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**HOUSE BILL NO. 1395**

Offered January 11, 2023

Prefiled November 30, 2022

A *BILL to amend and reenact §§ 9.1-151, 16.1-241, 20-163, 20-166, 20-167, 32.1-133.1, 32.1-162.18, 32.1-264, 32.1-325, 32.1-326.3, 37.2-1102, 53.1-40.1, 53.1-133.04, 54.1-2969, and 54.1-2983.3 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 1-240.01; and to repeal §§ 18.2-71.1 through 18.2-76, 32.1-92.1, and 32.1-92.2 of the Code of Virginia, relating to rights beginning at conception.*

Patrons—March, McGuire, Scott, P.A., Walker and Wright

Referred to Committee on Rules

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 9.1-151, 16.1-241, 20-163, 20-166, 20-167, 32.1-133.1, 32.1-162.18, 32.1-264, 32.1-325, 32.1-326.3, 37.2-1102, 53.1-40.1, 53.1-133.04, 54.1-2969, and 54.1-2983.3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 1-240.01 as follows:**

**§ 1-240.01. Rights beginning at conception.**

A. As used in this section:

"Abortifacient" means any method of inducing an abortion at any stage of a human pregnancy following conception.

"Abortion" means to interrupt or terminate a human pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage.

"Conception" means the process of combining the male gamete with the female gamete, resulting in a fertilized ovum or zygote.

"Contraception" means a method of inhibiting the development of a human pregnancy at any stage prior to conception. "Contraception" does not mean an abortifacient.

B. Life begins at conception and each person is accorded the same rights and protections guaranteed to all persons by the Constitution of the United States, the Constitution of Virginia, and the laws of the Commonwealth beginning at the moment of conception.

C. This section shall not be construed to create or recognize a right to an abortion, impose civil or criminal liability on a woman upon whom an abortion is performed, or prohibit the use of any means of contraception.

**§ 9.1-151. Court-Appointed Special Advocate Program; appointment of advisory committee.**

A. There is established a Court-Appointed Special Advocate Program (the Program) that shall be administered by the Department. The Program shall provide services in accordance with this article to children who are subjects of judicial proceedings (i) involving allegations that the child is abused, neglected, in need of services, or in need of supervision or (ii) for the restoration of parental rights pursuant to § 16.1-283.2 and for whom the juvenile and domestic relations district court judge determines such services are appropriate. Court-Appointed Special Advocate volunteer appointments may continue for youth 18 years of age and older who are in foster care if the court has retained jurisdiction pursuant to subsection Z Y of § 16.1-241 or § 16.1-242 and the juvenile and domestic relations district court judge determines such services are appropriate. The Department shall adopt regulations necessary and appropriate for the administration of the Program.

B. The Board shall appoint an Advisory Committee to the Court-Appointed Special Advocate Program, consisting of 15 members, one of whom shall be a judge of the juvenile and domestic relations district court or circuit court, knowledgeable of court matters, child welfare, and juvenile justice issues and representative of both state and local interests. The duties of the Advisory Committee shall be to advise the Board on all matters relating to the Program and the needs of the clients served by the Program, and to make such recommendations as it may deem desirable.

**§ 16.1-241. Jurisdiction.**

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

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59 A. The custody, visitation, support, control or disposition of a child:

60 1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status  
61 offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or  
62 divested;

63 2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical  
64 or mental incapacity of his parents is without parental care and guardianship;

65 2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated  
66 as having abused or neglected another child in the care of the parent or custodian;

67 3. Whose custody, visitation or support is a subject of controversy or requires determination. In such  
68 cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except  
69 as provided in § 16.1-244;

70 4. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817  
71 or whose parent or parents for good cause desire to be relieved of his care and custody;

72 5. Where the termination of residual parental rights and responsibilities is sought. In such cases  
73 jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided  
74 in § 16.1-244;

75 6. Who is charged with a traffic infraction as defined in § 46.2-100; or

76 7. Who is alleged to have refused to take a blood test in violation of § 18.2-268.2.

77 In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated  
78 in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile  
79 court shall be limited to conducting a preliminary hearing to determine if there is probable cause to  
80 believe that the juvenile committed the act alleged and that the juvenile was 16 years of age or older at  
81 the time of the commission of the alleged offense, and any matters related thereto. In any case in which  
82 the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of  
83 § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given  
84 notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited  
85 to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile  
86 committed the act alleged and that the juvenile was 16 years of age or older at the time of the  
87 commission of the alleged offense, and any matters related thereto. A determination by the juvenile  
88 court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge  
89 to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge.  
90 In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile  
91 court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as  
92 provided in § 16.1-269.6.

93 In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a  
94 violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a  
95 lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be  
96 divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

97 The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,  
98 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,  
99 father or legal guardian but shall include petitions filed at any time by any party with a legitimate  
100 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not  
101 be limited to, grandparents, step-grandparents, stepparents, former stepparents, blood relatives and family  
102 members. A party with a legitimate interest shall not include any person (i) whose parental rights have  
103 been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives  
104 from or through a person whose parental rights have been terminated by court order, either voluntarily  
105 or involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood  
106 relatives and family members, if the child subsequently has been legally adopted, except where a final  
107 order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of  
108 subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another  
109 state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was  
110 conceived as a result of such violation. The authority of the juvenile court to consider a petition  
111 involving the custody of a child shall not be proscribed or limited where the child has previously been  
112 awarded to the custody of a local board of social services.

113 A1. Making specific findings of fact required by state or federal law to enable a child to apply for or  
114 receive a state or federal benefit. For the purposes of this subsection only, when the court has obtained  
115 jurisdiction over the case of any child, the court may continue to exercise its jurisdiction until such  
116 person reaches 21 years of age, for the purpose of entering findings of fact or amending past orders, to  
117 include findings of fact necessary for the person to petition the federal government for status as a  
118 special immigrant juvenile, as defined by 8 U.S.C. § 1101(a)(27)(J).

119 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the  
120 provisions of Article 16 (§ 16.1-335 et seq.) and the involuntary admission of a person with mental

illness or judicial certification of eligibility for admission to a training center for persons with intellectual disability in accordance with the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2. Jurisdiction of the involuntary admission and certification of adults shall be concurrent with the general district court.

C. Except as provided in subsections D and H, judicial consent to such activities as may require parental consent may be given for a child who has been separated from his parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person standing in loco parentis (i) is not a resident of the Commonwealth, (ii) has his whereabouts unknown, (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law.

F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

1. Who has been abused or neglected;

2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or is otherwise before the court pursuant to subdivision A 4; or

3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court finds that such person has by overt act or omission induced, caused, encouraged or contributed to the conduct of the child complained of in the petition.

G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services that are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

H. Judicial consent to apply for a work permit for a child when such child is separated from his parents, legal guardian or other person standing in loco parentis.

I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or neglect of children or with any violation of law that causes or tends to cause a child to come within the purview of this law, or with any other offense against the person of a child. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause.

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim and all offenses under § 18.2-49.1.

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision under this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, and all petitions filed for the purpose of obtaining an order of protection pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 if either the alleged victim or the respondent is a juvenile.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.).

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the

182 juvenile and domestic relations district court.

183 Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.  
184 A circuit court shall have concurrent original jurisdiction to the extent provided for in § 20-49.2.

185 R. [Repealed.]

186 S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

187 T. Petitions to enforce any request for information or subpoena that is not complied with or to  
188 review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect  
189 pursuant to § 63.2-1526.

190 U. Petitions filed in connection with parental placement adoption consent hearings pursuant to  
191 § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within 10  
192 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible  
193 disposition.

194 V. Petitions filed for the purpose of obtaining the court's assistance with the execution of consent to  
195 an adoption when the consent to an adoption is executed pursuant to the laws of another state and the  
196 laws of that state provide for the execution of consent to an adoption in the court of the  
197 Commonwealth.

198 W. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion  
199 if a minor elects not to seek consent of an authorized person.

