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SENATE BILL NO. 135

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 23, 2012)

(Patron Prior to Substitute—Senator Puller)

A BILL to amend and reenact §§ 2.2-3705.6, 32.1-276.2, and 32.1-276.4 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 32.1-276.7:1 and 32.1-276.9:1, and to repeal § 32.1-276.5:1 of the Code of Virginia, relating to health care data reporting.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.6, 32.1-276.2, and 32.1-276.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 32.1-276.7:1 and 32.1-276.9:1 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

11. a. Memoranda, staff evaluations, or other records prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were made public prior to or after the execution of an interim or a comprehensive agreement, § 56-573.1:1 or 56-575.17

60 notwithstanding, the financial interest or bargaining position of the public entity would be adversely
61 affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the
62 responsible public entity; and

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

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

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

77 3. Stating the reasons why protection is necessary.

78 The responsible public entity shall determine whether the requested exclusion from disclosure is
79 necessary to protect the trade secrets or financial records of the private entity. To protect other records
80 submitted by the private entity from disclosure, the responsible public entity shall determine whether
81 public disclosure prior to the execution of an interim agreement or a comprehensive agreement would
82 adversely affect the financial interest or bargaining position of the public or private entity. The
83 responsible public entity shall make a written determination of the nature and scope of the protection to
84 be afforded by the responsible public entity under this subdivision. Once a written determination is made
85 by the responsible public entity, the records afforded protection under this subdivision shall continue to
86 be protected from disclosure when in the possession of any affected jurisdiction or affected local
87 jurisdiction.

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

95 For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction,"
96 "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation
97 facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined
98 in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and
99 Infrastructure Act of 2002.

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

106 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential
107 proprietary records that are not generally available to the public through regulatory disclosure or
108 otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21
109 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of
110 confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's,
111 or franchisee's financial capacity or provision of new services, adoption of new technologies or
112 implementation of improvements, where such new services, technologies or improvements have not been
113 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such
114 records were made public, the competitive advantage or financial interests of the franchisee would be
115 adversely affected.

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

120 No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the
121 bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the

applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

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

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

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

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

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

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

20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial records of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of Minority Business Enterprise as part of an application for (i) certification as a small, women-owned, or minority-owned business in accordance with Chapter 14 (§ 2.2-1400 et seq.) of this title or (ii) a claim made by a disadvantaged business or an economically disadvantaged individual against the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311. In order for such trade secrets or financial records to be excluded from the provisions of this chapter, the business shall (a) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) state the reasons why protection is necessary.

21. Documents and other information of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

22. (Effective until July 1, 2012) Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial records, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the Inspector General of the Virginia Department of Transportation for the purpose of an audit, special investigation, or any study requested by the Inspector General's Office in accordance with law.

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

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

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

3. Stating the reasons why protection is necessary.

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

183 22. (Effective July 1, 2012) Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336
184 et seq.), including, but not limited to, financial records, including balance sheets and financial
185 statements, that are not generally available to the public through regulatory disclosure or otherwise, and
186 revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector
187 General for the purpose of an audit, special investigation, or any study requested by the Office of the
188 State Inspector General in accordance with law.

189 In order for the records specified in this subdivision to be excluded from the provisions of this
190 chapter, the private or nongovernmental entity shall make a written request to the State Inspector
191 General:

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

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

195 3. Stating the reasons why protection is necessary.

196 The State Inspector General shall determine whether the requested exclusion from disclosure is
197 necessary to protect the trade secrets or financial records of the private entity. The State Inspector
198 General shall make a written determination of the nature and scope of the protection to be afforded by it
199 under this subdivision.

200 23. Records submitted as a grant application, or accompanying a grant application, to the Virginia
201 Tobacco Indemnification and Community Revitalization Commission to the extent such records contain
202 (i) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii) financial records
203 of a grant applicant that is not a public body, including balance sheets and financial statements, that are
204 not generally available to the public through regulatory disclosure or otherwise, or (iii) research-related
205 information produced or collected by the applicant in the conduct of or as a result of study or research
206 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information
207 has not been publicly released, published, copyrighted, or patented, if the disclosure of such information
208 would be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or
209 other records prepared by the Commission or its staff exclusively for the evaluation of grant
210 applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the
211 powers of and in furtherance of the performance of the duties of the Commission pursuant to
212 § 3.2-3103.

