

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 2.1-1.7, 2.1-51.15, 2.1-342, 2.1-344, 9-6.25:2, 11-45, 32.1-122.02, 32.1-335, 32.1-336, and 32.1-337 of the Code of Virginia; to amend the Code of Virginia by adding in Title 32.1 a chapter number 7.2, consisting of sections numbered 32.1-276.2 through 32.1-276.11; and to repeal Chapter 26 (§§ 9-156 through 9-166.7) of Title 9 of the Code of Virginia, relating to health care data reporting and the Virginia Health Services Cost Review Council.

[H 1307]

Approved

Whereas, the objective of health care data initiatives is to improve the quality of care by providing the information needed to assist consumers in choosing appropriate health care and long-term care services; to evaluate medical technologies; and to improve treatment and eliminate unnecessary procedures; and

Whereas, a study conducted by the Joint Commission on Health Care regarding the Commonwealth's current health care cost and quality data initiatives found that most of the existing reports do not produce useful information for the marketplace; and

Whereas, although the patient level data base system and the efficiency and productivity methodology for hospitals and nursing homes were found to provide useful information, the current organizational structure for administering these initiatives is duplicative and should be streamlined; and

Whereas, a partnership between the Commonwealth and a private, nonprofit organization representing purchasers, consumers, providers, and third party payers offers the best means of providing accurate and helpful health care cost and quality data in the marketplace; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.7, 2.1-51.15, 2.1-342, 2.1-344, 9-6.25:2, 11-45, 32.1-122.02, 32.1-335, 32.1-336, and 32.1-337 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 32.1 a chapter number 7.2, consisting of sections numbered 32.1-276.2 through 32.1-276.11, as follows:

§ 2.1-1.7. State councils.

A. There shall be, in addition to such others as may be established by law, the following permanent collegial bodies either affiliated with more than one agency or independent of an agency within the executive branch:

- Adult Education and Literacy, Virginia Advisory Council for
- Agricultural Council, Virginia
- Alcohol and Drug Abuse Problems, Governor's Council on
- Apprenticeship Council
- Blue Ridge Regional Education and Training Council
- Child Day Care and Early Childhood Programs, Virginia Council on
- Child Day-Care Council
- Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion
- Commonwealth Competition Council
- Commonwealth's Attorneys' Services Council
- Developmental Disabilities Planning Council, Virginia
- Disability Services Council
- Equal Employment Opportunity Council, Virginia
- Health Services Cost Review Council, Virginia
- Housing for the Disabled, Interagency Coordinating Council on
- Human Rights, Council on
- Human Services Information and Referral Advisory Council
- Indians, Council on
- Interagency Coordinating Council, Virginia
- Job Training Coordinating Council, Governor's
- Land Evaluation Advisory Council
- Local Debt, State Council on
- Maternal and Child Health Council
- Military Advisory Council, Virginia
- Needs of Handicapped Persons, Overall Advisory Council on the
- Prevention, Virginia Council on Coordinating

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Public Records Advisory Council, State
 Rate-setting for Children's Facilities, Interdepartmental Council on
 Revenue Estimates, Advisory Council on
 Southside Virginia Marketing Council
 Specialized Transportation Council
 State Health Benefits Advisory Council
 Status of Women, Council on the
 Technology Council, Virginia
 Virginia Business-Education Partnership Program, Advisory Council on the
 Virginia Recycling Markets Development Council.

B. Notwithstanding the definition for "council" as provided in § 2.1-1.2, the following entities shall be referred to as councils:

Council on Information Management
 Higher Education, State Council of
 Independent Living Council, Statewide
 Rehabilitation Advisory Council, Statewide
 Rehabilitation Advisory Council for the Blind, Statewide
 World Trade Council, Virginia.
 § 2.1-51.15. Agencies for which responsible.

The Secretary of Health and Human Resources shall be responsible to the Governor for the following agencies: Department of Health, Department for the Visually Handicapped, Department of Health Professions, Department for the Aging, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services, Department of Social Services, ~~Virginia Health Services Cost Review Council~~, Department for Rights of Virginians With Disabilities, Department of Medical Assistance Services, the Council on Indians, Governor's Employment and Training Department, Child Day-Care Council, Virginia Department for the Deaf and Hard-of-Hearing, the Virginia Council on Coordinating Prevention and the Virginia Council on Child Day Care and Early Childhood Programs. The Governor may, by executive order, assign any other state executive agency to the Secretary of Health and Human Resources, or reassign any agency listed above to another secretary.

§ 2.1-342. Official records to be open to inspection; procedure for requesting records and responding to request; charges; exceptions to application of chapter.

A. Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth. The custodian of such records shall take all necessary precautions for their preservation and safekeeping. Any public body covered under the provisions of this chapter shall make an initial response to citizens requesting records open to inspection within five work days after the receipt of the request by the public body which is the custodian of the requested records. Such citizen request shall designate the requested records with reasonable specificity. A specific reference to this chapter by the requesting citizen in his request shall not be necessary to invoke the provisions of this chapter and the time limits for response by the public body. The response by the public body within such five work days shall be one of the following responses:

1. The requested records shall be provided to the requesting citizen.

2. If the public body determines that an exemption applies to all of the requested records, it may refuse to release such records and provide to the requesting citizen a written explanation as to why the records are not available with the explanation making specific reference to the applicable Code sections which make the requested records exempt.

3. If the public body determines that an exemption applies to a portion of the requested records, it may delete or excise that portion of the records to which an exemption applies, but shall disclose the remainder of the requested records and provide to the requesting citizen a written explanation as to why these portions of the record are not available to the requesting citizen with the explanation making specific reference to the applicable Code sections which make that portion of the requested records exempt. Any reasonably segregatable portion of an official record shall be provided to any person requesting the record after the deletion of the exempt portion.