200 After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without  
201 the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough  
202 informed to make her abortion decision, in consultation with her physician, independent of the wishes of  
203 any authorized person, or (ii) the minor is not mature enough or well enough informed to make such  
204 decision, but the desired abortion would be in her best interest.

205 If the judge authorizes an abortion based on the best interests of the minor, such order shall  
206 expressly state that such authorization is subject to the physician or his agent giving notice of intent to  
207 perform the abortion; however, no such notice shall be required if the judge finds that such notice would  
208 not be in the best interest of the minor. In determining whether notice is in the best interest of the  
209 minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not  
210 in the best interest of the minor if he finds that (a) one or more authorized persons with whom the  
211 minor regularly and customarily resides is abusive or neglectful and (b) every other authorized person, if  
212 any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian,  
213 custodian or person standing in loco parentis.

214 The minor may participate in the court proceedings on her own behalf, and the court may appoint a  
215 guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and  
216 shall, upon her request, appoint counsel for her.

217 Notwithstanding any other provision of law, the provisions of this subsection shall govern  
218 proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and  
219 records of such proceedings shall be confidential. Such proceedings shall be given precedence over other  
220 pending matters so that the court may reach a decision promptly and without delay in order to serve the  
221 best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon  
222 as practicable but in no event later than four days after the petition is filed.

223 An expedited confidential appeal to the circuit court shall be available to any minor for whom the  
224 court denies an order authorizing an abortion without consent or without notice. Any such appeal shall  
225 be heard and decided no later than five days after the appeal is filed. The time periods required by this  
226 subsection shall be subject to subsection B of § 1-210. An order authorizing an abortion without consent  
227 or without notice shall not be subject to appeal.

228 No filing fees shall be required of the minor at trial or upon appeal.

229 If either the original court or the circuit court fails to act within the time periods required by this  
230 subsection, the court before which the proceeding is pending shall immediately authorize a physician to  
231 perform the abortion without consent of or notice to an authorized person.

232 Nothing contained in this subsection shall be construed to authorize a physician to perform an  
233 abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult  
234 woman.

235 A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent  
236 has been obtained or the minor delivers to the physician a court order entered pursuant to this section  
237 and the physician or his agent provides such notice as such order may require. However, neither consent  
238 nor judicial authorization nor notice shall be required if the minor declares that she is abused or  
239 neglected and the attending physician has reason to suspect that the minor may be an abused or  
240 neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with  
241 § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the  
242 facts justifying the exception in the minor's medical record.

243 For purposes of this subsection:

"Authorization" means the minor has delivered to the physician a notarized, written statement signed by an authorized person that the authorized person knows of the minor's intent to have an abortion and consents to such abortion being performed on the minor.

"Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with whom the minor regularly and customarily resides and who has care and control of the minor. Any person who knows he is not an authorized person and who knowingly and willfully signs an authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

"Consent" means that (i) the physician has given notice of intent to perform the abortion and has received authorization from an authorized person; or (ii) at least one authorized person is present with the minor seeking the abortion and provides written authorization to the physician, which shall be witnessed by the physician or an agent thereof. In either case, the written authorization shall be incorporated into the minor's medical record and maintained as a part thereof.

"Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.

"Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by telephone, at least 24 hours previous to the performance of the abortion or (ii) the physician or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at least 72 hours prior to the performance of the abortion.

"Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage as provided in § 18.2-72, 18.2-73, or 18.2-74.

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.).

X. W. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) relating to standby guardians for minor children.

Y. X. Petitions involving minors filed pursuant to § 32.1-45.1 relating to obtaining a blood specimen or test results.

Z. Y. Petitions filed pursuant to § 16.1-283.3 for review of voluntary agreements for continuation of services and support for persons who meet the eligibility criteria for the Fostering Futures program set forth in § 63.2-919.

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision A 3, except as provided in subdivision A 6 of § 17.1-272, or subsection B, D, M, or R.

Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of subsection W shall be guilty of a Class 3 misdemeanor.

Upon certification by the juvenile and domestic relations district court of any felony charge and ancillary misdemeanor charge committed by an adult or when an appeal of a conviction or adjudication of delinquency of an offense in the juvenile and domestic relations district court is noted, jurisdiction as to such charges shall vest in the circuit court, unless such case is reopened pursuant to § 16.1-133.1; a final judgment, order, or decree is modified, vacated, or suspended pursuant to Supreme Court of Virginia Rule 1:1; or the appeal has been withdrawn in the juvenile and domestic relations district court within 10 days pursuant to § 16.1-133.

#### § 20-163. Miscellaneous provisions related to all surrogacy contracts.

A. The surrogate shall be solely responsible for the clinical management of the pregnancy.

B. After the entry of an order under subsection B of § 20-160 or upon the execution of a contract pursuant to § 20-162, the marriage of the surrogate shall not affect the validity of the order or contract, and her spouse shall not be deemed a party to the contract in the absence of his explicit written consent.

C. Following the entry of an order pursuant to subsection D of § 20-160 or upon the relinquishing of the custody of and parental rights to any resulting child and the filing of the surrogate consent and report form as provided in § 20-162, the intended parent shall have the custody of, parental rights to, and full responsibilities for any child resulting from the performance of assisted conception from a surrogacy agreement regardless of the child's health, physical appearance, any mental or physical

handicap, and regardless of whether the child is born alive.

D. A child born to a surrogate within 300 days after assisted conception pursuant to an order under subsection B of § 20-160 or a contract under § 20-162 is presumed to result from the assisted conception. This presumption is conclusive as to all persons who fail to file an action to test its validity within two years after the birth of the child. The child and the parties to the contract shall be named as parties in any such action. The action shall be filed in the court that issued or could have issued an order under § 20-160.

E. Health care providers shall not be liable for recognizing the surrogate as the mother of the resulting child before receipt of a copy of an order entered under § 20-160 or a copy of the contract, or for recognizing the intended parent as the parent of the resulting child after receipt of such order or copy of the contract.

F. Any contract provision requiring or prohibiting an abortion or selective reduction is against the public policy of the Commonwealth and is void and unenforceable.

**§ 20-166. Power of attorney to delegate parental or legal custodial powers.**

A. A parent or legal custodian of a child, by a properly executed power of attorney pursuant to § 20-167, may delegate to another person, for a period not to exceed 180 days, any of the powers regarding the custody, care, and property of the child except the power to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child. In the event that both parents of a child are exercising joint custody, both parents shall be required to execute such power of attorney.

Such parent or legal custodian who is a service member may delegate such powers for a period longer than 180 days while on active duty service if such active duty is longer than 180 days, but such period shall not exceed the term of active duty service plus 30 days. For the purposes of this section, "service member" means (i) a member of the Armed Forces of the United States, (ii) a member of the Armed Forces Reserves, (iii) a member of the National Guard, (iv) a member of the commissioned corps of the National Oceanic and Atmospheric Administration, (v) a member of the commissioned corps of the U.S. Public Health Services, or (vi) any person otherwise required to enter or serve in the active military services of the United States under a call or order of the President of the United States or to serve on state active duty.

A delegation of powers under this section shall not operate to change or modify any parental or legal rights, obligations, or authority established by an existing court order or deprive a parent or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of any child under this title.

B. Any power of attorney properly executed pursuant to § 20-167 shall be signed by all persons with authority to make decisions concerning the child pursuant to Chapter 6.1 (§ 20-124.1 et seq.), the person to whom powers are delegated under the power of attorney, and a representative of a licensed child-placing agency that assists parents and legal guardians with the process of delegating parental and legal custodial powers of their children, including assistance with identifying appropriate placements for their children and providing services and resources to support children, parents and legal guardians, and persons to whom parental or legal custodial powers are delegated pursuant to this chapter. That agency shall file notice of the arrangement authorized by the power of attorney with the local department of social services in the jurisdiction where the parents or legal guardian resides within seven days of its execution.

