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HOUSE BILL NO. 1844

House Amendments in [] — January 21, 2013

A BILL to amend and reenact §§ 2.2-316, 2.2-2411, 2.2-2664, 2.2-2905, 2.2-3705.3, 2.2-3711, 2.2-5300, 22.1-253.13:3, 37.2-304, 37.2-709, as it is currently effective and as it shall become effective, 51.5-1, 51.5-39.1, 51.5-39.13, 51.5-46, and 63.2-1808 of the Code of Virginia, and to amend and reenact the third enactment clause of Chapter 847 of the Acts of Assembly of 2012, relating to the Virginia Office for Protection and Advocacy; privatization.

Patron Prior to Engrossment—Delegate Orrock

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-316, 2.2-2411, 2.2-2664, 2.2-2905, 2.2-3705.3, 2.2-3711, 2.2-5300, 22.1-253.13:3, 37.2-304, 37.2-709, as it is currently effective and as it shall become effective, 51.5-1, 51.5-39.1, 51.5-39.13, 51.5-46, and 63.2-1808 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-316. Additional powers and duties of State Inspector General.

In addition to the duties set forth in this chapter, the State Inspector General shall have the following powers and duties to:

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

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

3. Keep the General Assembly and the Joint Commission on Health Care fully and currently informed by means of reports required by § 2.2-313 concerning significant problems, abuses, and deficiencies relating to the administration of the programs and services of state facilities and of providers, including licensed mental health treatment units in state correctional facilities, to recommend corrective actions concerning the problems, abuses, and deficiencies, and to report on the progress made in implementing the corrective actions.

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

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

6. Receive reports, information, and complaints from the ~~Virginia Office for Protection and Advocacy~~ Commonwealth's designated protection and advocacy system concerning issues related to quality of care provided in state facilities and by providers, including licensed mental health treatment units in state correctional facilities, and to conduct independent reviews and investigations.

§ 2.2-2411. Public Guardian and Conservator Advisory Board; purpose; membership; terms.

A. The Public Guardian and Conservator Advisory Board (the Board) is established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Board shall be to report to and advise the Commissioner for Aging and Rehabilitative Services on the means for effectuating the purposes of this article and shall assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2.

B. The Board shall consist of no more than 15 members who shall be appointed by the Governor as

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HB1844E

59 follows: one representative of the Virginia Guardianship Association, one representative of the Virginia
 60 Association of Area Agencies on Aging, one representative of the Virginia State Bar, one active or
 61 retired circuit court judge upon recommendation of the Chief Justice of the Supreme Court, one
 62 representative of the ARC of Virginia, one representative of the National Alliance on Mental Illness of
 63 Virginia, one representative of the Virginia League of Social Service Executives, one representative of
 64 the Virginia Association of Community Services Boards, the Commissioner of Social Services or his
 65 designee, the Commissioner of Behavioral Health and Developmental Services or his designee, ~~the~~
 66 ~~Director of the Virginia Office for Protection and Advocacy or his designee,~~ and one person who is a
 67 member of the Commonwealth Council on Aging and such other individuals who may be qualified to
 68 assist in the duties of the Board, *who may include a representative of the Commonwealth's designated*
 69 *protection and advocacy system.*

70 C. The Commissioners of Social Services and Behavioral Health and Developmental Services, or
 71 their designees, ~~the Director of the Virginia Office for Protection and Advocacy or his designee,~~ and the
 72 representative of the Commonwealth Council on Aging; shall serve terms coincident with their terms of
 73 office or, in the case of designees, the term of the Commissioner ~~or Director.~~ Of the other members of
 74 the Board, five of the appointees shall serve for four-year terms and the remainder shall serve for
 75 three-year terms. No member shall serve more than two successive terms. A vacancy occurring other
 76 than by expiration of term shall be filled for the unexpired term.

77 D. Each year, the Board shall elect a chairman and a vice-chairman from among its members. Five
 78 members of the Board shall constitute a quorum.

79 E. Members shall receive no compensation for their services but shall be reimbursed for all
 80 reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2823.

81 **§ 2.2-2664. Virginia Interagency Coordinating Council; purpose; membership; duties.**

82 A. The Virginia Interagency Coordinating Council (the Council) is established as an advisory council,
 83 within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the
 84 Council shall be to promote and coordinate early intervention services in the Commonwealth.

85 B. The membership and operation of the Council shall be as required by Part C of the Individuals
 86 with Disabilities Education Act (20 U.S.C. § 1431 et seq.). The Commissioner of the Department of
 87 Health, the Director of the Department for the Deaf and Hard-of-Hearing, the Superintendent of Public
 88 Instruction, the Director of the Department of Medical Assistance Services, the Commissioner of
 89 Behavioral Health and Developmental Services, the Commissioner of Social Services, the Commissioner
 90 of the Department for the Blind and Vision Impaired, ~~the Director of the Virginia Office for Protection~~
 91 ~~and Advocacy,~~ and the Commissioner of the Bureau of Insurance within the State Corporation
 92 Commission shall each appoint one person from his agency to serve as the agency's representative on
 93 the Council. *The Director of the Commonwealth's designated protection and advocacy system may*
 94 *appoint one person from his agency to serve as the agency's representative on the Council.*

95 Agency representatives shall regularly inform their agency head of the Council's activities and the
 96 status of the implementation of an early intervention services system in the Commonwealth.

97 C. The Council's duties shall include advising and assisting the state lead agency in the following:

- 98 1. Performing its responsibilities for the early intervention services system;
- 99 2. Identifying sources of fiscal and other support for early intervention services, recommending
 100 financial responsibility arrangements among agencies, and promoting interagency agreements;
- 101 3. Developing strategies to encourage full participation, coordination, and cooperation of all
 102 appropriate agencies;
- 103 4. Resolving interagency disputes;
- 104 5. Gathering information about problems that impede timely and effective service delivery and taking
 105 steps to ensure that any identified policy problems are resolved;
- 106 6. Preparing federal grant applications; and
- 107 7. Preparing and submitting an annual report to the Governor and the U.S. Secretary of Education on
 108 the status of early intervention services within the Commonwealth.