4. If the public body determines that it is practically impossible to provide the requested records or to determine whether they are available within the five-work-day period, the public body shall so inform the requesting citizen and shall have an additional seven work days in which to provide one of the three preceding responses.

Nothing in this section shall prohibit any public body from petitioning the appropriate court for

additional time to respond to a request for records when the request is for an extraordinary volume of records and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with this petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

The public body may make reasonable charges for the copying, search time and computer time expended in the supplying of such records. The public body may also make a reasonable charge for preparing documents produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records or documents, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than fifty acres. Such charges for the supplying of requested records shall be estimated in advance at the request of the citizen. The public body may require the advance payment of charges which are subject to advance determination.

In any case where a public body determines in advance that search and copying charges for producing the requested documents are likely to exceed \$200, the public body may, before continuing to process the request, require the citizen requesting the information to agree to payment of an amount not to exceed the advance determination by five percent. The period within which the public body must respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the citizen requesting the information.

Official records maintained by a public body on a computer or other electronic data processing system which are available to the public under the provisions of this chapter shall be made reasonably accessible to the public at reasonable cost.

Public bodies shall not be required to create or prepare a particular requested record if it does not already exist. Public bodies may, but shall not be required to, abstract or summarize information from official records or convert an official record available in one form into another form at the request of the citizen. The public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

Failure to make any response to a request for records shall be a violation of this chapter and deemed a denial of the request.

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

1. Memoranda, correspondence, evidence and complaints related to criminal investigations; adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of such photograph will no longer jeopardize the investigation; reports submitted to the state and local police, to investigators authorized pursuant to § 53.1-16 and to the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of Title 23 in confidence; portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity; records of local police departments relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such departments under a promise of confidentiality; and all records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment. Information in the custody of law-enforcement officials relative to the identity of any individual other than a juvenile who is arrested and charged, and the status of the charge or arrest, shall not be excluded from the provisions of this chapter.

Criminal incident information relating to felony offenses shall not be excluded from the provisions of this chapter; however, where the release of criminal incident information is likely to jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information.

2. (Effective until July 1, 1996) Confidential records of all investigations of applications for licenses and permits, and all licensees and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department or the Virginia Racing Commission.

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3. State income, business, and estate tax returns, personal property tax returns, scholastic records and personnel records containing information concerning identifiable individuals, except that such access

shall not be denied to the person who is the subject thereof, and medical and mental records, except that such records can be personally reviewed by the subject person or a physician of the subject person's choice; however, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

Where the person who is the subject of medical records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the medical records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Medical records shall be reviewed only and shall not be copied by such administrator or chief medical officer. The information in the medical records of a person so confined shall continue to be confidential and shall not be disclosed to any person except the subject by the administrator or chief medical officer of the facility or except as provided by law.

For the purposes of this chapter such statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and releasable as provided in subsection A of this section. No such summaries or data shall include any patient-identifying information. Where the person who is the subject of scholastic or medical and mental records is under the age of eighteen, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. In instances where the person who is the subject thereof is an emancipated minor or a student in a state-supported institution of higher education, such right of access may be asserted by the subject person.

4. Memoranda, working papers and correspondence (i) held by or requested from members of the General Assembly or the Division of Legislative Services or (ii) held or requested by the office of the Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any political subdivision of the Commonwealth or the president or other chief executive officer of any state-supported institution of higher education. This exclusion shall not apply to memoranda, studies or other papers held or requested by the mayor or other chief executive officer of any political subdivision which are specifically concerned with the evaluation of performance of the duties and functions of any locally elected official and were prepared after June 30, 1992, nor shall this exclusion apply to agenda packets prepared and distributed to public bodies for use at a meeting.

Except as provided in § 30-28.18, memoranda, working papers and correspondence of a member of the General Assembly held by the Division of Legislative Services shall not be released by the Division without the prior consent of the member.

5. Written opinions of the city, county and town attorneys of the cities, counties and towns in the Commonwealth and any other writing protected by the attorney-client privilege.

6. Memoranda, working papers and records compiled specifically for use in litigation or as a part of an active administrative investigation concerning a matter which is properly the subject of an executive or closed meeting under § 2.1-344 and material furnished in confidence with respect thereto.

7. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

8. Library records which can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

9. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by any public body.

As used in this subdivision 9, "test or examination" shall include (i) any scoring key for any such test or examination, and (ii) any other document which would jeopardize the security of such test or examination. Nothing contained in this subdivision 9 shall prohibit the release of test scores or results as provided by law, or limit access to individual records as is provided by law. However, the subject of such employment tests shall be entitled to review and inspect all documents relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, such test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public

later than six months after the administration of such tests.

10. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

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

12. Memoranda, legal opinions, working papers and records recorded in or compiled exclusively for executive or closed meetings lawfully held pursuant to § 2.1-344.

13. Reports, documentary evidence and other information as specified in §§ 2.1-373.2 and 63.1-55.4.

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

15. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services and records, documents and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

16. Vendor proprietary information software which may be in the official records of a public body. For the purpose of this section, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

17. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of state institutions of higher learning, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.

18. Financial statements not publicly available filed with applications for industrial development financings.

19. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

20. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Department of Economic Development, the Virginia Economic Development Partnership, or local or regional industrial or economic development authorities or organizations, used by the Department, the Partnership, or such entities for business, trade and tourism development; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by the Partnership, where competition or bargaining is involved and where, if such records are made public, the financial interest of the governmental unit would be adversely affected.

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

22. Documents as specified in § 58.1-3.

23. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

24. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.

25. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Personnel and Training; however, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

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

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

28. Documents and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § 2.1-639.40 or of formulating advisory opinions to members on standards of conduct, or both.

29. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service.

30. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.1-714 et seq.); however, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form which does not reveal the identity of the parties involved or other persons supplying information.

31. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1; however, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings or other information or materials of the Virginia Board of Corrections, the Virginia Department of Corrections or any institution thereof to the extent, as determined by the Director of the Department of Corrections or his designee or of the Virginia Board of Youth and Family Services, the Virginia Department of Youth and Family Services or any facility thereof to the extent as determined by the Director of the Department of Youth and Family Services, or his designee, that disclosure or public dissemination of such materials would jeopardize the security of any correctional or juvenile facility or institution, as follows:

- (i) Security manuals, including emergency plans that are a part thereof;
- (ii) Engineering and architectural drawings of correctional and juvenile facilities, and operational specifications of security systems utilized by the Departments, provided the general descriptions of such security systems, cost and quality shall be made available to the public;
- (iii) Training manuals designed for correctional and juvenile facilities to the extent that they address procedures for institutional security, emergency plans and security equipment;
- (iv) Internal security audits of correctional and juvenile facilities, but only to the extent that they specifically disclose matters described in (i), (ii), or (iii) above or other specific operational details the disclosure of which would jeopardize the security of a correctional or juvenile facility or institution;
- (v) Minutes or recordings of divisional, regional and institutional staff meetings or portions thereof to the extent that such minutes deal with security issues listed in (i), (ii), (iii), and (iv) of this subdivision;
- (vi) Investigative case files by investigators authorized pursuant to § 53.1-16; however, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of complainants or charging parties, persons supplying information, confidential sources, or other individuals involved in the investigation, or other specific operational details the disclosure of which would jeopardize the security of a correctional or juvenile facility or institution; nothing herein shall permit the disclosure of materials otherwise exempt as set forth in subdivision 1 of subsection B of this section;
- (vii) Logs or other documents containing information on movement of inmates, juvenile clients or employees; and
- (viii) Documents disclosing contacts between inmates, juvenile clients and law-enforcement personnel.

Notwithstanding the provisions of this subdivision, reports and information regarding the general operations of the Departments, including notice that an escape has occurred, shall be open to inspection and copying as provided in this section.

33. Personal information, as defined in § 2.1-379, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority, (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs, or (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority. However, access to one's own information shall not be denied.

34. Documents regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.

35. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

36. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and

archaeological sites if, in the opinion of the public body which has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

37. Official records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

38. Official records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations which cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under subdivisions (iii), (iv) and (v) shall be subject to public disclosure under this chapter upon completion of the study or investigation.

39. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the building code in obtaining a building permit which would identify specific trade secrets or other information the disclosure of which would be harmful to the competitive position of the owner or lessee; however, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

40. [Repealed.]

41. Records concerning reserves established in specific claims administered by the Department of General Services through its Division of Risk Management as provided in Article 5.1 (§ 2.1-526.1 et seq.) of Chapter 32 of this title, or by any county, city, or town.

42. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Care System pursuant to § 32.1-112.

43. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3.

44. [Repealed.]

45. Investigative notes; correspondence and information furnished in confidence with respect to an investigation; and official records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the Auditor of Public Accounts and the Joint Legislative Audit and Review Commission; or investigative notes, correspondence, documentation and information furnished and provided to or produced by or for the Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline. Nothing in this chapter shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information or other individuals involved in the investigation; however, disclosure, unless such disclosure is prohibited by this section, of information from the records of completed investigations shall include, but is not limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. In the event an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person.

46. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

47. Documentation or other information which describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

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

49. In the case of corporations organized by the Virginia Retirement System, RF&P Corporation and

its wholly owned subsidiaries, (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors, and (ii) records concerning the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.

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

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

52. ~~Patient level data collected by the Virginia Health Services Cost Review Council and not yet processed, verified, and released, pursuant to § 9-166.7, to the Council by the nonprofit organization with which the Executive Director has contracted pursuant to § 9-166.4.~~

53. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Interstate Commerce Commission or the Federal Rail Administration with respect to data provided in confidence to the Interstate Commerce Commission and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

54. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

55. Reports, documents, memoranda or other information or materials which describe any aspect of security used by the Virginia Museum of Fine Arts to the extent that disclosure or public dissemination of such materials would jeopardize the security of the Museum or any warehouse controlled by the Museum, as follows:

a. Operational, procedural or tactical planning documents, including any training manuals to the extent they discuss security measures;

b. Surveillance techniques;

c. Installation, operation, or utilization of any alarm technology;

d. Engineering and architectural drawings of the Museum or any warehouse;

e. Transportation of the Museum's collections, including routes and schedules; or

f. Operation of the Museum or any warehouse used by the Museum involving the:

(1) Number of employees, including security guards, present at any time; or

(2) Busiest hours, with the maximum number of visitors in the Museum.

56. Reports, documents, memoranda or other information or materials which describe any aspect of security used by the Virginia Department of Alcoholic Beverage Control to the extent that disclosure or public dissemination of such materials would jeopardize the security of any government store as defined in Title 4.1, or warehouse controlled by the Department of Alcoholic Beverage Control, as follows:

(i) Operational, procedural or tactical planning documents, including any training manuals to the extent they discuss security measures;

(ii) Surveillance techniques;

(iii) The installation, operation, or utilization of any alarm technology;

(iv) Engineering and architectural drawings of such government stores or warehouses;

(v) The transportation of merchandise, including routes and schedules; and

(vi) The operation of any government store or the central warehouse used by the Department of Alcoholic Beverage Control involving the:

a. Number of employees present during each shift;

b. Busiest hours, with the maximum number of customers in such government store; and

c. Banking system used, including time and place of deposits.