C. Any person who has signed the form under § 20-167 shall have the authority to revoke or withdraw the power of attorney authorized by subsection A at any time. If the delegation of authority lasts longer than 180 days, a new power of attorney shall be executed. Where such delegation is executed by a service member, if the delegation is longer than 180 days while on active duty service and exceeds the term of active duty service plus 30 days, a new power of attorney shall be executed.

D. The attorney-in-fact shall exercise parental or legal authority on a continuous basis for not less than 24 hours and without compensation for the intended duration of the power of attorney authorized by subsection A and shall not be subject to the licensing requirements of § 63.2-1701.

E. The execution of a power of attorney by a parent or legal custodian authorized by subsection A shall not constitute abandonment, abuse, or neglect as defined in § 63.2-100 unless the parent or legal custodian fails to make contact or execute a new power of attorney after the time limit has elapsed.

F. Under a delegation of powers as authorized by subsection A, the child subject to the power of attorney shall not be deemed placed in foster care, in a foster home, or in an independent foster home as defined in § 63.2-100, and the parties shall not be subject to any of the licensing requirements or regulations for foster care.

G. A licensed child-placing agency that assists parents and legal guardians with the process of delegating parental and legal custodial powers of their children shall (i) comply with background check requirements established by regulations of the Board of Social Services or otherwise provided by law; (ii) develop and implement written policies and procedures for (a) governing active and closed cases, (b)

governing admissions, (c) monitoring the administration of medications, (d) prohibiting corporal punishment, (e) ensuring that children are not subjected to abuse or neglect, (f) investigating allegations of misconduct toward children, (g) implementing back-up emergency care plans for children, (h) assigning designated casework staff, (i) managing all records, (j) utilizing discharge policies, and (k) regulating the use of seclusion and restraint; and (iii) provide pre-service and ongoing training for temporary placement providers and staff. Any person to whom any powers are delegated pursuant to this section shall comply with background check requirements established by regulations of the Board of Social Services or otherwise provided by law.

H. Except as may be permitted by the federal No Child Left Behind Act, 20 U.S.C. §§ 6301 et seq. and 7801 et seq., a power of attorney executed pursuant to § 20-167 shall be invalid if executed for the primary purpose of enrolling the child in a school for the sole purpose of participating in the academic or interscholastic athletics programs provided by that school or for any other unlawful purpose. Violation of this subsection shall be punishable in accordance with the laws of the Commonwealth and may require, in addition to any other remedies, repayment by such parent of all costs incurred by the school as a result of the violation.

**§ 20-167. Statutory form for power of attorney to delegate parental or legal custodial powers.**

A. A power of attorney to delegate parental or legal authority executed pursuant to this chapter shall be substantially as follows:

**POWER OF ATTORNEY TO DELEGATE PARENTAL OR LEGAL CUSTODIAL POWERS**

1. I/We certify that I/we am/are the parent or legal custodian of:

Full name of minor child: \_\_\_\_\_ Date of birth: \_\_\_\_\_

Full name of minor child: \_\_\_\_\_ Date of birth: \_\_\_\_\_

Full name of minor child: \_\_\_\_\_ Date of birth: \_\_\_\_\_

2. I/We designate \_\_\_\_\_ (insert full name, address, and phone number of designated attorney-in-fact) as the attorney-in-fact of each child listed above.

3. I/We delegate to the attorney-in-fact all of my/our power and authority regarding the care, custody, and property of each minor child named above, including the right to enroll the child in school, the right to inspect and obtain copies of education records and other records concerning the child, the right to attend school activities and other functions concerning the child, and the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function, or treatment that may concern the child. This delegation shall not include the power or authority to consent to marriage or adoption of the child, ~~the performance or inducement of an abortion on or for the child,~~ or the termination of parental rights to the child. I/We understand that this power of attorney shall not operate to change or modify any parental or legal rights, obligations, or authority established by an existing court order or deprive a parent or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of any child under Title 20 of the Code of Virginia, and I/we understand that I/we shall continue to be bound by any obligations in such order. By my/our signature below, I/we hereby certify that I/we am/are not executing this power of attorney for any unlawful purpose or for the primary purpose of enrolling my/our child/children in a school for the sole purpose of participating in the academic or interscholastic athletics programs provided by that school.

OR

3. I/We delegate to the attorney-in-fact the following specific powers and responsibilities:

\_\_\_\_\_  
\_\_\_\_\_.

This delegation shall not include the power or authority to consent to marriage or adoption of the child, ~~the performance or inducement of an abortion on or for the child,~~ or the termination of parental rights to the child. I/We understand that this power of attorney shall not operate to change or modify any parental or legal rights, obligations, or authority established by an existing court order or deprive a parent or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of any child under Title 20 of the Code of Virginia, and I/we understand that I/we shall continue to be bound by any obligations in such order. By my/our signature below, I/we hereby certify that I/we am/are not executing this power of attorney for any unlawful purpose or for the primary purpose of enrolling my/our child/children in a school for the sole purpose of participating in the academic or interscholastic athletics programs provided by that school.

4. This power of attorney is effective for a period not to exceed 180 days, beginning \_\_\_\_\_ (insert date) and ending \_\_\_\_\_ (insert date). I/We reserve the right to revoke this authority at any time.

OR

4. I/We am/are a service member, as defined by § 20-166 of the Code of Virginia, and am/are on, or am/are scheduled to be on, active duty for a period that is set to last longer than 180 days. This power

428 of attorney is effective for a period not to exceed the period of active duty plus 30 days, beginning  
429 \_\_\_\_\_ (insert date) and ending \_\_\_\_\_ (insert date). I/We reserve the right to revoke this  
430 authority at any time.

431 Signature(s) of parent/legal custodian: \_\_\_\_\_ Date: \_\_\_\_\_

432 5. I hereby accept my designation as attorney-in-fact for the minor child/children specified in this  
433 power of attorney and agree to act at all times in the best interests of the child/children specified herein  
434 and within the limits of the powers delegated to me. I understand that this power of attorney does not  
435 change or modify any parental or legal rights, obligations, or authority established by an existing court  
436 order or deprive a parent or legal custodian of any parental or legal rights, obligations, or authority  
437 regarding the custody, visitation, or support of the child/children specified herein. By my signature  
438 below, I affirm that I have received notice of any existing court order regarding the custody, visitation,  
439 or support of the child/children and agree to honor the rights of a parent or legal custodian of the  
440 child/children as specified in such order.

441 Signature of attorney-in-fact: \_\_\_\_\_ Date: \_\_\_\_\_

442 6. I, \_\_\_\_\_ (insert name of representative of licensed child-placing agency), on  
443 behalf of \_\_\_\_\_ (insert name of licensed child-placing agency), hereby approve the  
444 designation of the aforementioned attorney-in-fact for the minor child/children specified in this power of  
445 attorney and accept responsibility for the supervision of the placement during the time the child/children  
446 is/are in the care of the attorney-in-fact.

447 Signature of representative of licensed child-placing agency: \_\_\_\_\_ Date: \_\_\_\_\_

448 B. A power of attorney executed under this chapter is legally sufficient if the wording of the form  
449 complies substantially with subsection A, the form is properly completed, and the signatures of the  
450 parties are acknowledged or verified before a notary public.

451 **§ 32.1-133.1. Human trafficking hotline; posted notice required; civil penalty.**

452 Any health care facility (i) licensed as a hospital pursuant to § 32.1-125 that includes an emergency  
453 department or that is a dedicated emergency department as defined in 42 C.F.R. § 489.24(b), (ii)  
454 operating as a clinic ~~which~~ *that* is organized in whole or in part for the delivery of health care services  
455 without charge, *or* (iii) ~~licensed as an abortion facility pursuant to § 32.1-127, or (iv)~~ in which the  
456 majority of patients are seen without appointments shall post notice of the existence of a human  
457 trafficking hotline to alert possible witnesses or victims of human trafficking to the availability of a  
458 means to report crimes or gain assistance. The notice required by this section shall be posted in a place  
459 readily visible and accessible to the public such as the admitting area or public or patient restrooms of  
460 such facility. Such notice shall meet the requirements specified in subsection C of § 40.1-11.3. The State  
461 Board shall promulgate regulations necessary to implement the provisions of this section.