109 **§ 2.2-2905. Certain officers and employees exempt from chapter.**

110 The provisions of this chapter shall not apply to:

- 111 1. Officers and employees for whom the Constitution specifically directs the manner of selection;
- 112 2. Officers and employees of the Supreme Court and the Court of Appeals;
- 113 3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either
 114 house thereof is required or not;
- 115 4. Officers elected by popular vote or by the General Assembly or either house thereof;
- 116 5. Members of boards and commissions however selected;
- 117 6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of
 118 accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and
 119 notaries public;
- 120 7. Officers and employees of the General Assembly and persons employed to conduct temporary or

- 121 special inquiries, investigations, or examinations on its behalf;
- 122 8. The presidents; and teaching and research staffs of state educational institutions;
- 123 9. Commissioned officers and enlisted personnel of the National Guard and the naval militia;
- 124 10. Student employees in institutions of learning; and patient or inmate help in other state
- 125 institutions;
- 126 11. Upon general or special authorization of the Governor, laborers, temporary employees, and
- 127 employees compensated on an hourly or daily basis;
- 128 12. County, city, town, and district officers, deputies, assistants, and employees;
- 129 13. The employees of the Virginia Workers' Compensation Commission;
- 130 14. The officers and employees of the Virginia Retirement System;
- 131 15. Employees whose positions are identified by the State Council of Higher Education and the
- 132 boards of the Virginia Museum of Fine Arts, The Science Museum of Virginia, the
- 133 Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of
- 134 Natural History, the New College Institute, the Southern Virginia Higher Education Center, and The
- 135 Library of Virginia, and approved by the Director of the Department of Human Resource Management
- 136 as requiring specialized and professional training;
- 137 16. Employees of the State Lottery Department;
- 138 17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs;
- 139 18. Employees of the Virginia Commonwealth University Health System Authority;
- 140 19. Employees of the University of Virginia Medical Center. Any changes in compensation plans for
- 141 such employees shall be subject to the review and approval of the Board of Visitors of the University of
- 142 Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia
- 143 Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the
- 144 provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);
- 145 20. In executive branch agencies the employee who has accepted serving in the capacity of chief
- 146 deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential
- 147 assistant for policy or administration. An employee serving in either one of these two positions shall be
- 148 deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve
- 149 in this exempt capacity;
- 150 21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the
- 151 provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);
- 152 22. Officers and employees of the Virginia Port Authority;
- 153 23. Employees of the Virginia College Savings Plan;
- 154 24. Directors of state facilities operated by the Department of Behavioral Health and Developmental
- 155 Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to
- 156 § 37.2-707. Such employees shall remain subject to the provisions of the State Grievance Procedure
- 157 (§ 2.2-3000 et seq.);
- 158 ~~25. The Director of the Virginia Office for Protection and Advocacy;~~
- 159 ~~26.~~ Employees of the Virginia Foundation for Healthy Youth. Such employees shall be treated as
- 160 state employees for purposes of participation in the Virginia Retirement System, health insurance, and
- 161 all other employee benefits offered by the Commonwealth to its classified employees;
- 162 ~~27.~~ 26. Employees of the Virginia Indigent Defense Commission; and
- 163 ~~28.~~ 27. Any chief of a campus police department that has been designated by the governing body of
- 164 a public institution of higher education as exempt, pursuant to § 23-232.

165 **§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative**
 166 **investigations.**

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

- 169 1. Confidential records of all investigations of applications for licenses and permits, and of all
- 170 licenses and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State
- 171 Lottery Department, the Virginia Racing Commission, the Department of Agriculture and Consumer
- 172 Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of
- 173 Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice
- 174 Services.
- 175 2. Records of active investigations being conducted by the Department of Health Professions or by
- 176 any health regulatory board in the Commonwealth.
- 177 3. Investigator notes, and other correspondence and information, furnished in confidence with respect
- 178 to an active investigation of individual employment discrimination complaints made to the Department
- 179 of Human Resource Management or to such personnel of any local public body, including local school
- 180 boards as are responsible for conducting such investigations in confidence. However, nothing in this
- 181 section shall prohibit the disclosure of information taken from inactive reports in a form that does not

182 reveal the identity of charging parties, persons supplying the information or other individuals involved in
183 the investigation.

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

186 5. Investigative notes and other correspondence and information furnished in confidence with respect
187 to an investigation or conciliation process involving an alleged unlawful discriminatory practice under
188 the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance
189 with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior to July 1,
190 1987, in accordance with applicable law, relating to local human rights or human relations commissions.
191 However, nothing in this section shall prohibit the distribution of information taken from inactive reports
192 in a form that does not reveal the identity of the parties involved or other persons supplying
193 information.

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

201 7. Investigative notes, correspondence and information furnished in confidence, and records otherwise
202 exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of
203 Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority
204 as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and
205 Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector General
206 with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline or
207 an investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) the committee or the auditor
208 with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vi) the auditors, appointed
209 by the local governing body of any county, city or town or a school board, who by charter, ordinance,
210 or statute have responsibility for conducting an investigation of any officer, department or program of
211 such body. Records of completed investigations shall be disclosed in a form that does not reveal the
212 identity of the complainants or persons supplying information to investigators. Unless disclosure is
213 prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved,
214 the identity of the person who is the subject of the complaint, the nature of the complaint, and the
215 actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity
216 of the person who is the subject of the complaint may be released only with the consent of the subject
217 person. Local governing bodies shall adopt guidelines to govern the disclosure required by this
218 subdivision.

219 ~~8. Records of the Virginia Office for Protection and Advocacy consisting of documentary evidence~~
220 ~~received or maintained by the Office or its agents in connection with specific complaints or~~
221 ~~investigations, and records of communications between employees and agents of the Office and its~~
222 ~~clients or prospective clients concerning specific complaints, investigations or cases. Upon the~~
223 ~~conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Office may~~
224 ~~not at any time release the identity of any complainant or person with mental illness, intellectual~~
225 ~~disability, developmental disabilities or other disability, unless (i) such complainant or person or his~~
226 ~~legal representative consents in writing to such identification or (ii) such identification is required by~~
227 ~~court order.~~

228 9. Information furnished in confidence to the Department of Human Resource Management with
229 respect to an investigation, consultation, or mediation under § 2.2-1202.1, and memoranda,
230 correspondence and other records resulting from any such investigation, consultation or mediation.
231 However, nothing in this section shall prohibit the distribution of information taken from inactive reports
232 in a form that does not reveal the identity of the parties involved or other persons supplying
233 information.