57. Information required to be provided pursuant to § 54.1-2506.1.

58. Confidential information designated as provided in subsection D of § 11-52 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 11-46.

59. All information and records acquired during a review of any child death by the State Child Fatality Review Team established pursuant to § 32.1-283.1.

60. Investigative notes, correspondence, documentation and information provided to or produced by or for the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.1-765.2. Nothing in this section shall prohibit disclosure of information from the records of completed investigations or audits in a form that does not reveal the identity of complainants or persons supplying information.

61. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

62. *Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.*

C. Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et seq.) of this title shall be construed as denying public access to contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 3 of subsection B of this section, or to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to, any public officer, official or employee at any level of state, local or regional government in the Commonwealth or to the compensation or benefits paid by any corporation organized by the Virginia Retirement System, RF&P Corporation and its wholly owned subsidiaries, to their officers or employees. The provisions of this subsection, however, shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

§ 2.1-344. Executive or closed meetings.

A. Public bodies are not required to conduct executive or closed meetings. However, should a public body determine that an executive or closed meeting is desirable, such meeting shall be held only for the following purposes:

1. Discussion, consideration or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of any public body; and evaluation of performance of departments or schools of state institutions of higher education where such matters regarding such specific individuals might be affected by such evaluation. Any teacher shall be permitted to be present during an executive session or closed meeting in which there is a discussion or consideration of a disciplinary matter which involves the teacher and some student or students and the student or students involved in the matter are present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters concerning any student or students of any state institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at an executive or closed meeting, if such student, parents or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the condition, acquisition or use of real property for public purpose, or of the disposition of publicly held property, or of plans for the future of a state institution of higher education which could affect the value of property owned or desirable for ownership by such institution.

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

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

6. The investing of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members, consultants or attorneys, pertaining to actual or probable litigation, or other specific legal matters requiring the provision of legal advice by counsel.

8. In the case of boards of visitors of state institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants and contracts made by a foreign government, a foreign legal entity or a foreign person and accepted by a state institution of higher education shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such

legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

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

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

11. Discussion or consideration of tests or examinations or other documents excluded from this chapter pursuant to § 2.1-342 B 9.

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

13. Discussion of strategy with respect to the negotiation of a siting agreement or to consider the terms, conditions, and provisions of a siting agreement if the governing body in open meeting finds that an open meeting will have a detrimental effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting or executive session.

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

15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to § 2.1-342 B 3, and those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation or Department of Health Professions conducted pursuant to § 9-6.14:11 or § 9-6.14:12 during which the board deliberates to reach a decision.

16. Discussion, consideration or review of State Lottery Department matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivisions 37 and 38 of subsection B of § 2.1-342.

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

18. Discussion, consideration, review and deliberations by local community corrections resources boards regarding the placement in community diversion programs of individuals previously sentenced to state correctional facilities.

19. Those portions of meetings of the Virginia Health Services Cost Review Council in which the Council discusses filings of individual health care institutions which are confidential pursuant to subsection B of § 9-159.

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

21. Discussion of plans to protect public safety as it relates to terrorist activity.

22. In the case of corporations organized by the Virginia Retirement System, RF&P Corporation and its wholly owned subsidiaries, discussion or consideration of (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors, and (ii) the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.

23. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review Team established pursuant to § 32.1-283.1.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in an executive or closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation or motion which shall have its substance reasonably identified in the open meeting. Nothing in this section shall be construed to require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.1-1373 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 of this section applies. However, such business or industry must be identified as a matter of public record at least thirty days prior to the actual date of the board's authorization of

the sale or issuance of such bonds.

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

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

§ 9-6.25:2. Policy boards, commissions and councils.

There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the following policy boards, commissions and councils:

Apprenticeship Council

Athletic Board

Auctioneers Board

Blue Ridge Regional Education and Training Council

Board for Accountancy

Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects

Board for Barbers

Board for Contractors

Board for Cosmetology

Board for Geology

Board for Hearing Aid Specialists

Board for Opticians

Board for Professional and Occupational Regulation

Board for Professional Soil Scientists

Board for Waterworks and Wastewater Works Operators

Board of Agriculture and Consumer Services

Board of Audiology and Speech-Language Pathology

Board of Coal Mining Examiners

Board of Conservation and Recreation

Board of Correctional Education

Board of Dentistry

Board of Directors, Virginia Student Assistance Authorities

Board of Funeral Directors and Embalmers

Board of Health Professions

Board of Historic Resources

Board of Housing and Community Development

Board of Medical Assistance Services

Board of Medicine

Board of Mineral Mining Examiners

Board of Nursing

Board of Nursing Home Administrators

Board of Optometry

Board of Pharmacy

Board of Professional Counselors

Board of Psychology

Board of Recreation Specialists

Board of Social Services

Board of Social Work

Board of Surface Mining Review

Board of Veterinary Medicine

Board on Conservation and Development of Public Beaches

Chesapeake Bay Local Assistance Board

Child Day Care and Early Childhood Programs, Virginia Council on

Child Day-Care Council

Commission on Local Government

Commonwealth Transportation Board

Council on Human Rights

Council on Information Management

Criminal Justice Services Board

Disability Services Council

Farmers Market Board, Virginia

- 667 Immigrant and Refugee Policy Council
- 668 Interdepartmental Council on Rate-setting for Children's Facilities
- 669 Library Board, The Library of Virginia
- 670 Marine Resources Commission
- 671 Milk Commission
- 672 Pesticide Control Board
- 673 Real Estate Appraiser Board
- 674 Real Estate Board
- 675 Reciprocity Board, Department of Motor Vehicles
- 676 Safety and Health Codes Board
- 677 Seed Potato Board
- 678 Southside Virginia Marketing Council
- 679 Specialized Transportation Council
- 680 State Air Pollution Control Board
- 681 State Board of Corrections
- 682 State Board of Elections
- 683 State Board of Health
- 684 State Board of Youth and Family Services
- 685 State Health Department, Sewage Handling and Disposal Appeal Review Board
- 686 State Library Board
- 687 State Mental Health, Mental Retardation and Substance Abuse Services Board
- 688 State Water Control Board
- 689 Substance Abuse Certification Board
- 690 Treasury Board, The, Department of the Treasury
- 691 Virginia Aviation Board
- 692 Virginia Board for Asbestos Licensing
- 693 Virginia Fire Services Board
- 694 Virginia Gas and Oil Board
- 695 Virginia Health Planning Board
- 696 ~~Virginia Health Services Cost Review Council~~
- 697 Virginia Manufactured Housing Board
- 698 Virginia Parole Board
- 699 Virginia Public Telecommunications Board
- 700 Virginia Soil and Water Conservation Board
- 701 Virginia Voluntary Formulary Board
- 702 Virginia Waste Management Board
- 703 Virginia World Trade Council.
- 704 (Contingently repealed) Waste Management Facility Operators, Board for.
- 705 § 11-45. Exceptions to requirement for competitive procurement.
- 706 A. Any public body may enter into contracts without competition for the purchase of goods or
- 707 services (i) which are performed or produced by persons, or in schools or workshops, under the
- 708 supervision of the Virginia Department for the Visually Handicapped; or (ii) which are performed or
- 709 produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or
- 710 supported employment services serving the handicapped.
- 711 B. Any public body may enter into contracts without competition for (i) legal services, provided that
- 712 the pertinent provisions of Chapter 11 (§ 2.1-117 et seq.) of Title 2.1 remain applicable; or (ii) expert
- 713 witnesses and other services associated with litigation or regulatory proceedings.
- 714 C. Any public body may extend the term of an existing contract for services to allow completion of
- 715 any work undertaken but not completed during the original term of the contract.
- 716 D. An industrial development authority may enter into contracts without competition with respect to
- 717 any item of cost of "authority facilities" or "facilities" as defined in § 15.1-1374 (d).
- 718 E. The Department of Alcoholic Beverage Control may procure alcoholic beverages without
- 719 competitive sealed bidding or competitive negotiation.
- 720 F. Any public body administering public assistance programs as defined in § 63.1-87, the fuel
- 721 assistance program, community services boards as defined in § 37.1-1, or any public body purchasing
- 722 services under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.1-745 et seq.) may
- 723 procure goods or personal services for direct use by the recipients of such programs without competitive
- 724 sealed bidding or competitive negotiations if the procurement is made for an individual recipient.
- 725 Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted
- 726 from the requirements of § 11-41.
- 727 G. Any public body may enter into contracts without competitive sealed bidding or competitive

negotiation for insurance if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

H. The Department of Health may enter into contracts with laboratories providing cytology and related services without competitive sealed bidding or competitive negotiation if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

I. The Director of the Department of Medical Assistance Services may enter into contracts without competitive sealed bidding or competitive negotiation for special services provided for eligible recipients pursuant to § 32.1-325 E, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

J. The Virginia Code Commission may enter into contracts without competitive sealed bidding or competitive negotiation when procuring the services of a publisher, pursuant to §§ 9-77.7 and 9-77.8, to publish the Code of Virginia or the Virginia Administrative Code.

K. The Executive Director of the Virginia Health Services Cost Review Council may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the compilation, storage, analysis, and evaluation of patient level data pursuant to Article 2 (§ 9-166.1 et seq.) of Chapter 26 of Title 9, if the Executive Director has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination.

The State Health Commissioner may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.

§ 32.1-122.02. Virginia Health Planning Board created; membership; terms; duties and responsibilities.

A. There is hereby created in the executive branch of the state government, in the secretariat of Health and Human Resources, the Virginia Health Planning Board, hereinafter referred to as the "Planning Board." The Planning Board shall be appointed by the Governor and shall consist of ~~nineteen~~ *eighteen* members who are domiciliaries of the Commonwealth to be appointed as follows: eight members shall be consumers with each regional health planning board being represented by at least one such consumer; four members shall be providers, one of whom shall represent the hospital industry and one of whom shall represent the nursing home industry; the Commissioner of Health; the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services; the Commissioner of the Department for the Aging; the Director of the Department of Medical Assistance Services; the Commissioner of the Department of Social Services; ~~the Executive Director of the Virginia Health Services Cost Review Council~~ and the Secretary of Health and Human Resources, who shall serve as the chairman. The initial appointments to the Planning Board shall be as follows: of the eight members who are consumers, three shall be appointed for terms of two years, three shall be appointed for terms of three years and two shall be appointed for terms of four years. Of the four members who are providers, one shall be appointed for a term of two years, one shall be appointed for a term of three years and two shall be appointed for terms of four years. Thereafter, all members shall serve terms of four years. Members shall serve at the pleasure of the Governor and may serve for two consecutive terms. The Planning Board shall meet at least four times a year at such times and in such locations as shall be designated by the chairman.

B. The Planning Board shall have the following duties and responsibilities:

1. To supervise and provide leadership for the statewide health planning system.
2. To provide technical expertise in the development of state health policy.
3. To receive data and information from the regional health planning agencies and consider regional

health planning interests in its deliberations.

4. To review and assess critical health care issues.

5. To make recommendations to the Secretary, the Governor and the General Assembly concerning health policy, legislation and resource allocation.