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

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

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

218 3. Stating the reasons why protection is necessary.

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

223 24. a. Records of the Commercial Space Flight Authority relating to rate structures or charges for the
224 use of projects of, the sale of products of, or services rendered by the Authority if public disclosure
225 would adversely affect the financial interest or bargaining position of the Authority or a private entity
226 providing records to the Authority; or

227 b. Records provided by a private entity to the Commercial Space Flight Authority, to the extent that
228 such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act
229 (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial
230 statements, that are not generally available to the public through regulatory disclosure or otherwise; or
231 (iii) other information submitted by the private entity, where, if the records were made public, the
232 financial interest or bargaining position of the Authority or private entity would be adversely affected.

233 In order for the records specified in clauses (i), (ii), and (iii) of subdivision 24 b to be excluded from
234 the provisions of this chapter, the private entity shall make a written request to the Authority:

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

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

238 3. Stating the reasons why protection is necessary.

239 The Authority shall determine whether the requested exclusion from disclosure is necessary to protect
240 the trade secrets or financial records of the private entity. To protect other records submitted by the
241 private entity from disclosure, the Authority shall determine whether public disclosure would adversely
242 affect the financial interest or bargaining position of the Authority or private entity. The Authority shall
243 make a written determination of the nature and scope of the protection to be afforded by it under this
244 subdivision.

25. Documents and other information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services or any political subdivision, agency, or board of the Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part of a state or federal regulatory enforcement action.

§ 32.1-276.2. Health care data reporting; purpose.

The General Assembly finds that the establishment of effective health care data analysis and reporting initiatives is essential to improving the quality ~~and~~, cost, *and efficiency* of health care, fostering competition among health care providers, and increasing consumer choice with regard to health care services in the Commonwealth, and that accurate and valuable health care data can best be identified by representatives of state government ~~and~~, the consumer, ~~hospital, nursing home, physician and the provider~~, insurance, and business communities. For this reason, the State Board of Health and the State Health Commissioner, assisted by the State Department of Health *and the Bureau of Insurance*, shall administer the health care data reporting initiatives established by this chapter.

§ 32.1-276.4. Agreements for certain data services.

A. The Commissioner shall negotiate and enter into contracts or agreements with a nonprofit organization for the compilation, storage, analysis, and evaluation of data submitted by health care providers pursuant to this chapter; *for the operation of the All-Payer Claims Database pursuant to § 32.1-276.7:1*; and for the development and administration of a methodology for the measurement and review of the efficiency and productivity of health care providers. Such nonprofit organization shall be governed by a board of directors composed of representatives of state government, including the Commissioner *and representatives of the Department of Medical Assistance Services and the Bureau of Insurance*, ~~and~~ the consumer, *and the health care provider*, and business communities. Of the health care ~~provider~~ representatives, there shall be an equal number of hospital, nursing home, physician, and health plan representatives. The articles of incorporation of such nonprofit organization shall require the nomination of such board members by organizations and associations representing those categories of persons specified for representation on the board of directors.

B. In addition to providing for the compilation, storage, analysis, and evaluation services described in subsection A, any contract or agreement with a nonprofit, tax-exempt health data organization made pursuant to this section shall require the board of directors of such organization to:

1. Develop and disseminate other health care cost ~~and~~, quality, *and efficiency* information designed to assist businesses and consumers in purchasing health care and long-term care services;

2. Prepare and make public summaries, compilations, or other supplementary reports based on the data provided by health care providers pursuant to this chapter;

3. Collect, compile, and publish Health Employer Data and Information Set (HEDIS) information or reports or other quality of care or performance information sets approved by the Board, pursuant to § 32.1-276.5, and submitted by health maintenance organizations or other health care plans;

4. Jointly determine with the Board of Medicine any data concerning safety services and quality health care services rendered by physicians to Medicaid recipients that should be identified, collected, and disseminated. The board of directors shall further determine jointly with the Board of Medicine the costs of requiring physicians to identify, submit, or collect such information and identify sufficient funding sources to appropriate to physicians for the collection of the same. No physician shall be required to collect or submit safety and quality of health care services information that is already identified, collected, or submitted under this chapter; or for which funds for collection are not appropriated;

5. Maintain the confidentiality *and security* of data as set forth in §§ 32.1-276.7:1 and 32.1-276.9;

6. Submit a report to the Board, the Governor, and the General Assembly no later than October 1 of each year for the preceding fiscal year. Such report shall include a certified audit, *including a triennial analysis of the efficacy and value of the All-Payer Claims Database beginning in 2015*, and provide information on the accomplishments, priorities, and current and planned activities of the nonprofit organization;