234 ~~10. 9. The names, addresses and telephone numbers of complainants furnished in confidence with~~
235 ~~respect to an investigation of individual zoning enforcement complaints or complaints relating to the~~
236 ~~Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et~~
237 ~~seq.) made to a local governing body.~~

238 ~~11. 10. Records of active investigations being conducted by the Department of Criminal Justice~~
239 ~~Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185~~
240 ~~et seq.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.~~

241 ~~12. 11. Records furnished to or prepared by the Board of Education pursuant to subsection D of~~
242 ~~§ 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,~~
243 ~~unauthorized alteration, or improper administration of tests by local school board employees responsible~~

244 for the distribution or administration of the tests. However, this section shall not prohibit the disclosure
 245 of records to (i) a local school board or division superintendent for the purpose of permitting such board
 246 or superintendent to consider or to take personnel action with regard to an employee or (ii) any
 247 requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity
 248 of any person making a complaint or supplying information to the Board on a confidential basis and (b)
 249 does not compromise the security of any test mandated by the Board.

250 ~~13.~~ 12. Investigator notes, and other correspondence and information, furnished in confidence with
 251 respect to an active investigation conducted by or for the Board of Education related to the denial,
 252 suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure
 253 of records to a local school board or division superintendent for the purpose of permitting such board or
 254 superintendent to consider or to take personnel action with regard to an employee. Records of completed
 255 investigations shall be disclosed in a form that does not reveal the identity of any complainant or person
 256 supplying information to investigators. The records disclosed shall include information regarding the
 257 school or facility involved, the identity of the person who was the subject of the complaint, the nature
 258 of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a
 259 complaint or does not lead to corrective action, the identity of the person who was the subject of the
 260 complaint may be released only with the consent of the subject person. No personally identifiable
 261 information in the records regarding a current or former student shall be released except as permitted by
 262 state or federal law.

263 14. 13. Records, notes and information provided in confidence and related to an investigation by the
 264 Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of
 265 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,
 266 or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that
 267 has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is
 268 not otherwise prohibited by law and does not reveal the identity of charging parties, complainants,
 269 persons supplying information, witnesses or other individuals involved in the investigation.

270 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

271 A. Public bodies may hold closed meetings only for the following purposes:

272 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
 273 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
 274 officers, appointees, or employees of any public body; and evaluation of performance of departments or
 275 schools of public institutions of higher education where such evaluation will necessarily involve
 276 discussion of the performance of specific individuals. Any teacher shall be permitted to be present
 277 during a closed meeting in which there is a discussion or consideration of a disciplinary matter that
 278 involves the teacher and some student and the student involved in the matter is present, provided the
 279 teacher makes a written request to be present to the presiding officer of the appropriate board.

280 2. Discussion or consideration of admission or disciplinary matters or any other matters that would
 281 involve the disclosure of information contained in a scholastic record concerning any student of any
 282 Virginia public institution of higher education or any state school system. However, any such student,
 283 legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to
 284 be present during the taking of testimony or presentation of evidence at a closed meeting, if such
 285 student, parents, or guardians so request in writing and such request is submitted to the presiding officer
 286 of the appropriate board.

287 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the
 288 disposition of publicly held real property, where discussion in an open meeting would adversely affect
 289 the bargaining position or negotiating strategy of the public body.

290 4. The protection of the privacy of individuals in personal matters not related to public business.

291 5. Discussion concerning a prospective business or industry or the expansion of an existing business
 292 or industry where no previous announcement has been made of the business' or industry's interest in
 293 locating or expanding its facilities in the community.

294 6. Discussion or consideration of the investment of public funds where competition or bargaining is
 295 involved, where, if made public initially, the financial interest of the governmental unit would be
 296 adversely affected.

297 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual
 298 or probable litigation, where such consultation or briefing in open meeting would adversely affect the
 299 negotiating or litigating posture of the public body; and consultation with legal counsel employed or
 300 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
 301 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
 302 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
 303 will be commenced by or against a known party. Nothing in this subdivision shall be construed to
 304 permit the closure of a meeting merely because an attorney representing the public body is in attendance

305 or is consulted on a matter.

306 8. In the case of boards of visitors of public institutions of higher education, discussion or
307 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
308 for services or work to be performed by such institution. However, the terms and conditions of any such
309 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign
310 person and accepted by a public institution of higher education in Virginia shall be subject to public
311 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
312 (i) "foreign government" means any government other than the United States government or the
313 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
314 created under the laws of the United States or of any state thereof if a majority of the ownership of the
315 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
316 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
317 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
318 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

319 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum
320 of Natural History, and The Science Museum of Virginia, discussion or consideration of matters relating
321 to specific gifts, bequests, and grants.

322 10. Discussion or consideration of honorary degrees or special awards.

323 11. Discussion or consideration of tests, examinations, or other records excluded from this chapter
324 pursuant to subdivision 4 of § 2.2-3705.1.

325 12. Discussion, consideration, or review by the appropriate House or Senate committees of possible
326 disciplinary action against a member arising out of the possible inadequacy of the disclosure statement
327 filed by the member, provided the member may request in writing that the committee meeting not be
328 conducted in a closed meeting.

329 13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to
330 consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing
331 body in open meeting finds that an open meeting will have an adverse effect upon the negotiating
332 position of the governing body or the establishment of the terms, conditions and provisions of the siting
333 agreement, or both. All discussions with the applicant or its representatives may be conducted in a
334 closed meeting.

335 14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic
336 activity and estimating general and nongeneral fund revenues.

337 15. Discussion or consideration of medical and mental health records excluded from this chapter
338 pursuant to subdivision 1 of § 2.2-3705.5.

339 16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to
340 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
341 discussion, consideration or review of State Lottery Department matters related to proprietary lottery
342 game information and studies or investigations exempted from disclosure under subdivision 6 of
343 § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

344 17. Those portions of meetings by local government crime commissions where the identity of, or
345 information tending to identify, individuals providing information about crimes or criminal activities
346 under a promise of anonymity is discussed or disclosed.

347 18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity
348 of, or information tending to identify, any prisoner who (i) provides information about crimes or
349 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
350 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
351 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

352 19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff
353 members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to
354 respond to such activity or a related threat to public safety; or discussion of reports or plans related to
355 the security of any governmental facility, building or structure, or the safety of persons using such
356 facility, building or structure.