6. To supervise the development of a health data system in order to provide necessary information to support health policy recommendations.

7. To promote the delivery of high quality and cost-effective health care throughout the Commonwealth.

8. To promote the development and maintenance of a coordinated and integrated health planning system on the state and local levels.

9. To perform such other duties relating to health planning as may be requested by the Secretary.

10. To adopt and revise as necessary bylaws for its operation.

11. To make recommendations to the Secretary, the Governor, and the General Assembly concerning statewide data collection systems for health care manpower distribution and for mortality and morbidity rates for citizens of the Commonwealth.

C. In addition to the duties and responsibilities enumerated in subsection B, the Planning Board shall promulgate such regulations as may be necessary to effectuate the purposes of this article including, but not limited to: (i) the designation of health planning regions, (ii) the designation of the regional health planning agencies, and (iii) the composition and method of appointment of members of the regional health planning boards.

D. Personnel of the Department shall serve as staff to the Planning Board. Other agencies of the Commonwealth within the Secretary's office shall cooperate and provide assistance as directed by the chairman of the Planning Board.

CHAPTER 7.2.

HEALTH CARE DATA REPORTING.

§ 32.1-276.2. Health care data reporting; purpose. The General Assembly finds that the establishment of effective health care data analysis and reporting initiatives is essential to the improvement of the quality and cost of health care in the Commonwealth, and that accurate and valuable health care data can best be identified by representatives of state government and the consumer, hospital, nursing home, physician, insurance, and business communities. For this reason, the State Board of Health and the State Health Commissioner, assisted by the State Department of Health, shall administer the health care data reporting initiatives established by this chapter.

§ 32.1-276.3. Definitions.

As used in this chapter:

"Board" means the Board of Health.

"Consumer" means any person (i) whose occupation is other than the administration of health activities or the provision of health services, (ii) who has no fiduciary obligation to a health care institution or other health agency or to any organization, public or private, whose principal activity is an adjunct to the provision of health services, or (iii) who has no material financial interest in the rendering of health services.

"Health care provider" means (i) a general hospital, ordinary hospital, outpatient surgical hospital, nursing home or certified nursing facility licensed or certified pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5, Title 32.1; (ii) a mental or psychiatric hospital licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1; (iii) a hospital operated by the University of Virginia or Virginia Commonwealth University; (iv) any person licensed to practice medicine or osteopathy in the Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1; or (v) any person licensed to furnish health care policies or plans pursuant to Chapter 34 (§ 38.2-3400 et seq.), Chapter 42 (§ 38.2-4200), or Chapter 43 (§ 38.2-4300) of Title 38.2. In no event shall such term be construed to include continuing care retirement communities which file annual financial reports with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 or any nursing care facility of a religious body which depends upon prayer alone for healing.

"Inpatient hospital" means a hospital providing inpatient care and licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1, a hospital licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1, or a hospital operated by the University of Virginia or Virginia Commonwealth University.

"Nonprofit organization" means a nonprofit, tax-exempt health data organization with the characteristics, expertise, and capacity to execute the powers and duties set forth for such entity in this chapter.

"System" means the Virginia Patient Level Data System.

§ 32.1-276.4. Agreements for certain data services.

A. The Commissioner shall negotiate and enter into contracts or agreements with a nonprofit

organization for the compilation, storage, analysis, and evaluation of data submitted by health care providers pursuant to this chapter and for the development and administration of a methodology for the measurement and review of the efficiency and productivity of health care providers. Such nonprofit organization shall be governed by a board of directors composed of representatives of state government, including the Commissioner, and the consumer, health care provider, and business communities. Of the health care provider representatives, there shall be an equal number of hospital, nursing home, physician and health plan representatives. The articles of incorporation of such nonprofit organization shall require the nomination of such board members by organizations and associations representing those categories of persons specified for representation on the board of directors.

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

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

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

3. Collect, compile, and publish Health Employer Data and Information Set (HEDIS) information or reports voluntarily submitted by health maintenance organizations or other health care plans;

4. Maintain the confidentiality of data as set forth in § 32.1-276.9;

5. Submit a report to the Board, the Governor, and the General Assembly no later than October 1 of each year for the preceding fiscal year. Such report shall include a certified audit and provide information on the accomplishments, priorities, and current and planned activities of the nonprofit organization;

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

7. Competitively bid or competitively negotiate all aspects of all data projects, if feasible.

C. Except as provided in subsection K of § 11-45, the provisions of the Virginia Public Procurement Act (§ 11-35 et seq.) shall not apply to the activities of the Commissioner authorized by this section. Funding for services provided pursuant to any such contract or agreement shall come from general appropriations and from fees determined pursuant to § 32.1-276.8.

§ 32.1-276.5. Providers to submit data.

Every health care provider shall submit data as required pursuant to regulations of the Board, consistent with the recommendations of the nonprofit organization in its strategic plans submitted and approved pursuant to § 32.1-276.4. Notwithstanding the provisions of Chapter 26 (§ 2.1-377 et seq.) of Title 2.1, it shall be lawful to provide information in compliance with the provisions of this chapter.

§ 32.1-276.6. Patient level data system continued; reporting requirements.

A. The Virginia Patient Level Data System is hereby continued, hereinafter referred to as the "System." Its purpose shall be to establish and administer an integrated system for collection and analysis of data which shall be used by consumers, employers, providers, and purchasers of health care and by state government to continuously assess and improve the quality, appropriateness, and accessibility of health care in the Commonwealth and to enhance their ability to make effective health care decisions.