7. Submit, as appropriate, strategic plans to the Board, the Governor, and the General Assembly recommending specific data projects to be undertaken and specifying data elements ~~that will be required from health care providers for collection under this chapter~~. In developing strategic plans, the nonprofit organization shall incorporate similar activities of other public and private entities to maximize the quality of data projects and to minimize the cost and duplication of data projects. In its strategic plans, the nonprofit organization shall also evaluate the continued need for and efficacy of current data initiatives, including the use of patient level data for public health purposes. ~~The nonprofit organization shall submit the first such strategic plan to the Board, the Governor, and the General Assembly by October 1, 1996. Such initial plan shall include recommendations for measuring quality of care for all health care providers and for funding all data projects undertaken pursuant to this chapter.~~ The approval

306 of the General Assembly shall be required prior to the implementation of any recommendations set forth
307 in a strategic plan submitted pursuant to this section;

308 8. Competitively bid or competitively negotiate all aspects of all data projects, if feasible; and

309 9. *Fulfill all funded requirements set forth for the nonprofit organization in this chapter.*

310 C. The Department shall take steps to increase public awareness of the data and information available
311 through the nonprofit organization's website and how consumers can use the data and information when
312 making decisions about health care providers and services.

313 D. Except as provided in subdivision A 2 of § 2.2-4345, the provisions of the Virginia Public
314 Procurement Act (§ 2.2-4300 et seq.) shall not apply to the activities of the Commissioner authorized by
315 this section. Funding for services provided pursuant to any such contract or agreement shall come from
316 general appropriations and from fees determined pursuant to § 32.1-276.8 and from such fees and other
317 public and private funding sources as may be authorized by this chapter.

318 § 32.1-276.7:1. *All-Payer Claims Database created; purpose; reporting requirements.*

319 A. *The Virginia All-Payer Claims Database is hereby created to facilitate data-driven,*
320 *evidence-based improvements in access, quality, and cost of health care and to promote and improve the*
321 *public health through the understanding of health care expenditure patterns and operation and*
322 *performance of the health care system.*

323 B. *The Commissioner, in cooperation with the Bureau of Insurance, may collect paid claims data or*
324 *encounter records for covered benefits, pursuant to data submission and use agreements as specified in*
325 *subsection C, from entities electing to participate as data suppliers, which may include:*

326 1. *Issuers of individual or group accident and sickness insurance policies providing hospital, medical*
327 *and surgical, or major medical coverage on an expense-incurred basis; corporations providing*
328 *individual or group accident and sickness subscription contracts; and health maintenance organizations*
329 *providing a health care plan for health care services;*

330 2. *Third-party administrators, pharmacy benefit managers, and any other entities that receive or*
331 *collect charges, contributions, or premiums, or adjust or settle health care claims, for Virginia*
332 *residents;*

333 3. *The Department of Medical Assistance Services, with respect to services provided under programs*
334 *administered pursuant to Titles XIX and XXI of the Social Security Act; and*

335 4. *Federal health insurance plans, if available, including but not limited to Medicare, TRICARE, and*
336 *the Federal Employees Health Benefits Plan.*

337 C. *The Commissioner shall ensure that the nonprofit organization executes uniform data submission*
338 *and use agreements with each entity listed in subsection B that submits paid claims data to the*
339 *All-Payer Claims Database and each entity that subscribes to data products and reports. Such*
340 *agreements shall include procedures for submission, collection, aggregation, and distribution of specified*
341 *data and shall provide for, at a minimum:*

342 1. *The protection of patient privacy and data security pursuant to provisions of this chapter and state*
343 *and federal privacy laws, including the federal Health Insurance Portability and Accountability Act (42*
344 *U.S.C. § 1320d et seq., as amended); Titles XIX and XXI of the Social Security Act; § 32.1-127.01:3;*
345 *Chapter 6 (§ 38.2-600 et seq.) of Title 38.2; and the Health Information Technology for Economic and*
346 *Clinical Health (HITECH) Act, as included in the American Recovery and Reinvestment Act (P.L. 111-5,*
347 *123 Stat. 115);*