357 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
358 of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the
359 University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings
360 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or
361 other ownership interest in an entity, where such security or ownership interest is not traded on a
362 governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential
363 analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement
364 system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia
365 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest
366 or the future financial performance of the entity, and (ii) would have an adverse effect on the value of

367 the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of
 368 the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be
 369 construed to prevent the disclosure of information relating to the identity of any investment held, the
 370 amount invested or the present value of such investment.

371 21. Those portions of meetings in which individual child death cases are discussed by the State Child
 372 Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in which
 373 individual child death cases are discussed by a regional or local child fatality review team established
 374 pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are discussed
 375 by family violence fatality review teams established pursuant to § 32.1-283.3.

376 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
 377 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
 378 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
 379 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
 380 proprietary, business-related information pertaining to the operations of the University of Virginia
 381 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
 382 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
 383 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
 384 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
 385 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
 386 Medical School, as the case may be.

387 23. In the case of the Virginia Commonwealth University Health System Authority, discussion or
 388 consideration of any of the following: the acquisition or disposition of real or personal property where
 389 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;
 390 operational plans that could affect the value of such property, real or personal, owned or desirable for
 391 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and
 392 contracts for services or work to be performed by the Authority; marketing or operational strategies
 393 where disclosure of such strategies would adversely affect the competitive position of the Authority;
 394 members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications
 395 or evaluations of other employees.

396 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within
 397 the Department of Health Professions to the extent such discussions identify any practitioner who may
 398 be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

399 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
 400 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
 401 by or on behalf of individuals who have requested information about, applied for, or entered into
 402 prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.)
 403 of Title 23 is discussed.

404 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created
 405 pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
 406 seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless
 407 E-911 service.

408 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
 409 Professional and Occupational Regulation, Department of Health Professions, or the Board of
 410 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach
 411 a decision or meetings of health regulatory boards or conference committees of such boards to consider
 412 settlement proposals in pending disciplinary actions or modifications to previously issued board orders as
 413 requested by either of the parties.

414 28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of
 415 § 2.2-3705.6 by a responsible public entity or an affected local jurisdiction, as those terms are defined in
 416 § 56-557, or any independent review panel appointed to review information and advise the responsible
 417 public entity concerning such records.

418 29. Discussion of the award of a public contract involving the expenditure of public funds, including
 419 interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
 420 discussion in an open session would adversely affect the bargaining position or negotiating strategy of
 421 the public body.

422 30. Discussion or consideration of grant or loan application records excluded from this chapter
 423 pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the
 424 Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment
 425 Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

426 31. Discussion or consideration by the Commitment Review Committee of records excluded from
 427 this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as

428 sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

429 32. [Expired.]

430 33. Discussion or consideration of confidential proprietary records and trade secrets excluded from
431 this chapter pursuant to subdivision 18 of § 2.2-3705.6.

432 34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless
433 Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets
434 excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

435 35. Discussion or consideration by the State Board of Elections or local electoral boards of voting
436 security matters made confidential pursuant to § 24.2-625.1.

437 36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee
438 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from
439 this chapter pursuant to subdivision F 1 of § 2.2-3706.

440 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards
441 Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of
442 § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship
443 award, review and consider scholarship applications and requests for scholarship award renewal, and
444 cancel, rescind, or recover scholarship awards.

445 38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter
446 pursuant to subdivision 1 of § 2.2-3705.6.

447 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
448 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,
449 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College
450 Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment
451 Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant
452 to subdivision 25 of § 2.2-3705.7.

453 40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of
454 § 2.2-3705.6.

455 41. Discussion or consideration by the Board of Education of records relating to the denial,
456 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision ~~13~~ 12 of
457 § 2.2-3705.3.

458 42. Those portions of meetings of the Virginia Military Advisory Council or any commission created
459 by executive order for the purpose of studying and making recommendations regarding preventing
460 closure or realignment of federal military and national security installations and facilities located in
461 Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization
462 appointed by a local governing body, during which there is discussion of records excluded from this
463 chapter pursuant to subdivision 12 of § 2.2-3705.2.

464 43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
465 records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

466 44. Discussion or consideration by the Virginia Tobacco Indemnification and Community
467 Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of
468 § 2.2-3705.6.

469 45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority
470 of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

471 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
472 closed meeting shall become effective unless the public body, following the meeting, reconvenes in open
473 meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or
474 motion that shall have its substance reasonably identified in the open meeting.

475 C. Public officers improperly selected due to the failure of the public body to comply with the other
476 provisions of this section shall be de facto officers and, as such, their official actions are valid until they
477 obtain notice of the legal defect in their election.

478 D. Nothing in this section shall be construed to prevent the holding of conferences between two or
479 more public bodies, or their representatives, but these conferences shall be subject to the same
480 procedures for holding closed meetings as are applicable to any other public body.

481 E. This section shall not be construed to (i) require the disclosure of any contract between the
482 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1
483 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant
484 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body
485 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry
486 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of
487 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance
488 of such bonds.

489 **§ 2.2-5300. Definitions.**

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

491 "Council" means the Virginia Interagency Coordinating Council created pursuant to § 2.2-2664.

492 "Early intervention services" means services provided through Part C of the Individuals with
 493 Disabilities Education Act (20 U.S.C. § 1431 et seq.), as amended, designed to meet the developmental
 494 needs of each child and the needs of the family related to enhancing the child's development and
 495 provided to children from birth to age three who have (i) a 25 percent developmental delay in one or
 496 more areas of development, (ii) atypical development, or (iii) a diagnosed physical or mental condition
 497 that has a high probability of resulting in a developmental delay. Early intervention services provided in
 498 the child's home and in accordance with this chapter shall not be construed to be home health services
 499 as referenced in § 32.1-162.7.

500 "Participating agencies" means the Departments of Health, of Education, of Medical Assistance
 501 Services, of Behavioral Health and Developmental Services, and of Social Services; the Departments for
 502 the Deaf and Hard-of-Hearing and for the Blind and Vision Impaired; ~~the Virginia Office for Protection~~
 503 ~~and Advocacy~~; and the Bureau of Insurance within the State Corporation Commission.

504 **§ 22.1-253.13:3. Standard 3. Accreditation, other standards and evaluation.**

505 A. The Board of Education shall promulgate regulations establishing standards for accreditation
 506 pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), which shall include, but not be limited to,
 507 student outcome measures, requirements and guidelines for instructional programs and for the
 508 integration of educational technology into such instructional programs, administrative and instructional
 509 staffing levels and positions, including staff positions for supporting educational technology, student
 510 services, auxiliary education programs such as library and media services, course and credit requirements
 511 for graduation from high school, community relations, and the philosophy, goals, and objectives of
 512 public education in Virginia.