462 **§ 32.1-162.18. Informed consent.**

463 A. In order to conduct human research in ~~this~~ *the* Commonwealth, informed consent must be  
464 obtained if the person who is to be the human subject is as follows: (i) capable of making an informed  
465 decision, then it shall be subscribed to in writing by the person and witnessed; (ii) incapable of making  
466 an informed decision, as defined in § 54.1-2982, at the time consent is required, then it shall be  
467 subscribed to in writing by the person's legally authorized representative and witnessed; or (iii) a minor  
468 otherwise capable of rendering informed consent, then it shall be subscribed to in writing by both the  
469 minor and his legally authorized representative. The giving of consent by a legally authorized  
470 representative shall be subject to the provisions of subsection B ~~of this section~~. If two or more persons  
471 who qualify as legally authorized representatives and have equal decision-making priority under this  
472 chapter inform the principal investigator or attending physician that they disagree as to participation of  
473 the prospective subject in human research, the subject shall not be enrolled in the human research that is  
474 the subject of the consent. No informed consent form shall include any language through which the  
475 person who is to be the human subject waives or appears to waive any of his legal rights, including any  
476 release of any individual, institution, or agency or any agents thereof from liability for negligence.

477 Notwithstanding consent by a legally authorized representative, no person shall be forced to  
478 participate in any human research if the investigator conducting the human research knows that  
479 participation in the research is protested by the prospective subject. In the case of persons suffering from  
480 neurodegenerative diseases causing progressive deterioration of cognition for which there is no known  
481 cure, the implementation of experimental courses of therapeutic treatment, including  
482 non-pharmacological treatment, to which a legally authorized representative has given informed consent  
483 shall not constitute the use of force.

484 B. A legally authorized representative may not consent to nontherapeutic research unless it is  
485 determined by the human research committee that such nontherapeutic research will present no more  
486 than a minor increase over minimal risk to the human subject. A legally authorized representative may  
487 not consent to participation in human research on behalf of a prospective subject if the legally  
488 authorized representative knows, or upon reasonable inquiry ought to know, that any aspect of the  
489 human research protocol is contrary to the religious beliefs or basic values of the prospective subject,



whether expressed orally or in writing. A legally authorized representative may not consent to participation in human research involving nontherapeutic sterilization, ~~abortion~~, psychosurgery, or admission for research purposes to a facility or hospital as defined in § 37.2-100.

C. Except as provided elsewhere in this chapter, no investigator may involve a human being as a subject in research covered by this chapter unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the legally authorized representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence.

D. The human research review committee may approve a consent procedure which omits or alters some or all of the basic elements of informed consent, or waives the requirement to obtain informed consent, if the committee finds and documents that (i) the research involves no more than minimal risk to the subjects; (ii) the omission, alteration or waiver will not adversely affect the rights and welfare of the subjects; (iii) the research could not practicably be performed without the omission, alteration or waiver; and (iv) after participation, the subjects are to be provided with additional pertinent information, whenever appropriate.

E. The human research review committee may waive the requirement that the investigator obtain written informed consent for some or all subjects, if the committee finds that the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. The committee may require the investigator to provide the subjects with a written statement explaining the research. Further, each subject shall be asked whether he wants documentation linking him to the research and the subject's wishes shall govern.

**§ 32.1-264. Reports of fetal deaths; medical certification; investigation by the Office of the Chief Medical Examiner.**

A. A fetal death report for each fetal death ~~which~~ *that* occurs in ~~this~~ *the* Commonwealth shall be filed, on a form furnished by the State Registrar, with the registrar of the district in which the delivery occurred ~~or the abortion was performed~~ within three days after such delivery ~~or abortion~~ and shall be registered with such registrar if it has been completed and filed in accordance with this section, provided that:

1. If the place of fetal death is unknown, a fetal death report shall be filed in the registration district in which a dead fetus was found within three days after discovery of such fetus; and

2. If a fetal death occurs in a moving conveyance, a fetal death report shall be filed in the registration district in which the fetus was first removed from such conveyance.

B. The funeral director or person who first assumes custody of a dead fetus or, in the absence of a funeral director or such person, the hospital representative who first assumes custody of a fetus shall file the fetal death report; in the absence of such a person, the physician or other person in attendance at or after the delivery ~~or abortion~~ shall file the report of fetal death. The person completing the forms shall obtain the personal data from the next of kin or the best qualified person or source available, and he shall obtain the medical certification of cause of death from the person responsible for preparing the same as provided in this section. ~~In the case of induced abortion, such forms shall not identify the patient by name.~~

C. The medical certification portion of the fetal death report shall be completed and signed within 24 hours after delivery ~~or abortion~~ by the physician in attendance at or after delivery ~~or abortion~~ except when inquiry or investigation by the Office of the Chief Medical Examiner is required.

D. When a fetal death occurs without medical attendance upon the mother at or after the delivery ~~or abortion~~ or when inquiry or investigation by the Office of the Chief Medical Examiner is required, the Chief Medical Examiner shall cause an investigation of the cause of fetal death to be made and the medical certification portion of the fetal death report to be completed and signed within 24 hours after being notified of a fetal death.

E. The reports required pursuant to this section are statistical reports to be used only for medical and health purposes and shall not be incorporated into the permanent official records of the system of vital records. A schedule for the disposition of these reports may be provided by regulation.

F. The physician or facility attending an individual who has delivered a dead fetus shall maintain a copy of the fetal death report for one year and, upon written request by the individual and payment of an appropriate fee, shall furnish the individual a copy of such report.

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

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

551 The Board shall include in such plan:

552 1. A provision for payment of medical assistance on behalf of individuals, up to the age of 21,  
553 placed in foster homes or private institutions by private, nonprofit agencies licensed as child-placing  
554 agencies by the Department of Social Services or placed through state and local subsidized adoptions to  
555 the extent permitted under federal statute;

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

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

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

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

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

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

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

600 9. A provision identifying entities approved by the Board to receive applications and to determine  
601 eligibility for medical assistance, which shall include a requirement that such entities (i) obtain accurate  
602 contact information, including the best available address and telephone number, from each applicant for  
603 medical assistance, to the extent required by federal law and regulations, and (ii) provide each applicant  
604 for medical assistance with information about advance directives pursuant to Article 8 (§ 54.1-2981 et  
605 seq.) of Chapter 29 of Title 54.1, including information about the purpose and benefits of advance  
606 directives and how the applicant may make an advance directive;

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

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

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

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

14. A requirement that certificates of medical necessity for durable medical equipment and any supporting verifiable documentation shall be signed, dated, and returned by the physician, physician assistant, or nurse practitioner and in the durable medical equipment provider's possession within 60 days from the time the ordered durable medical equipment and supplies are first furnished by the durable medical equipment provider;

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

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

17. A provision, when in compliance with federal law and regulation and approved by the Centers for Medicare & Medicaid Services (CMS), for payment of medical assistance services delivered to Medicaid-eligible students when such services qualify for reimbursement by the Virginia Medicaid program and may be provided by school divisions, regardless of whether the student receiving care has an individualized education program or whether the health care service is included in a student's individualized education program. Such services shall include those covered under the state plan for medical assistance services or by the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit as specified in § 1905(r) of the federal Social Security Act, and shall include a provision for payment of medical assistance for health care services provided through telemedicine services, as defined in § 38.2-3418.16. No health care provider who provides health care services through telemedicine shall be required to use proprietary technology or applications in order to be reimbursed for providing telemedicine services;

