization at any time, but that my revocation is not effective
 854 until delivered in writing to the person who is in possession of my
 855 health records and is not effective as to health records already
 856 disclosed under this authorization. A copy of this authorization and a

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

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

869 H. Pursuant to this subsection:

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

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

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

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

892 **NOTICE TO INDIVIDUAL**

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

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

912 **NOTICE TO HEALTH CARE ENTITIES**

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

917 WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.

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

921 NO MOTION TO QUASH WAS FILED; OR

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

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

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

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

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

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

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

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

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

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

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

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

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

996 d. All filed motions to quash have been resolved by the court or administrative agency and the
997 disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only
998 limited disclosure has been authorized. The certification shall state that only the portion of the health
999 records as set forth in the certification, consistent with the court or administrative agency's ruling, shall
1000 be disclosed. The certification shall also state that health records that were previously delivered to the
1001 court or administrative agency for which disclosure has been authorized will not be returned to the
1002 health care entity; however, all health records for which disclosure has not been authorized will be
1003 returned to the health care entity; or

1004 e. All filed motions to quash have been resolved by the court or administrative agency and the
1005 disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no
1006 health records have previously been delivered to the court or administrative agency by the health care
1007 entity, the health care entity shall return only those health records specified in the certification,
1008 consistent with the court or administrative agency's ruling, by the return date on the subpoena or five
1009 days after receipt of the certification, whichever is later.

1010 A copy of the court or administrative agency's ruling shall accompany any certification made
1011 pursuant to this subdivision.

1012 9. The provisions of this subsection have no application to subpoenas for health records requested
1013 under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation,
1014 audit, review or proceedings regarding a health care entity's conduct.

1015 The provisions of this subsection shall apply to subpoenas for the health records of both minors and
1016 adults.

1017 Nothing in this subsection shall have any effect on the existing authority of a court or administrative
1018 agency to issue a protective order regarding health records, including, but not limited to, ordering the
1019 return of health records to a health care entity, after the period for filing a motion to quash has passed.

1020 A subpoena for substance abuse records must conform to the requirements of federal law found in 42
1021 C.F.R. Part 2, Subpart E.

1022 I. Health care entities may testify about the health records of an individual in compliance with
1023 §§ 8.01-399 and 8.01-400.2.

1024 J. If an individual requests a copy of his health record from a health care entity, the health care
1025 entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and
1026 labor of copying the requested information, postage when the individual requests that such information
1027 be mailed, and preparation of an explanation or summary of such information as agreed to by the
1028 individual. For the purposes of this section, "individual" shall subsume a person with authority to act on
1029 behalf of the individual who is the subject of the health record in making decisions related to his health
1030 care.

1031 § 32.1-283. Investigation of deaths; obtaining consent to removal of organs, etc.; fees.

1032 A. Upon the death of any person from trauma, injury, violence, poisoning, accident, suicide or
1033 homicide, or suddenly when in apparent good health, or when unattended by a physician, or in jail,
1034 prison, other correctional institution or in police custody, or who is a patient or resident of a state
1035 mental health or mental retardation facility, or suddenly as an apparent result of fire, or in any
1036 suspicious, unusual or unnatural manner, or the sudden death of any infant less than eighteen months of
1037 age whose death is suspected to be attributable to Sudden Infant Death Syndrome (SIDS), the medical
1038 examiner of the county or city in which death occurs shall be notified by the physician in attendance,
1039 hospital, law-enforcement officer, funeral director or any other person having knowledge of such death.

1040 Good faith efforts shall be made by such person or institution having custody of the dead body to
1041 identify and to notify the next of kin of the decedent. Notification shall include informing the person
1042 presumed to be the next of kin that he has a right to have identification of the decedent confirmed
1043 without due delay and without being held financially responsible for any procedures performed for the
1044 purpose of the identification. Identity of the next of kin, if determined, shall be provided to the Chief
1045 Medical Examiner upon transfer of the dead body.