513 The Board of Education shall promulgate regulations establishing standards for accreditation of
 514 public virtual schools under the authority of the local school board that enroll students full time.

515 The Board shall review annually the accreditation status of all schools in the Commonwealth.

516 Each local school board shall maintain schools that are fully accredited pursuant to the standards for
 517 accreditation as prescribed by the Board of Education. Each local school board shall review the
 518 accreditation status of all schools in the local school division annually in public session. Within the time
 519 specified by the Board of Education, each school board shall submit corrective action plans for any
 520 schools within its school division that have been designated as not meeting the standards as approved by
 521 the Board.

522 When the Board of Education has obtained evidence through the school academic review process that
 523 the failure of schools within a division to achieve full accreditation status is related to division level
 524 failure to implement the Standards of Quality, the Board may require a division level academic review.
 525 After the conduct of such review and within the time specified by the Board of Education, each school
 526 board shall submit for approval by the Board a corrective action plan, consistent with criteria established
 527 by the Board and setting forth specific actions and a schedule designed to ensure that schools within its
 528 school division achieve full accreditation status. Such corrective action plans shall be part of the relevant
 529 school division's comprehensive plan pursuant to § 22.1-253.13:6.

530 With such funds as are appropriated or otherwise received for this purpose, the Board shall adopt and
 531 implement an academic review process, to be conducted by the Department of Education, to assist
 532 schools that are accredited with warning. The Department shall forward a report of each academic
 533 review to the relevant local school board, and such school board shall report the results of such
 534 academic review and the required annual progress reports in public session. The local school board shall
 535 implement any actions identified through the academic review and utilize them for improvement
 536 planning.

537 B. The Superintendent of Public Instruction shall develop and the Board of Education shall approve
 538 criteria for determining and recognizing educational performance in the Commonwealth's public school
 539 divisions and schools. Such criteria, when approved, shall become an integral part of the accreditation
 540 process and shall include student outcome measurements. The Superintendent of Public Instruction shall
 541 annually identify to the Board those school divisions and schools that exceed or do not meet the
 542 approved criteria. Such identification shall include an analysis of the strengths and weaknesses of public
 543 education programs in the various school divisions in Virginia and recommendations to the General
 544 Assembly for further enhancing student learning uniformly across the Commonwealth. In recognizing
 545 educational performance in the school divisions, the Board shall include consideration of special school
 546 division accomplishments, such as numbers of dual enrollments and students in Advanced Placement and
 547 International Baccalaureate courses, and participation in academic year Governor's Schools.

548 The Superintendent of Public Instruction shall assist local school boards in the implementation of
 549 action plans for increasing educational performance in those school divisions and schools that are
 550 identified as not meeting the approved criteria. The Superintendent of Public Instruction shall monitor

551 the implementation of and report to the Board of Education on the effectiveness of the corrective actions
552 taken to improve the educational performance in such school divisions and schools.

553 C. With such funds as are available for this purpose, the Board of Education shall prescribe
554 assessment methods to determine the level of achievement of the Standards of Learning objectives by all
555 students. Such assessments shall evaluate knowledge, application of knowledge, critical thinking, and
556 skills related to the Standards of Learning being assessed. The Board shall (i) in consultation with the
557 chairpersons of the eight regional superintendents' study groups, establish a timetable for administering
558 the Standards of Learning assessments to ensure genuine end-of-course and end-of-grade testing and (ii)
559 with the assistance of independent testing experts, conduct a regular analysis and validation process for
560 these assessments.

561 In prescribing such Standards of Learning assessments, the Board shall provide local school boards
562 the option of administering tests for United States History to 1877, United States History: 1877 to the
563 Present, and Civics and Economics. The last administration of the cumulative grade eight history test
564 will be during the 2007-2008 academic school year. Beginning with the 2008-2009 academic year, all
565 school divisions shall administer the United States History to 1877, United States History: 1877 to the
566 Present, and Civics and Economics tests. The Board shall also provide the option of industry
567 certification and state licensure examinations as a student-selected verified credit.

568 The Board of Education shall make publicly available such assessments in a timely manner and as
569 soon as practicable following the administration of such tests, so long as the release of such assessments
570 does not compromise test security or deplete the bank of assessment questions necessary to construct
571 subsequent tests, or limit the ability to test students on demand and provide immediate results in the
572 web-based assessment system.

573 The Board shall include in the student outcome measures that are required by the Standards for
574 Accreditation end-of-course or end-of-grade tests for various grade levels and classes, as determined by
575 the Board, in accordance with the Standards of Learning. These Standards of Learning assessments shall
576 include, but need not be limited to, end-of-course or end-of-grade tests for English, mathematics,
577 science, and history and social science.

578 In addition, to assess the educational progress of students, the Board of Education shall (i) develop
579 appropriate assessments, which may include criterion-referenced tests and alternative assessment
580 instruments that may be used by classroom teachers; (ii) select appropriate industry certification and
581 state licensure examinations and (iii) prescribe and provide measures, which may include nationally
582 normed tests to be used to identify students who score in the bottom quartile at selected grade levels.
583 An annual justification that includes evidence that the student meets the participation criteria defined by
584 the Virginia Department of Education shall be provided for each student considered for the Virginia
585 Grade Level Alternative. Each Individual Education Program team shall review such justification and
586 make the final determination as to whether or not the Virginia Grade Level Alternative is appropriate for
587 the student. The superintendent and the school board chairman shall certify to the Board of Education,
588 as a part of certifying compliance with the Standards of Quality, that there is a justification in the
589 Individual Education Program for every student who takes the Virginia Grade Level Alternative.
590 Compliance with this requirement shall be monitored as a part of the special education monitoring
591 process conducted by the Department of Education. The Board shall report to the Governor and General
592 Assembly in its annual reports pursuant to § 22.1-18 any school division that is not in compliance with
593 this requirement.

594 The Standards of Learning requirements, including all related assessments, shall be waived for any
595 student awarded a scholarship under the Brown v. Board of Education Scholarship Program, pursuant to
596 § 30-231.2, who is enrolled in a preparation program for the General Education Development (GED)
597 certificate or in an adult basic education program to obtain the high school diploma.