348 2. *Identification of the type of paid claims to be collected by the All-Payer Claims Database and the*
349 *entities that are subject to the submission of such claims, as well as identification of specific data*
350 *elements from existing claims systems to be submitted and collected, including but not limited to patient*
351 *demographics, diagnosis and procedure codes, provider information, plan payments, member payment*
352 *responsibility, and service dates;*

353 3. *The fostering of geographic, demographic, economic, and peer group comparisons;*

354 4. *The identification and comparison of health plans by public and private health care purchasers,*
355 *providers, employers, consumers, health plans, health insurers, and data analysts, with regard to their*
356 *provision of safe, cost-effective, and high-quality health care services;*

357 5. *The use of and building upon existing national data collection standards and methods, including*
358 *the electronic Uniform Medical Claims Payer Reporting Standard as adopted by the Accredited*
359 *Standards Committee X12 (ASC X12) and the APCD Council, to establish and maintain the database in*
360 *a cost-effective manner and to facilitate uniformity among various all-payer claims databases of other*
361 *states and specification of data fields to be included in the submitted claims, consistent with such*
362 *national standards, allowing for exemptions when submitting entities do not collect the specified data or*
363 *pay on a per-claim basis, such exemption process to be managed by the advisory committee created*
364 *pursuant to subsection D;*

365 6. *A prohibition on disclosure or reporting of provider-specific, facility-specific, or carrier-specific*
366 *reimbursement information, except as provided in subsection L. The nonprofit organization shall ensure*
367 *that information being disclosed is not subject to reverse-engineering or any other method of*

determining reimbursement information;

7. A definition of responsible use of claims data to improve health care value and preserve the integrity and utility of the All-Payer Claims Database;

8. A stipulation that analyses comparing providers or health plans using data from the All-Payer Claims Database use national standards or, when such national standards are unavailable, provide full transparency to providers or health plans of the alternative methodology used;

9. The establishment of data submission methods, schedules, and formats and procedures for verifying the accuracy of data submitted;

10. The specification of which data, reports, and other products shall be available to the public, insurers, employers, providers, public and private purchasers of health care, state agencies, and other public and private entities;

11. The facilitation of value-based, cost-effective purchasing of health care services by public and private purchasers and consumers and provision of sufficient claims data to achieve meaningful reporting as described in subsection E; and

12. A statement of the consequences, if any, for not reporting accurate claims pursuant to the executed agreements.

D. The Commissioner shall appoint an advisory committee to assist in the formation and operation of the All-Payer Claims Database. Such committee shall include a balanced representation of all the stakeholders serving on the governing board of the nonprofit organization as well as individuals with expertise in public health and specific expertise in health care performance measurement and reporting. Each stakeholder on the board of the nonprofit organization shall nominate a member and an alternate member to serve on the committee. The meetings of the advisory committee shall be open to all nominating member organizations and to the public.

E. The nonprofit organization shall implement the All-Payer Claims Database, consistent with the provisions of this chapter, to include:

1. The reporting of data that can be used to improve public health surveillance and population health, including reports on (i) injuries; (ii) chronic diseases, including but not limited to asthma, diabetes, cardiovascular disease, hypertension, arthritis, and cancer; (iii) health conditions of pregnant women, infants, and children; and (iv) geographic and demographic information for use in community health assessment, prevention education, and public health improvement. These data shall be developed in a format that allows comparison of information in the All-Payer Claims Database with other nationwide data programs and that allows employers to compare their employee health plans statewide and between and among regions of the Commonwealth and nationally.

2. The reporting of data that health care purchasers, including employers and consumers, may use to compare quality, cost, and efficiency of health care, including development of information on utilization patterns and information that permits comparison of providers statewide between and among regions of the Commonwealth. The advisory committee created pursuant to subsection D shall make recommendations to the nonprofit organization on the appropriate level of specificity of reported data in order to protect patient privacy and to accurately attribute services, cost, and resource utilization rates to providers.

3. The reporting of data that permits design and evaluation of alternative delivery and payment models.

F. Reporting of data shall not commence until such data has been processed and verified at levels of accuracy consistent with existing nonprofit organization data standards. Prior to release of any report specifically naming any provider or payer, the nonprofit organization shall provide affected entities with notice of the pending report and allow for a 60-day period of review to ensure accuracy. During this period, affected entities may seek explanations of results and correction of data that they prove to be inaccurate. The nonprofit organization shall make these corrections prior to any release of the report. At the end of the review period, upon completion of all necessary corrections, the report may be released.