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

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

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

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

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

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

689 24. A provision, when authorized by and in compliance with federal law, to establish a public-private  
690 long-term care partnership program between the Commonwealth of Virginia and private insurance  
691 companies that shall be established through the filing of an amendment to the state plan for medical  
692 assistance services by the Department of Medical Assistance Services. The purpose of the program shall  
693 be to reduce Medicaid costs for long-term care by delaying or eliminating dependence on Medicaid for  
694 such services through encouraging the purchase of private long-term care insurance policies that have  
695 been designated as qualified state long-term care insurance partnerships and may be used as the first  
696 source of benefits for the participant's long-term care. Components of the program, including the  
697 treatment of assets for Medicaid eligibility and estate recovery, shall be structured in accordance with  
698 federal law and applicable federal guidelines;

699 25. A provision for the payment of medical assistance for otherwise eligible pregnant women during  
700 the first five years of lawful residence in the United States, pursuant to § 214 of the Children's Health  
701 Insurance Program Reauthorization Act of 2009 (P.L. 111-3);

702 26. A provision for the payment of medical assistance for medically necessary health care services  
703 provided through telemedicine services, as defined in § 38.2-3418.16, regardless of the originating site or  
704 whether the patient is accompanied by a health care provider at the time such services are provided. No  
705 health care provider who provides health care services through telemedicine services shall be required to  
706 use proprietary technology or applications in order to be reimbursed for providing telemedicine services.

707 For the purposes of this subdivision, "originating site" means any location where the patient is  
708 located, including any medical care facility or office of a health care provider, the home of the patient,  
709 the patient's place of employment, or any public or private primary or secondary school or  
710 postsecondary institution of higher education at which the person to whom telemedicine services are  
711 provided is located;

712 27. A provision for the payment of medical assistance for the dispensing or furnishing of up to a  
713 12-month supply of hormonal contraceptives at one time. Absent clinical contraindications, the  
714 Department shall not impose any utilization controls or other forms of medical management limiting the  
715 supply of hormonal contraceptives that may be dispensed or furnished to an amount less than a  
716 12-month supply. Nothing in this subdivision shall be construed to (i) require a provider to prescribe,  
717 dispense, or furnish a 12-month supply of self-administered hormonal contraceptives at one time or (ii)  
718 exclude coverage for hormonal contraceptives as prescribed by a prescriber, acting within his scope of  
719 practice, for reasons other than contraceptive purposes. As used in this subdivision, "hormonal  
720 contraceptive" means a medication taken to prevent pregnancy by means of ingestion of hormones,  
721 including medications containing estrogen or progesterone, that is self-administered, requires a  
722 prescription, and is approved by the U.S. Food and Drug Administration for such purpose; and

723 28. A provision for payment of medical assistance for remote patient monitoring services provided  
724 via telemedicine, as defined in § 38.2-3418.16, for (i) high-risk pregnant persons; (ii) medically  
725 complex infants and children; (iii) transplant patients; (iv) patients who have undergone surgery, for up  
726 to three months following the date of such surgery; and (v) patients with a chronic or acute health  
727 condition who have had two or more hospitalizations or emergency department visits related to such  
728 health condition in the previous 12 months when there is evidence that the use of remote patient  
729 monitoring is likely to prevent readmission of such patient to a hospital or emergency department. For  
730 the purposes of this subdivision, "remote patient monitoring services" means the use of digital  
731 technologies to collect medical and other forms of health data from patients in one location and  
732 electronically transmit that information securely to health care providers in a different location for  
733 analysis, interpretation, and recommendations, and management of the patient. "Remote patient  
734 monitoring services" includes monitoring of clinical patient data such as weight, blood pressure, pulse,  
735 pulse oximetry, blood glucose, and other patient physiological data, treatment adherence monitoring, and

interactive videoconferencing with or without digital image upload;

29. A provision for the payment of medical assistance for provider-to-provider consultations that is no more restrictive than, and is at least equal in amount, duration, and scope to, that available through the fee-for-service program; and

30. A provision for payment of the originating site fee to emergency medical services agencies for facilitating synchronous telehealth visits with a distant site provider delivered to a Medicaid member. As used in this subdivision, "originating site" means any location where the patient is located, including any medical care facility or office of a health care provider, the home of the patient, the patient's place of employment, or any public or private primary or secondary school or postsecondary institution of higher education at which the person to whom telemedicine services are provided is located.

B. In preparing the plan, the Board shall:

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

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

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

4. Examine, before acting on a regulation to be published in the Virginia Register of Regulations pursuant to § 2.2-4007.05, the potential fiscal impact of such regulation on local boards of social services. For regulations with potential fiscal impact, the Board shall share copies of the fiscal impact analysis with local boards of social services prior to submission to the Registrar. The fiscal impact analysis shall include the projected costs/savings to the local boards of social services to implement or comply with such regulation and, where applicable, sources of potential funds to implement or comply with such regulation.

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

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

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

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

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

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

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

3. Refuse to enter into or renew an agreement or contract, or elect to terminate an existing agreement or contract, with any provider who has been convicted of or otherwise pled guilty to a felony, or pursuant to Subparts A, B, and C of 42 C.F.R. Part 1002, and upon notice of such action to the provider as required by 42 C.F.R. § 1002.212.

4. Refuse to enter into or renew an agreement or contract, or elect to terminate an existing agreement

797 or contract, with a provider who is or has been a principal in a professional or other corporation when  
798 such corporation has been convicted of or otherwise pled guilty to any violation of § 32.1-314, 32.1-315,  
799 32.1-316, or 32.1-317, or any other felony or has been excluded from participation in any federal  
800 program pursuant to 42 C.F.R. Part 1002.

801 5. Terminate or suspend a provider agreement with a home care organization pursuant to subsection  
802 E of § 32.1-162.13.

803 For the purposes of this subsection, "provider" may refer to an individual or an entity.

804 E. In any case in which a Medicaid agreement or contract is terminated or denied to a provider  
805 pursuant to subsection D, the provider shall be entitled to appeal the decision pursuant to 42 C.F.R.  
806 § 1002.213 and to a post-determination or post-denial hearing in accordance with the Administrative  
807 Process Act (§ 2.2-4000 et seq.). All such requests shall be in writing and be received within 15 days of  
808 the date of receipt of the notice.

809 The Director may consider aggravating and mitigating factors including the nature and extent of any  
810 adverse impact the agreement or contract denial or termination may have on the medical care provided  
811 to Virginia Medicaid recipients. In cases in which an agreement or contract is terminated pursuant to  
812 subsection D, the Director may determine the period of exclusion and may consider aggravating and  
813 mitigating factors to lengthen or shorten the period of exclusion, and may reinstate the provider pursuant  
814 to 42 C.F.R. § 1002.215.

815 F. When the services provided for by such plan are services which a marriage and family therapist,  
816 clinical psychologist, clinical social worker, professional counselor, or clinical nurse specialist is licensed  
817 to render in Virginia, the Director shall contract with any duly licensed marriage and family therapist,  
818 duly licensed clinical psychologist, licensed clinical social worker, licensed professional counselor or  
819 licensed clinical nurse specialist who makes application to be a provider of such services, and thereafter  
820 shall pay for covered services as provided in the state plan. The Board shall promulgate regulations  
821 which reimburse licensed marriage and family therapists, licensed clinical psychologists, licensed clinical  
822 social workers, licensed professional counselors and licensed clinical nurse specialists at rates based  
823 upon reasonable criteria, including the professional credentials required for licensure.

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

829 H. The Department of Medical Assistance Services shall:

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

836 2. Amend the Medallion II waiver and its implementing regulations to develop and implement an  
837 exception, with procedural requirements, to mandatory enrollment for certain children between birth and  
838 age three certified by the Department of Behavioral Health and Developmental Services as eligible for  
839 services pursuant to Part C of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.).

840 3. Utilize, to the extent practicable, electronic funds transfer technology for reimbursement to  
841 contractors and enrolled providers for the provision of health care services under Medicaid and the  
842 Family Access to Medical Insurance Security Plan established under § 32.1-351.