598 The Board of Education may adopt special provisions related to the administration and use of any
599 SOL test or tests in a content area as applied to accreditation ratings for any period during which the
600 SOL content or assessments in that area are being revised and phased in. Prior to statewide
601 administration of such tests, the Board of Education shall provide notice to local school boards regarding
602 such special provisions.

603 D. The Board of Education may pursue all available civil remedies pursuant to § 22.1-19.1 or
604 administrative action pursuant to § 22.1-292.1 for breaches in test security and unauthorized alteration of
605 test materials or test results.

606 The Board may initiate or cause to be initiated a review or investigation of any alleged breach in
607 security, unauthorized alteration, or improper administration of tests, including the exclusion of students
608 from testing who are required to be assessed, by local school board employees responsible for the
609 distribution or administration of the tests.

610 Records and other information furnished to or prepared by the Board during the conduct of a review
611 or investigation may be withheld pursuant to subdivision 42 11 of § 2.2-3705.3. However, this section
612 shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the

613 purpose of permitting such board or superintendent to consider or to take personnel action with regard to
 614 an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a)
 615 does not reveal the identity of any person making a complaint or supplying information to the Board on
 616 a confidential basis and (b) does not compromise the security of any test mandated by the Board. Any
 617 local school board or division superintendent receiving such records or other information shall, upon
 618 taking personnel action against a relevant employee, place copies of such records or information relating
 619 to the specific employee in such person's personnel file.

620 Notwithstanding any other provision of state law, no test or examination authorized by this section,
 621 including the Standards of Learning assessments, shall be released or required to be released as
 622 minimum competency tests, if, in the judgment of the Board, such release would breach the security of
 623 such test or examination or deplete the bank of questions necessary to construct future secure tests.

624 E. With such funds as may be appropriated, the Board of Education may provide, through an
 625 agreement with vendors having the technical capacity and expertise to provide computerized tests and
 626 assessments, and test construction, analysis, and security, for (i) web-based computerized tests and
 627 assessments for the evaluation of student progress during and after remediation and (ii) the development
 628 of a remediation item bank directly related to the Standards of Learning.

629 F. To assess the educational progress of students as individuals and as groups, each local school
 630 board shall require the use of Standards of Learning assessments and other relevant data, such as
 631 industry certification and state licensure examinations, to evaluate student progress and to determine
 632 educational performance. Each local school shall require the administration of appropriate assessments to
 633 all students for grade levels and courses identified by the Board of Education, which may include
 634 criterion-referenced tests, teacher-made tests and alternative assessment instruments and shall include the
 635 Standards of Learning Assessments and the National Assessment of Educational Progress state-by-state
 636 assessment. Each school board shall analyze and report annually, in compliance with any criteria that
 637 may be established by the Board of Education, the results from the Stanford Achievement Test Series,
 638 Ninth Edition (Stanford Nine) assessment, if administered, industry certification examinations, and the
 639 Standards of Learning Assessments to the public.

640 The Board of Education shall not require administration of the Stanford Achievement Test Series,
 641 Ninth Edition (Stanford Nine) assessment, except as may be selected to facilitate compliance with the
 642 requirements for home instruction pursuant to § 22.1-254.1.

643 The Board shall include requirements for the reporting of the Standards of Learning assessment
 644 scores and averages for each year as part of the Board's requirements relating to the School Performance
 645 Report Card. Such scores shall be disaggregated for each school by student subgroups on the Virginia
 646 assessment program as appropriate and shall be reported to the public within three months of their
 647 receipt. These reports (i) shall be posted on the portion of the Department of Education's website
 648 relating to the School Performance Report Card, in a format and in a manner that allows year-to-year
 649 comparisons, and (ii) may include the National Assessment of Educational Progress state-by-state
 650 assessment.

651 G. Each local school division superintendent shall regularly review the division's submission of data
 652 and reports required by state and federal law and regulations to ensure that all information is accurate
 653 and submitted in a timely fashion. The Superintendent of Public Instruction shall provide a list of the
 654 required reports and data to division superintendents annually. The status of compliance with this
 655 requirement shall be included in the Board of Education's annual report to the Governor and the General
 656 Assembly as required by § 22.1-18.

657 H. Any school board, on behalf of one or more of its schools, may request the Board of Education
 658 for releases from state regulations and for approval of an Individual School Accreditation Plan for the
 659 evaluation of the performance of one or more of its schools as authorized for certain other schools by
 660 the Standards of Accreditation pursuant to 8 VAC 20-131-280 C of the Virginia Administrative Code.

661 **§ 37.2-304. Duties of Commissioner.**

662 The Commissioner shall be the chief executive officer of the Department and shall have the
 663 following duties and powers:

- 664 1. To supervise and manage the Department and its state facilities.
- 665 2. To employ the personnel required to carry out the purposes of this title.
- 666 3. To make and enter into all contracts and agreements necessary or incidental to the performance of
 667 the Department's duties and the execution of its powers under this title, including contracts with the
 668 United States, other states, and agencies and governmental subdivisions of the Commonwealth,
 669 consistent with policies and regulations of the Board and applicable federal and state statutes and
 670 regulations.
- 671 4. To accept, hold, and enjoy gifts, donations, and bequests on behalf of the Department from the
 672 United States government, agencies and instrumentalities thereof, and any other source, subject to the
 673 approval of the Governor. To these ends, the Commissioner shall have the power to comply with

674 conditions and execute agreements that may be necessary, convenient, or desirable, consistent with
675 policies and regulations of the Board.

676 5. To accept, execute, and administer any trust in which the Department may have an interest, under
677 the terms of the instruments creating the trust, subject to the approval of the Governor.

678 6. To transfer between state hospitals and training centers school-age individuals who have been
679 identified as appropriate to be placed in public school programs and to negotiate with other school
680 divisions for placements in order to ameliorate the impact on those school divisions located in a
681 jurisdiction in which a state hospital or training center is located.

682 7. (Effective until July 1, 2014) To provide to the Director of the ~~Virginia Office for Protection and~~
683 ~~Advocacy~~ *Commonwealth's designated protection and advocacy system*, pursuant to § 51.5-39.12, a
684 written report setting forth the known facts of critical incidents or deaths of individuals receiving
685 services in facilities within 15 working days of the critical incident or death.