1046 B. Upon being notified of a death as provided in subsection A, the medical examiner shall take
1047 charge of the dead body, make an investigation into the cause and manner of death, reduce his findings
1048 to writing, and promptly make a full report to the Chief Medical Examiner. In order to facilitate his
1049 investigation, the medical examiner is authorized to inspect and copy the pertinent medical records of
1050 the decedent whose death he is investigating. Full directions as to the nature, character and extent of the
1051 investigation to be made in such cases shall be furnished each medical examiner by the Chief Medical
1052 Examiner, together with appropriate forms for the required reports and instructions for their use. The
1053 facilities and personnel under the Chief Medical Examiner shall be made available to medical examiners
1054 in such investigations. Reports and findings of the Medical Examiner shall be confidential and shall not
1055 under any circumstance be disclosed or made available for discovery pursuant to a court subpoena or
1056 otherwise, except as provided in this chapter. Nothing in this subsection shall prohibit the Chief Medical
1057 Examiner from releasing the cause or manner of death, or prohibit disclosure of reports or findings to
1058 the parties in a criminal case.

1059 C. A copy of each report pursuant to this section shall be delivered to the appropriate attorney for
1060 the Commonwealth and to the appropriate law-enforcement agency investigating the death. A copy of
1061 any such report regarding the death of a victim of a traffic accident shall be furnished upon request to
1062 the State Police and the Highway Safety Commission. In addition, a copy of any autopsy report
1063 concerning a patient or resident of a state mental health or mental retardation facility shall be delivered
1064 to the Commissioner of Behavioral Health and Developmental Services and to the *Office of the Inspector*
1065 *General* ~~for~~, *Division of Behavioral Health and Developmental Services*. A copy of any autopsy report
1066 concerning a prisoner committed to the custody of the Director of the Department of Corrections shall,
1067 upon request of the Director of the Department of Corrections, be delivered to the Director of the
1068 Department of Corrections. A copy of any autopsy report concerning a prisoner committed to any local
1069 correctional facility shall be delivered to the local sheriff or superintendent. Upon request, the Chief
1070 Medical Examiner shall release such autopsy report to the decedent's attending physician and to the
1071 personal representative or executor of the decedent or, if no personal representative or executor is
1072 appointed, then at the discretion of the Chief Medical Examiner, to the following persons in the
1073 following order of priority: (i) the spouse of the decedent, (ii) an adult son or daughter of the decedent,
1074 (iii) either parent of the decedent, (iv) an adult sibling of the decedent, (v) any other adult relative of the
1075 decedent in order of blood relationship, or (vi) any appropriate health facility quality assurance program.

1076 D. For each investigation under this article, including the making of the required reports, the medical
1077 examiner shall receive a fee established by the Board within the limitations of appropriations for the
1078 purpose. Such fee shall be paid by the Commonwealth, if the deceased is not a legal resident of the
1079 county or city in which his death occurred. In the event the deceased is a legal resident of the county or
1080 city in which his death occurred, such county or city shall be responsible for the fee up to \$20. If the
1081 deceased is a patient or resident of a state mental health or mental retardation facility, the fee shall be
1082 paid by the Department of Behavioral Health and Developmental Services.

1083 E. Nothing herein shall be construed to interfere with the autopsy procedure or with the routine
1084 obtaining of consent for removal of organs as conducted by surgical teams or others.

1085 **2. That Article 3 (§§ 37.2-423 through 37.2-425) of Chapter 4 of Title 37.2 and §§ 53.1-16 and**
1086 **66-3.1 of the Code of Virginia are repealed.**

1087 **3. That, effective July 1, 2011, the Office of the Inspector General created by this act shall be**
1088 **deemed the successor in interest to the (i) Office of the Inspector General for Behavioral Health**
1089 **and Developmental Services, (ii) Inspector General for the Department of Corrections, (iii)**
1090 **Inspector General of the Department of Juvenile Justice, and (iv) the Inspector General of the**
1091 **Department of Transportation to the extent that this act transfers powers and duties. All rights,**
1092 **title and interest in and to any real or tangible personal property vested in the Inspector General**
1093 **for Behavioral Health and Developmental Services, the Inspector General for the Department of**
1094 **Corrections, Inspector General of the Department of Juvenile Justice, or the Inspector General of**
1095 **the Department of Transportation to the extent that this act transfers powers and duties as July 1,**
1096 **2011, shall be transferred to and taken as standing in the name of the Office of the Inspector**
1097 **General created by this act.**

1098 **4. That the Governor may transfer an appropriation or any portion thereof within a state agency**
1099 **established, abolished or otherwise affected by the provisions of this act, or from one such agency**
1100 **to another, to support the changes in organization or responsibility resulting from or required by**
1101 **the provisions of this act.**