843 4. Require any managed care organization with which the Department enters into an agreement for  
844 the provision of medical assistance services to include in any contract between the managed care  
845 organization and a pharmacy benefits manager provisions prohibiting the pharmacy benefits manager or  
846 a representative of the pharmacy benefits manager from conducting spread pricing with regards to the  
847 managed care organization's managed care plans. For the purposes of this subdivision:

848 "Pharmacy benefits management" means the administration or management of prescription drug  
849 benefits provided by a managed care organization for the benefit of covered individuals.

850 "Pharmacy benefits manager" means a person that performs pharmacy benefits management.

851 "Spread pricing" means the model of prescription drug pricing in which the pharmacy benefits  
852 manager charges a managed care plan a contracted price for prescription drugs, and the contracted price  
853 for the prescription drugs differs from the amount the pharmacy benefits manager directly or indirectly  
854 pays the pharmacist or pharmacy for pharmacist services.

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

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

K. When the services provided for by such plan are services related to initiation of treatment with or dispensing or administration of a vaccination by a pharmacist, pharmacy technician, or pharmacy intern in accordance with § 54.1-3303.1, the Department shall provide reimbursement for such service.

**§ 32.1-326.3. Special education health services; memorandum of agreement between the Department of Education and the Department of Medical Assistance Services.**

A. The Department of Medical Assistance Services, in cooperation with the Department of Education, shall, consistent with the biennium budget cycle, examine and revise, as necessary, the regulations relating to the funding and components of special education services.

Any revisions shall be designed to maximize access to health care for poor children who are eligible for medical assistance services and to assist school divisions in the funding of medically necessary related services by making use of every possible, cost-effective means, Medicaid reimbursement or other program administered by the Department of Medical Assistance Services, including, but not limited to, the State Children's Health Insurance Plan pursuant to Title XXI of the United States Social Security Act, as approved by the federal Health Care Financing Administration at the time. Any revisions shall be based on the flexibility allowed to the states and be focused on avoiding large costs for acute or medical care and increasing children's access to health care, and shall include, but need not be limited to:

1. Rates for services which shall clearly identify that only the federal share shall be reimbursed for the special education health services and shall demonstrate that local governments are funding the state match for the special education health services provided by school divisions.

2. The benefits and drawbacks of allowing school divisions to provide services as Medicaid providers to disabled students.

3. The appropriate credentials of the providers of care, in compliance with federal requirements and with the approval of the Health Care Financing Administration, for special education health services; e.g., licensure by the Board of Education and licensure by the appropriate health regulatory board within the Department of Health Professions.

4. Delivery of medically necessary related services for students who are eligible for medical assistance services.

The services shall be limited to those services which are covered under the then-current state plan for medical assistance services, and may be provided, consistent with federal law and as approved by the Health Care Financing Administration, by a school division participating as a health services provider. Such services shall include, but need not be limited to, speech therapy, including such services when delivered by school speech-language pathologists licensed by the Board of Audiology and Speech-Language Pathology or those individuals who are directly supervised, at least twenty-five percent of the time, by such licensed speech-language pathologists; physical therapy; occupational therapy; psychiatric and psychological evaluations and therapy, including such services when delivered by school psychologists-limited licensed by the Board of Psychology; transportation between the student's home, the school or other site where health-related services are to be provided on those days when the student is scheduled to receive such services at the school or such other site; and skilled nursing services, such as health assessments, screening activities, nursing appraisals, nursing assessments, nursing procedures, medication assessment, medication monitoring, and medication administration.

5. The role of the Medallion, Medallion II, Options or other managed care programs in regard to the special education health services and coordination with school divisions regarding any required referrals.

B. Any funds necessary to support revisions to the special education health services shall be included in the budget estimates for the departments, as appropriate.

C. The Director of the Department of Medical Assistance Services or his designee and the Superintendent of Public Instruction or his designee shall develop and execute a memorandum of agreement relating to special education health services. This memorandum of agreement shall be revised on a periodic basis; however, the agreement shall, at a minimum, be revised and executed within six months of the inauguration of a new governor in order to maintain policy integrity.

D. The agreement shall include, but need not be limited to, (i) requirements for regular and consistent communications and consultations between the two departments and with school division personnel and officials and school board representatives; (ii) a specific and concise description and history of the federal Individuals with Disabilities Education Act (IDEA), a summary of school division responsibilities pursuant to the Individuals with Disabilities Education Act, and a summary of any corresponding state law which influences the scope of these responsibilities; (iii) a specific and concise summary of the then-current Department of Medical Assistance Services regulations regarding the

special education health services; (iv) assignment of the specific responsibilities of the two state departments for the operation of special education health services; (v) a schedule of issues to be resolved through the regular and consistent communications process, including, but not limited to, ways to integrate and coordinate care between the Department of Medical Assistance Services' managed care providers and special education health services providers; (vi) a process for the evaluation of the services which may be delivered by school divisions participating as special education health services providers pursuant to Medicaid; (vii) a plan and schedule to reduce the administrative and paperwork burden of Medicaid participation on school divisions in Virginia; and (viii) a mechanism for informing primary care providers and other case management providers of those school divisions that are participating as Medicaid providers and for identifying such school divisions as Medicaid providers that are available to receive referrals to provide special education health services.

E. The Board of Medical Assistance Services shall cooperate with the Board of Education in developing a form to be included with the Individualized Education Plan (IEP) that shall be accepted by the Department of Medical Assistance Services as the plan of care (POC) and in collecting the data necessary to establish separate and specific Medicaid rates for the IEP meetings and other services delivered by school divisions to students.

The POC form shall (i) be consistent with the plan of care required by the Department of Medical Assistance Services of other Medicaid providers, (ii) allow for written updates, (iii) be used by all school divisions participating as Medicaid providers of special education health services, (iv) document the student's progress, and (v) be integrated and coordinated with the Department of Medical Assistance Services' managed care providers.

F. The Department of Medical Assistance Services shall consult with the Department of Education in preparing a consent form which (i) is separate from the IEP, (ii) includes a statement noting that such form is not part of the student's IEP, (iii) includes a release to authorize billing of school-based health services delivered to the relevant student by the school division, and (iv) shall be used by all school divisions participating in Medicaid reimbursement. This consent form shall be made available to the parents upon conclusion of the IEP meeting. The release shall allow for billing of school-based health services by Virginia school divisions to the Virginia Medicaid program and other programs operated by the Department of Medical Assistance Services.

G. The Department of Medical Assistance Services and the Department of Education shall also develop a cost-effective, efficient, and appropriate process to allow school divisions access to eligibility data for students for whom consent has been obtained.

H. The Board of Medical Assistance Services shall, when in compliance with federal law and regulation and approved by the Health Care Financing Administration, also (i) include, in its regulations which provide for reimbursement of school divisions participating in Medicaid as special education health services providers, a provision for reimbursement of mental health services delivered by licensed school psychologists-limited and a provision for reimbursement for services rendered to Medicaid-eligible students of speech-language pathology services delivered by school speech-language pathologists or those individuals who are directly supervised, at least twenty-five percent of the time, by such licensed speech-language pathologists; (ii) revise the limitations, established pursuant to relevant regulations and Virginia's state plan for medical assistance services, on services delivered by school divisions participating in Medicaid as special education health services providers, in effect on January 1, 1999, for physical therapy, occupational therapy, and speech, hearing, and language disorders when such services are rendered to children who are eligible for special education services and have IEPs requiring such services; (iii) cooperate with the Board of Education in developing a form to be included with the IEP that shall be accepted by the Department of Medical Assistance Services as the plan of care when signed by a physician or, when under such physician's supervision, his designee; (iv) cooperate with the Board of Education in collecting the data necessary to establish separate and specific rates for the IEP services delivered by school divisions to students with disabilities who are eligible for special education and for medical assistance services; and (v) analyze the data necessary for such rates and establish new rates for reimbursement of IEP meetings based on such data.

I. Services delivered by school divisions as participating providers in the Medicaid program or any other program operated by the Department of Medical Assistance Services shall not include any family planning, or pregnancy or abortion services.