686 7. (Effective July 1, 2014) To provide to the Director of the ~~Virginia Office for Protection and~~
687 ~~Advocacy~~ *Commonwealth's designated protection and advocacy system*, established pursuant to
688 § 51.5-39.13, a written report setting forth the known facts of critical incidents or deaths of individuals
689 receiving services in facilities within 15 working days of the critical incident or death.

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

697 9. To work with the Department of Veterans Services and the Department for Aging and
698 Rehabilitative Services to establish a program for mental health and rehabilitative services for Virginia
699 veterans and members of the Virginia National Guard and Virginia residents in the Armed Forces
700 Reserves not in active federal service and their family members pursuant to § 2.2-2001.1.

701 10. To establish and maintain a pharmaceutical and therapeutics committee composed of
702 representatives of the Department of Medical Assistance Services, state facilities operated by the
703 Department, community services boards, at least one health insurance plan, and at least one individual
704 receiving services to develop a drug formulary for use at all community services boards, state facilities
705 operated by the Department, and providers licensed by the Department.

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

708 **§ 37.2-709. (Effective until July 1, 2014) State facility reporting requirements.**

709 Each director of a state facility shall notify the Director of the ~~Virginia Office for Protection and~~
710 ~~Advocacy~~ *Commonwealth's designated protection and advocacy system*, pursuant to § 51.5-39.12, in
711 writing within 48 hours of critical incidents or deaths of individuals receiving services in the state
712 facility.

713 **§ 37.2-709. (Effective July 1, 2014) State facility reporting requirements.**

714 Each director of a state facility shall notify the Director of the ~~Virginia Office for Protection and~~
715 ~~Advocacy~~ *Commonwealth's designated protection and advocacy system*, established pursuant to
716 § 51.5-39.13, in writing within 48 hours of critical incidents or deaths of individuals receiving services
717 in the state facility.

718 **§ 51.5-1. Declaration of policy.**

719 It is the policy of the Commonwealth to encourage and enable persons with disabilities to participate
720 fully and equally in the social and economic life of the Commonwealth and to engage in remunerative
721 employment. To these ends, the General Assembly directs the Governor, ~~the Virginia Office for~~
722 ~~Protection and Advocacy~~,; the Virginia Board for People with Disabilities,; the Departments of
723 Education, Health, Housing and Community Development, Behavioral Health and Developmental
724 Services, and Social Services, ~~and~~; the Departments for Aging and Rehabilitative Services, the Blind and
725 Vision Impaired, and the Deaf and Hard-of-Hearing; and such other agencies as the Governor deems
726 appropriate, to provide, in a comprehensive and coordinated manner ~~which that~~ makes the best use of
727 available resources, those services necessary to assure equal opportunity to persons with disabilities in
728 the Commonwealth.

729 The provisions of this title shall be known and may be cited as "The Virginians with Disabilities
730 Act."

731 **§ 51.5-39.1. (Repealed effective January 1, 2014) Definitions.**

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

733 "Abuse" means any act or failure to act which was performed, or which was failed to be performed,
734 knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an
735 individual with a disability and includes such acts as: verbal, nonverbal, mental and emotional

736 harassment; rape or sexual assault; striking; the use of excessive force when placing such an individual
 737 in bodily restraints; the use of bodily or chemical restraints which is not in compliance with federal and
 738 state laws and regulations; and any other practice which is likely to cause immediate physical or
 739 psychological harm or result in long term harm if such practices continue.

740 "Board" means the Board for Protection and Advocacy.

741 "Disabilities" means mental, cognitive, sensory, physical, or other disabilities covered by the federal
 742 Protection and Advocacy for Individuals with Mental Illness Act, the federal Developmental Disabilities
 743 Assistance and Bill of Rights Act, the federal Rehabilitation Act of 1973, as amended, and such other
 744 related federal and state programs as may be established by federal and state law.

745 "Investigation" means, when authorized under this chapter and when used in relation to (i) private
 746 elementary or secondary schools or (ii) public educational institutions which are subject to the
 747 requirements of § 22.1-215, access to facilities, clients, and records necessary to make a determination
 748 about whether alleged or suspected instances of abuse or neglect are taking place or have taken place.
 749 Investigations may be conducted independently or in cooperation with other agencies authorized to
 750 conduct similar investigations.

751 "Neglect" means failure by an individual, program or facility responsible for providing services to
 752 provide nourishment, treatment, care, goods, or services necessary to the health, safety or welfare of a
 753 person receiving care or treatment for mental, cognitive, sensory, physical or other disabilities.

754 "Office" means the ~~Virginia Office for Protection and Advocacy~~ *Commonwealth's designated*
 755 *protection and advocacy system.*

756 **§ 51.5-39.13. Conversion of the Virginia Office for Protection and Advocacy to a nonprofit**
 757 **entity.**

758 A. Not later than December 31, 2013, the Director, in consultation with the Board, shall establish a
 759 nonprofit entity to provide advocacy, legal, and ombudsman services to persons with disabilities. Such
 760 nonprofit entity shall be established in such a manner that the entity is in compliance with all federal
 761 law regarding a protection and advocacy system. Such nonprofit entity shall be designated as the agency
 762 to protect and advocate for the rights of persons with mental, cognitive, sensory, physical, or other
 763 disabilities and to receive federal funds on behalf of the Commonwealth of Virginia to implement the
 764 federal Protection and Advocacy for Individuals with Mental Illness Act, the federal Developmental
 765 Disabilities Assistance and Bill of Rights Act, the federal Rehabilitation Act, the Virginians with
 766 Disabilities Act (§ 51.5-1 et seq.), and such other related programs as may be established in state or
 767 federal law.

768 B. Not later than January 1, 2014, the Governor shall designate the nonprofit entity established
 769 pursuant to subsection A to serve as the state's protection and advocacy system, and such nonprofit
 770 entity shall thereafter be known as the ~~Virginia Office for Protection and Advocacy~~ *disAbility Law*
 771 *Center of Virginia.*

772 C. Employees of the Virginia Office for Protection and Advocacy who transition to employment with
 773 the organization designated pursuant to subsection B shall not be subject to the provisions of the
 774 Workforce Transition Act (§ 2.2-3200 et seq.).