B. Every inpatient hospital shall submit to the Board patient level data as set forth in this subsection. Any such hospital may report the required data directly to the nonprofit organization cited in § 32.1-276.4. Patient level data elements for hospital inpatients shall include:

1. Hospital identifier;

2. Attending physician identifier;

3. Operating physician identifier;

4. Payor identifier;

5. Employer identifier;

6. Patient identifier;

7. Patient sex, race, date of birth (including century indicator), zip code, patient relationship to insured, employment status code, status at discharge, and birth weight for infants;

8. Admission type, source, date and hour, and diagnosis;

9. Discharge date and status;

10. Principal and secondary diagnoses;

11. External cause of injury;

12. Co-morbid conditions existing but not treated;

13. Procedures and procedure dates;

14. Revenue center codes, units, and charges; and

15. Total charges.

C. State agencies providing coverage for outpatient services shall submit to the Board patient level data regarding paid outpatient claims. Information to be submitted shall be extracted from standard claims forms and, where available, shall include:

1. Provider identifier;

2. Patient identifier;

3. Physician identifier;

4. Dates of service and diagnostic, procedural, demographic, pharmaceutical, and financial information; and

5. Other related information.

The Board shall promulgate regulations specifying the format for submission of such outpatient data. State agencies may submit this data directly to the nonprofit organization cited in § 32.1-276.4.

§ 32.1-276.7. Methodology to review and measure the efficiency and productivity of health care providers.

A. Pursuant to the contract identified in § 32.1-276.4, and consistent with recommendations set forth in strategic plans submitted and approved pursuant to § 32.1-276.4, the nonprofit organization shall administer and modify, as appropriate, the methodology to review and measure the efficiency and productivity of health care providers. The methodology shall provide for, but not be limited to, comparisons of a health care provider's performance to national and regional data, where available, and may include different methodologies and reporting requirements for the assessment of the various types of health care providers which report to it. Health care providers shall submit the data necessary for implementation of the requirements of this section pursuant to regulations of the Board. Individual health care provider filings shall be open to public inspection once they have been received pursuant to the methodology adopted by the Board as required by this section.

B. The data reporting requirements of this section shall not apply to those health care providers enumerated in (iv) and (v) of the definition of health care providers set forth in § 32.1-276.3 until a strategic plan submitted pursuant to § 32.1-276.4 is approved requiring such reporting and any implementing laws and regulations take effect.

§ 32.1-276.8. Fees for processing, verification, and dissemination of data.

A. The Board shall prescribe a reasonable fee, not to exceed one dollar per discharge, for each health care provider submitting patient level data pursuant to this chapter to cover the costs of the reasonable expenses in processing and verifying such data. The Board shall also prescribe a reasonable fee for each affected health care provider to cover the costs of the reasonable expenses of establishing and administering the methodology developed pursuant to § 32.1-276.7. The payment of such fees shall be at such time as the Board designates. The Board may assess a late charge on any fees paid after their due date.

The Board shall (i) maintain records of its activities; (ii) collect and account for all fees and deposit the moneys so collected into a special fund from which the expenses attributed to this chapter shall be paid; and (iii) enforce all regulations promulgated by it pursuant to this chapter.

B. The nonprofit organization providing services pursuant to an agreement or contract as provided in § 32.1-276.4 shall be authorized to charge and collect the fees prescribed by the Board in subsection A of this section when the data are provided directly to the nonprofit organization. Such fees shall not exceed the amount authorized by the Board as provided in subsection A of this section. The nonprofit organization, at its discretion, may grant a reduction or waiver of the patient level data submission fees upon a determination by the nonprofit organization that the health care provider has submitted processed, verified data.

C. State agencies shall not be assessed fees for the submission of patient level data required by subsection C of § 32.1-276.6. Individual employers, insurers, and other organizations may voluntarily provide the nonprofit organization with outpatient data for processing, storage, and comparative analysis and shall be subject to fees negotiated with and charged by the nonprofit organization for services provided.

D. The nonprofit organization providing services pursuant to an agreement or contract with the

Commissioner shall be authorized to charge and collect reasonable fees for the dissemination of patient level data; however, the Commissioner shall be entitled to receive publicly available data from the nonprofit organization at no charge.

§ 32.1-276.9. Confidentiality, subsequent release of data and relief from liability for reporting; penalty for wrongful disclosure; individual action for damages.

A. Patient level data collected pursuant to this chapter shall be exempt from the provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq.), shall be considered confidential, and shall not be disclosed other than as specifically authorized by this chapter; however, upon processing and verification by the nonprofit organization, all patient level data shall be publicly available, except patient, physician, and employer identifier elements, which may be released solely for research purposes if otherwise permitted by law and only if such identifier is encrypted and cannot be reasonably expected to reveal patient identities. No report published by the nonprofit organization, the Commissioner, or other person may present information that reasonably could be expected to reveal the identity of any patient. Publicly available information shall be designed to prevent persons from being able to gain access to combinations of patient characteristic data elements that reasonably could be expected to reveal the identity of any patient. The nonprofit organization, in its discretion, may release physician and employer identifier information.

B. No person or entity, including the nonprofit organization contracting with the Commissioner, shall be held liable in any civil action with respect to any report or disclosure of information made under this article unless such person or entity has knowledge of any falsity of the information reported or disclosed.

C. Any disclosure of information made in violation of this chapter shall be subject to a civil penalty of not more than \$5,000 per violation. This provision shall be enforceable upon petition to the appropriate circuit court by the Attorney General, any attorney for the Commonwealth, or any attorney for the county, city or town in which the violation occurred. Any penalty imposed shall be payable to the Literary Fund. In addition, any person or entity who is the subject of any disclosure in violation of this article shall be entitled to initiate an action to recover actual damages, if any, or \$500, whichever is greater, together with reasonable attorney's fees and court costs.

§ 32.1-276.10. Chapter and actions thereunder not to be construed as approval of charges or costs.