**§ 37.2-1102. Certain actions may not be authorized.**

The following actions may not be authorized under this chapter:

1. Nontherapeutic sterilization, ~~abortion~~, or psychosurgery.

2. Admission to a training center or a hospital. However, the court may issue an order under § 37.2-1101 authorizing treatment of a person whose admission to a training center or hospital has been or is simultaneously being authorized under § 37.2-805, 37.2-806, 37.2-807, or §§ 37.2-809 through 37.2-813, or of a person who is subject to an order of involuntary admission previously or simultaneously issued under §§ 37.2-814 through 37.2-819 or of Chapter 9 (§ 37.2-900 et seq.).



3. Administration of antipsychotic medication for a period to exceed 180 days or electroconvulsive therapy for a period to exceed 60 days pursuant to any petition filed under this section. The court may authorize electroconvulsive therapy only if it is demonstrated by clear and convincing evidence, which shall include the testimony of a licensed psychiatrist, that all other reasonable forms of treatment have been considered and that electroconvulsive therapy is the most effective treatment for the person. Even if the court has authorized administration of antipsychotic medication or electroconvulsive therapy hereunder, these treatments may be administered over the person's objection only if he is subject to an order of involuntary admission, including involuntary outpatient treatment, previously or simultaneously issued under §§ 37.2-814 through 37.2-819 or Chapter 9 (§ 37.2-900 et seq.), or the provisions of Chapter 11 (§ 19.2-167 et seq.) or Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2.

4. Restraint or transportation of the person, unless the court finds upon clear and convincing evidence that restraint or transportation is necessary to the administration of an authorized treatment for a physical disorder or for a mental disorder if the person is subject to an order of involuntary admission issued previously or simultaneously under Chapter 11 (§ 19.2-167 et seq.) or 11.1 (§ 19.2-182.2 et seq.) of Title 19.2, §§ 37.2-814 through 37.2-819, or Chapter 9 (§ 37.2-900 et seq.).

**§ 53.1-40.1. Medical and mental health treatment of prisoners incapable of giving consent.**

A. The Director or his designee may petition the circuit court or any district court judge or any special justice, as defined in § 37.2-100, herein referred to as the court, of the county or city in which the prisoner is located for an order authorizing treatment of a prisoner sentenced and committed to the Department of Corrections. The court shall authorize such treatment in a facility designated by the Director upon finding, on the basis of clear and convincing evidence, that the prisoner is incapable, either mentally or physically, of giving informed consent to such treatment and that the proposed treatment is in the best interests of the prisoner.

B. Prior to the court's authorization of such treatment, the court shall appoint an attorney to represent the interests of the prisoner. Evidence shall be presented concerning the prisoner's condition and proposed treatment, which evidence may, in the court's discretion and in the absence of objection by the prisoner or the prisoner's attorney, be submitted by affidavit.

C. Any order authorizing treatment pursuant to subsection A shall describe the treatment authorized and authorize generally such examinations, tests, medications, and other treatments as are in the best interests of the prisoner but may not authorize nontherapeutic sterilization, ~~abortion~~, or psychosurgery. Such order shall require the licensed physician, psychiatrist, clinical psychologist, professional counselor, or clinical social worker acting within his area of expertise who is treating the prisoner to report to the court and the prisoner's attorney any change in the prisoner's condition resulting in restoration of the prisoner's capability to consent prior to completion of the authorized treatment and related services. Upon receipt of such report, the court may enter such order withdrawing or modifying its prior authorization as it deems appropriate. Any petition or order under this section may be orally presented or entered, provided a written order is subsequently executed.

D. Any order of a judge under subsection A may be appealed de novo within 10 days to the circuit court for the jurisdiction where the prisoner is located, and any order of a circuit court hereunder, either originally or on appeal, may be appealed within 10 days to the Court of Appeals, which shall give such appeal priority and hear the appeal as soon as possible.

E. Whenever the director of any hospital or facility reasonably believes that treatment is necessary to protect the life, health, or safety of a prisoner, such treatment may be given during the period allowed for any appeal unless prohibited by order of a court of record wherein the appeal is pending.

F. Upon the advice of a licensed physician, psychiatrist, or clinical psychologist acting within his area of expertise who has attempted to obtain consent and upon a finding of probable cause to believe that a prisoner is incapable, due to any physical or mental condition, of giving informed consent to treatment and that the medical standard of care calls for testing, observation, or other treatment within the next 12 hours to prevent death, disability or a serious irreversible condition, the court or, if the court is unavailable, a magistrate shall issue an order authorizing temporary admission of the prisoner to a hospital or other health care facility and authorizing such testing, observation, or other treatment. Such order shall expire after a period of 12 hours unless extended by the court as part of an order authorizing treatment under subsection A.

G. Any licensed health or mental health professional or licensed facility providing services pursuant to the court's or magistrate's authorization as provided in this section shall have no liability arising out of a claim to the extent it is based on lack of consent to such services. Any such professional or facility providing services with the consent of the prisoner receiving treatment shall have no liability arising out of a claim to the extent it is based on lack of capacity to consent if a court or a magistrate has denied a petition hereunder to authorize such services, and such denial was based on an affirmative finding that the prisoner was capable of making an informed decision regarding the proposed services.

H. Nothing in this section shall be deemed to limit or repeal any common law rule relating to

consent for medical treatment or the right to apply or the authority conferred by any other applicable statute or regulation relating to consent.

**§ 53.1-133.04. Medical and mental health treatment of prisoners incapable of giving consent.**

A. The sheriff or administrator in charge of a local or regional correctional facility or his designee may petition the circuit court or any district court judge or any special justice, as defined in § 37.2-100, herein referred to as the court, of the county or city in which the prisoner is located for an order authorizing treatment of a prisoner confined in the local or regional correctional facility. Upon filing the petition, the petitioner or the court shall serve a certified copy of the petition to the person for whom treatment is sought and, if the identity and whereabouts of the person's next of kin are known, to the person's next of kin. The court shall authorize such treatment in a facility designated by the sheriff or administrator upon finding, on the basis of clear and convincing evidence, that the prisoner is incapable, either mentally or physically, of giving informed consent to such treatment; that the prisoner does not have a relevant advanced directive, guardian, or other substitute decision maker; that the proposed treatment is in the best interests of the prisoner; and that the jail has sufficient medical and nursing resources available to safely administer the treatment and respond to any adverse side effects that might arise from the treatment. The facility designated for treatment by the sheriff or administrator may be located within a local or regional correctional facility if such facility is licensed to provide the treatment authorized by the court order.

B. Prior to the court's authorization of such treatment, the court shall appoint an attorney to represent the interests of the prisoner. Evidence shall be presented concerning the prisoner's condition and proposed treatment, which evidence may, in the court's discretion and in the absence of objection by the prisoner or the prisoner's attorney, be submitted by affidavit.

C. Any order authorizing treatment pursuant to subsection A shall describe the treatment authorized and authorize generally such examinations, tests, medications, and other treatments as are in the best interests of the prisoner but may not authorize nontherapeutic sterilization, ~~abortion~~, or psychosurgery. Such order shall require the licensed physician, psychiatrist, clinical psychologist, professional counselor, or clinical social worker acting within his area of expertise who is treating the prisoner to report to the court and the prisoner's attorney any change in the prisoner's condition resulting in restoration of the prisoner's capability to consent prior to completion of the authorized treatment and related services. Upon receipt of such report, the court may enter such order withdrawing or modifying its prior authorization as it deems appropriate. Any petition or order under this section may be orally presented or entered, provided that a written order is subsequently executed.

D. Prior to authorizing treatment pursuant to this section, the court shall find that there is no available person with legal authority under the Health Care Decisions Act (§ 54.1-2981 et seq.) or under other applicable law to authorize the proposed treatment.