G. The Commissioner and the nonprofit organization shall develop recommendations for elimination of existing state health care data submission and reporting requirements, including those imposed by this chapter, that may be replaced by All-Payer Claims Database submissions and reports. In addition, the Commissioner and the nonprofit organization shall consider and recommend, as appropriate, integration of new data sources into the All-Payer Claims Database, based on the findings and recommendations of the work group established pursuant to § 32.1-276.9:1.

H. Information acquired pursuant to this section shall be confidential and shall be exempt from disclosure by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

I. No person shall assess costs or charge a fee to any health care practitioner related to formation or operation of the All-Payer Claims Database. However, a reasonable fee may be charged to health care practitioners who voluntarily subscribe to access the database for purposes other than data

429 verification.

430 J. As used in this section, "provider" means a hospital or physician as defined in this chapter or any
431 other health care practitioner licensed, certified, or authorized under state law to provide covered
432 services represented in claims reported pursuant to this section.

433 K. The board of directors of the nonprofit organization shall develop short-term and long-term
434 funding strategies for the creation and operation of the All-Payer Claims Database that may include
435 public and private grant funding, subscriptions for access to data reports, and revenue for specific data
436 projects.

437 L. Any state agency, excluding institutions of higher education, shall, upon the request of the
438 chairman, commissioner, or secretary responsible for such agency, have access to aggregated data
439 reported by the All-Payer Claims Database pursuant to this section at no cost for the purposes of health
440 care research and activities. Claims data provided to such agency shall be confidential and shall not be
441 disclosed for any purpose. The nonprofit organization may charge a reasonable fee to cover the cost of
442 these data requests.

443 § 32.1-276.9:1. Health information needs related to reform; work group.

444 A. The Commissioner shall direct the nonprofit organization to convene a work group to study
445 continuing health information needs and to develop recommendations for the design, development, and
446 operation of systems and strategies to meet those needs. The work group shall include representatives of
447 the Department of Health, the Department of Medical Assistance Services, the Department of Health
448 Professions, the State Corporation Commission's Bureau of Insurance, the Virginia Health Reform
449 Initiative, the Virginia Hospital and Healthcare Association, the Virginia Association of Health Plans,
450 the Medical Society of Virginia, health care providers, and other stakeholders and shall:

451 1. Identify various health information needs related to implementation of health care reform
452 initiatives, including those associated with development and operation of an all-payer claims database,
453 the Virginia Health Information Exchange, the Virginia Health Benefit Exchange, and any other health
454 reform initiatives. In doing so, the work group shall identify the clinical and paid claims information
455 required and the purposes for which such information will be used; and

456 2. Identify opportunities for maximizing efficiency and effectiveness of health information systems,
457 reducing duplication of efforts related to collection of health information, and minimizing costs and risks
458 associated with collection and use of health information.

459 B. The Commissioner shall report on activities, findings, and recommendations of the work group to
460 the Governor and the General Assembly no later than December 1 of each year, beginning in 2014.

461 2. That § 32.1-276.5:1 of the Code of Virginia is repealed upon certification by the nonprofit
462 organization with which the Commissioner of Health has entered into a contract or agreement
463 pursuant to § 32.1-276.4 of the Code of Virginia to the Commissioner that it has received 12
464 months of claims data.

465 3. That the Board of Health promulgate regulations requiring all entities listed in subdivisions B 1
466 and B 2 of § 32.1-276.7:1 as added by this act to submit paid claims data for covered benefits to
467 the All-Payer Claims Database established pursuant to that section.

468 4. That by December 1, 2012, the Commissioner of Health report to the Governor and the
469 General Assembly on whether the entities listed in subdivisions B 1 and B 2 of § 32.1-276.7:1 as
470 added by this act have executed agreements to submit claims data representing at least 75 percent
471 of privately covered individuals in the Commonwealth, as certified by the Commissioner. For
472 purposes of this enactment, "privately covered individuals" means the total population of Virginia
473 as determined by the 2010 United States census less the number of (i) uninsured individuals as
474 reported in the most recent estimate of the Secretary of Health and Human Resources' Virginia
475 Health Reform Initiative Advisory Council and (ii) Virginia enrollees in the Medicaid, Family
476 Access to Medical Insurance Security, Medicare and TRICARE programs and the Federal
477 Employee Health Benefits Plan, each as reported by the Department of Medical Assistance
478 Services.