775 **§ 51.5-46. Remedies.**

776 A. Any circuit court having jurisdiction and venue pursuant to Title 8.01, on the petition of any
 777 person with a disability, shall have the right to enjoin the abridgement of rights set forth in this chapter
 778 and to order such affirmative equitable relief as is appropriate and to award compensatory damages and
 779 to award to a prevailing party reasonable attorneys' fees, except that a defendant shall not be entitled to
 780 an award of attorneys' fees unless the court finds that the claim was frivolous, unreasonable or
 781 groundless, or brought in bad faith. Compensatory damages shall not include damages for pain and
 782 suffering. Punitive or exemplary damages shall not be awarded.

783 B. An action may be commenced pursuant to this section any time within one year of the occurrence
 784 of any violation of rights under this chapter. However, such action shall be forever barred unless such
 785 claimant or his agent, attorney or representative has commenced such action or has filed by registered
 786 mail a written statement of the nature of the claim with the potential defendant or defendants within 180
 787 days of the occurrence of the alleged violation. Any liability for back pay shall not accrue from a date
 788 more than 180 days prior to the filing of the notice or the initial pleading in such civil action and shall
 789 be limited to a total of 180 days, reduced by the amount of other earnings over the same period. The
 790 petitioner shall have a duty to mitigate damages.

791 C. The relief available for violations of this chapter shall be limited to the relief set forth in this
 792 section.

793 D. ~~In any action in which the petitioner is represented by the Virginia Office for Protection and~~
 794 ~~Advocacy, no attorneys' fees shall be awarded, nor shall the Virginia Office for Protection and~~
 795 ~~Advocacy have the authority to institute any class action under this chapter.~~

796 **§ 63.2-1808. Rights and responsibilities of residents of assisted living facilities; certification of**

797 licensure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

852 c. In communications, in writing or by telephone;

853 d. During visitations with other persons;

854 e. In the resident's room or portion thereof; residents shall be permitted to have guests or other
855 residents in their rooms unless to do so would infringe upon the rights of other residents; staff may not
856 enter a resident's room without making their presence known except in an emergency or in accordance
857 with safety oversight requirements included in regulations of the Board;

858 f. In visits with his spouse; if both are residents of the facility they are permitted but not required to

859 share a room unless otherwise provided in the residents' agreements;

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

863 19. Is fully informed, as evidenced by the written acknowledgment of the resident or his legal
864 representative, prior to or at the time of admission and during his stay, that he should exercise whatever
865 due diligence he deems necessary with respect to information on any sex offenders registered pursuant
866 to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including how to obtain such information. Upon request,
867 the assisted living facility shall assist the resident, prospective resident, or the legal representative of the
868 resident or prospective resident in accessing this information and provide the resident, prospective
869 resident, or the legal representative of the resident or prospective resident with printed copies of the
870 requested information.

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

877 C. The rights and responsibilities of residents shall be printed in at least 12-point type and posted
878 conspicuously in a public place in all assisted living facilities. The facility shall also post the name and
879 telephone number of the regional licensing supervisor of the Department, the Adult Protective Services'
880 toll-free telephone number, as well as the toll-free telephone number for the Virginia Long-Term Care
881 Ombudsman Program, any sub-state ombudsman program serving the area, and the toll-free number of
882 the ~~Virginia Office for Protection and Advocacy~~ *Commonwealth's designated protection and advocacy*
883 *system.*

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

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

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

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

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

894 **2. That the third enactment clause of Chapter 847 of the Acts of Assembly of 2012 is amended as**
895 **follows:**

896 **3. That the provisions of this act amending §§ 2.2-510, 37.2-304, and 37.2-709 of the Code of**
897 **Virginia shall be effective on ~~July~~ January 1, 2014.**

898 **3. That the provisions of this act amending §§ 2.2-2905, 2.2-3705.3, 37.2-304, and 37.2-709 of the**
899 **Code of Virginia shall become effective January 1, 2014.**

900 **4. That [as of not later than] January 1, 2014, the nonprofit organization established pursuant**
901 **to § 51.5-39.13 of the Code of Virginia shall be deemed the successor in interest to all functions of**
902 **the Virginia Office for Protection and Advocacy abolished pursuant to Chapter 847 of the Acts of**
903 **Assembly of 2012; all rights, duties, and obligations created by a contract, memorandum of**
904 **understanding, or other agreement of the Virginia Office for Protection and Advocacy abolished**
905 **pursuant to Chapter 847 of the Acts of Assembly of 2012 and any actions taken on behalf of the**
906 **Virginia Office for Protection and Advocacy abolished pursuant to Chapter 847 of the Acts of**
907 **Assembly of 2012 shall be transferred to and taken as standing in the name of the nonprofit**
908 **organization established pursuant to § 51.5-39.13 of the Code of Virginia.**

909 **5. That [as of not later than] January 1, 2014, the nonprofit organization established pursuant**
910 **to § 51.5-39.13 of the Code of Virginia shall be deemed the successor in interest to the Virginia**
911 **Office of Protection and Advocacy abolished pursuant to Chapter 847 of the Acts of Assembly of**
912 **2012, to the extent that such Chapter transferred powers and duties from the Virginia Office for**
913 **Protection and Advocacy to the nonprofit organization established pursuant to § 51.5-39.13 of the**
914 **Code of Virginia. All right, title, and interest in and to any tangible property vested in the**
915 **Virginia Office for Protection and Advocacy shall be transferred to and taken as standing in the**
916 **name of the nonprofit organization established pursuant to § 51.5-39.13 of the Code of Virginia.**

917 **6. That the Governor may transfer an appropriation equal to the amount of any cash balance**
918 **remaining in any account used by the Virginia Office for Protection and Advocacy abolished**
919 **pursuant to Chapter 847 of the Acts of Assembly of 2012 to the nonprofit organization established**

920 pursuant to § 51.5-39.13 of the Code of Virginia to support the changes in organization required
921 by and resulting from Chapter 847 of the Acts of Assembly of 2012.

922 7. That the Governor may transfer any financial records and personnel records of the Virginia
923 Office for Protection and Advocacy abolished pursuant to Chapter 847 of the Acts of Assembly of
924 2012 to the nonprofit organization established pursuant to § 51.5-39.13 of the Code of Virginia to
925 support the changes in organization required by and resulting from Chapter 847 of the Acts of
926 Assembly of 2012.

927 8. That the Virginia Office for Protection and Advocacy and the nonprofit organization
928 established pursuant to § 51.5-39.13 of the Code of Virginia shall enter into an agreement for the
929 transfer of positions and property pursuant to this act prior to January 1, 2014.