E. Any order of a judge under subsection A may be appealed de novo within 10 days to the circuit court for the jurisdiction where the prisoner is located, and any order of a circuit court hereunder, either originally or on appeal, may be appealed within 10 days to the Court of Appeals, which shall give such appeal priority and hear the appeal as soon as possible.

F. Whenever the director of any hospital or facility reasonably believes that treatment is necessary to protect the life, health, or safety of a prisoner, such treatment may be given during the period allowed for any appeal unless prohibited by order of a court of record wherein the appeal is pending.

G. Upon the advice of a licensed physician, psychiatrist, or clinical psychologist acting within his area of expertise who has attempted to obtain consent and upon a finding of probable cause to believe that a prisoner is incapable, due to any physical or mental condition, of giving informed consent to treatment and that the medical standard of care calls for testing, observation, or other treatment within the next 12 hours to prevent death, disability, or a serious irreversible condition, the court or, if the court is unavailable, a magistrate shall issue an order authorizing temporary admission of the prisoner to a hospital or other health care facility and authorizing such testing, observation, or other treatment. Such order shall expire after a period of 12 hours unless extended by the court as part of an order authorizing treatment under subsection A.

H. Any licensed health or mental health professional or licensed facility providing services pursuant to the court's or magistrate's authorization as provided in this section shall have no liability arising out of a claim to the extent that it is based on lack of consent to such services, except with respect to injury or death resulting from gross negligence or willful and wanton misconduct. Any such professional or facility providing services with the consent of the prisoner receiving treatment shall have no liability arising out of a claim to the extent that it is based on lack of capacity to consent, except with respect to injury or death resulting from gross negligence or willful and wanton misconduct, if a court or a magistrate has denied a petition hereunder to authorize such services and such denial was based on an affirmative finding that the prisoner was capable of making an informed decision regarding the proposed services.

I. Nothing in this section shall be deemed to limit or repeal any common law rule relating to consent

for medical treatment or the right to apply or the authority conferred by any other applicable statute or regulation relating to consent.

**§ 54.1-2969. Authority to consent to surgical and medical treatment of certain minors.**

A. Whenever any minor who has been separated from the custody of his parent or guardian is in need of surgical or medical treatment, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, as follows:

1. Upon judges with respect to minors whose custody is within the control of their respective courts.

2. Upon local directors of social services or their designees with respect to (i) minors who are committed to the care and custody of the local board by courts of competent jurisdiction, (ii) minors who are taken into custody pursuant to § 63.2-1517, and (iii) minors who are entrusted to the local board by the parent, parents or guardian, when the consent of the parent or guardian cannot be obtained immediately and, in the absence of such consent, a court order for such treatment cannot be obtained immediately.

3. Upon the Director of the Department of Corrections or the Director of the Department of Juvenile Justice or his designees with respect to any minor who is sentenced or committed to his custody.

4. Upon the principal executive officers of state institutions with respect to the wards of such institutions.

5. Upon the principal executive officer of any other institution or agency legally qualified to receive minors for care and maintenance separated from their parents or guardians, with respect to any minor whose custody is within the control of such institution or agency.

6. Upon any person standing in loco parentis, or upon a conservator or custodian for his ward or other charge under disability.

B. Whenever the consent of the parent or guardian of any minor who is in need of surgical or medical treatment is unobtainable because such parent or guardian is not a resident of the Commonwealth or his whereabouts is unknown or he cannot be consulted with promptness reasonable under the circumstances, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, upon judges of juvenile and domestic relations district courts.

C. Whenever delay in providing medical or surgical treatment to a minor may adversely affect such minor's recovery and no person authorized in this section to consent to such treatment for such minor is available within a reasonable time under the circumstances, no liability shall be imposed upon qualified emergency medical services personnel as defined in § 32.1-111.1 at the scene of an accident, fire or other emergency, a licensed health professional, or a licensed hospital by reason of lack of consent to such medical or surgical treatment. However, in the case of a minor 14 years of age or older who is physically capable of giving consent, such consent shall be obtained first.

D. Whenever delay in providing transportation to a minor from the scene of an accident, fire or other emergency prior to hospital admission may adversely affect such minor's recovery and no person authorized in this section to consent to such transportation for such minor is available within a reasonable time under the circumstances, no liability shall be imposed upon emergency medical services personnel as defined in § 32.1-111.1, by reason of lack of consent to such transportation. However, in the case of a minor 14 years of age or older who is physically capable of giving consent, such consent shall be obtained first.

E. A minor shall be deemed an adult for the purpose of consenting to:

1. Medical or health services needed to determine the presence of or to treat venereal disease or any infectious or contagious disease that the State Board of Health requires to be reported;

2. Medical or health services required in case of birth control, pregnancy or family planning except for the purposes of sexual sterilization;

3. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for substance abuse as defined in § 37.2-100; or

4. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for mental illness or emotional disturbance.

A minor shall also be deemed an adult for the purpose of accessing or authorizing the disclosure of medical records related to subdivisions 1 through 4.

F. Except for the purposes of sexual sterilization, any minor who is or has been married shall be deemed an adult for the purpose of giving consent to surgical and medical treatment.

G. A pregnant minor shall be deemed an adult for the sole purpose of giving consent for herself and her child to surgical and medical treatment relating to the delivery of her child when such surgical or medical treatment is provided during the delivery of the child or the duration of the hospital admission for such delivery; thereafter, the minor mother of such child shall also be deemed an adult for the purpose of giving consent to surgical and medical treatment for her child.

H. Any minor 16 years of age or older may, with the consent of a parent or legal guardian, consent

1166 to donate blood and may donate blood if such minor meets donor eligibility requirements. However,  
1167 parental consent to donate blood by any minor 17 years of age shall not be required if such minor  
1168 receives no consideration for his blood donation and the procurer of the blood is a nonprofit, voluntary  
1169 organization.

1170 I. Any judge, local director of social services, Director of the Department of Corrections, Director of  
1171 the Department of Juvenile Justice, or principal executive officer of any state or other institution or  
1172 agency who consents to surgical or medical treatment of a minor in accordance with this section shall  
1173 make a reasonable effort to notify the minor's parent or guardian of such action as soon as practicable.

1174 J. ~~Nothing in subsection G shall be construed to permit a minor to consent to an abortion without~~  
1175 ~~complying with § 16.1-241.~~

1176 K. Nothing in subsection E shall prevent a parent, legal guardian or person standing in loco parentis  
1177 from obtaining (i) the results of a minor's nondiagnostic drug test when the minor is not receiving care,  
1178 treatment or rehabilitation for substance abuse as defined in § 37.2-100 or (ii) a minor's other health  
1179 records, except when the minor's treating physician, clinical psychologist, clinical social worker, or  
1180 licensed professional counselor has determined, in the exercise of his professional judgment, that the  
1181 disclosure of health records to the parent, legal guardian, or person standing in loco parentis would be  
1182 reasonably likely to cause substantial harm to the minor or another person pursuant to subsection B of  
1183 § 20-124.6.

1184 **§ 54.1-2983.3. Exclusions and limitations of advance directives.**

1185 A. The absence of an advance directive by an adult patient shall not give rise to any presumption as  
1186 to his intent to consent to or refuse any particular health care.

1187 B. The provisions of this article shall not apply to authorization of nontherapeutic sterilization,  
1188 ~~abortion~~, or psychosurgery.

1189 C. If any provision of a patient's advance directive conflicts with the authority conferred by any  
1190 emergency custody, temporary detention, involuntary admission, and mandatory outpatient treatment  
1191 order set forth in Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 or by any other provision of law, the  
1192 provisions of the patient's advance directive that create the conflict shall have no effect. However, a  
1193 patient's advance directive shall otherwise be given full effect.

1194 D. The provisions of this article, if otherwise applicable, may be used to authorize admission of a  
1195 patient to a facility, as defined in § 37.2-100, only if the admission is otherwise authorized under  
1196 Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.

1197 **2. That §§ 18.2-71.1 through 18.2-76, 32.1-92.1, and 32.1-92.2 of the Code of Virginia are repealed.**