Nothing in this chapter or the actions taken by the Board pursuant to any of its provisions shall be construed as constituting approval by the Commonwealth or any of its agencies or officers of the reasonableness of any charges made or costs incurred by any health care provider.

§ 32.1-276.11. Violations.

Any person violating the provisions of this chapter may be enjoined from continuing such violation by application by the Board for relief to a circuit court having jurisdiction over the offending party.

§ 32.1-335. Technical Advisory Panel.

The Board shall annually appoint a Technical Advisory Panel whose duties shall include recommending to the Board (i) policy and procedures for administration of the fund, (ii) methodology relating to creation of charity care standards, eligibility and service verification, and (iii) contribution rates and distribution of payments. The Panel shall also advise the Board on any matters relating to the governance or administration of the fund as may from time to time be appropriate and on the establishment of pilot health care projects for the uninsured. In addition to these duties, the Panel shall, in accordance with Board regulations, establish pilot health care projects for the uninsured and shall administer any money voluntarily contributed or donated to the fund by private or public sources, including local governments, for the purpose of subsidizing pilot health care projects for the uninsured.

The Panel shall consist of fifteen members as follows: the Chairman of the Board, the Director of the Department of Medical Assistance Services, ~~the Executive Director of the Virginia Health Services Cost Review Council~~, the Commissioner of Health, the Commissioner of the Bureau of Insurance or his designee, the chairman of the Virginia Health Care Foundation or his designee, two additional members of the Board, one of whom shall be the representative of the hospital industry, and two chief executive officers of hospitals as nominated by the Virginia Hospital Association.

In addition, there shall be three representatives of private enterprise, who shall be executives serving in business or industry organizations. Nominations for these appointments may be submitted to the Board by associations representing constituents of the business and industry community in Virginia including, but not limited to, the Virginia Manufacturers Association, the Virginia Chamber of Commerce, the Virginia Retail Merchants Association, and the Virginia Small Business Advisory Board. There shall be two representatives from the insurance industry who shall be executives serving in insurance companies or industry organizations. Nominations for these appointments may be submitted to the Board by associations representing constituents of the insurance industry in Virginia including, but not limited to, Blue Cross/Blue Shield of Virginia, Health Insurance Association of America and the Virginia Association of Health Maintenance Organizations. There shall be one physician member.

1033 Nominations for this appointment may be submitted to the Board by associations representing medical
 1034 professionals, including, but not limited to, the Medical Society of Virginia and the Old Dominion
 1035 Medical Society.

1036 § 32.1-336. Annual charity care data submission.

1037 No later than 120 days following the end of each of its fiscal years, each hospital shall file with the
 1038 Department a statement of charity care and such other data as may be required by the Department. The
 1039 Department may grant one 30-day extension of the filing date to hospitals unable to meet the 120-day
 1040 requirement. Data required for carrying out the purposes of this chapter may be supplied to the
 1041 Department by the ~~Virginia Health Services Cost Review Council~~ *Board of Health*. The Board shall
 1042 prescribe a procedure for alternative data gathering in cases of extreme hardship or impossibility of
 1043 compliance by a hospital.

1044 § 32.1-337. Hospital contributions; calculations.

1045 Hospitals shall make contributions to the fund in accordance with the following:

1046 A. A charity care standard shall be established annually as follows: For each hospital, a percentage
 1047 shall be calculated of which the numerator shall be the charity care charges and the denominator shall
 1048 be the gross patient revenues as reported by that hospital. This percentage shall be the charity care
 1049 percent. The median of the percentages of all such hospitals shall be the standard.

1050 B. Based upon the general fund appropriation to the fund and the contribution, a disproportionate
 1051 share level shall be established as a percentage above the standard not to exceed three percent above the
 1052 standard.

1053 C. The cost of charity care shall be each hospital's charity care charges multiplied by each hospital's
 1054 cost-to-charge ratio as determined in accordance with the Medicare cost finding principles. For those
 1055 hospitals whose mean Medicare patient days are greater than two standard deviations below the
 1056 Medicare statewide mean, the hospital's individual cost-to-charge ratio shall be used.

1057 D. An annual contribution shall be established which shall be equal to the total sum required to
 1058 support charity care costs of hospitals between the standard and the disproportionate share level. This
 1059 sum shall be equally funded by hospital contributions and general fund appropriations.

1060 E. A charity care and corporate tax credit shall be calculated, the numerator of which shall be each
 1061 hospital's cost of charity care plus state corporate taxes and the denominator of which shall be each
 1062 hospital's net patient revenues as defined by the ~~Virginia Health Services Cost Review Council~~ *Board of*
 1063 *Medical Assistance Services*.

1064 F. An annual hospital contribution rate shall be calculated, the numerator of which shall be the sum
 1065 of one-half the contribution plus the sum of the product of the contributing hospitals' credits multiplied
 1066 by the contributing hospitals' positive operating margins and the denominator of which shall be the sum
 1067 of the positive operating margins for the contributing hospitals. The annual hospital contribution rate
 1068 shall not exceed 6.25 percent of a hospital's positive operating margin.

1069 G. For each hospital, the contribution dollar amount shall be calculated as the difference between the
 1070 rate and the credit multiplied by each hospital's operating margin. In addition to the required
 1071 contribution, hospitals may make voluntary contributions or donations to the fund for the purpose of
 1072 subsidizing pilot health care projects for the uninsured.

1073 H. The fund shall be established on the books of the Comptroller so as to segregate the amounts
 1074 appropriated and contributed thereto and the amounts earned or accumulated therein and any amounts
 1075 voluntarily contributed or donated for the purpose of subsidizing pilot health care projects for the
 1076 uninsured. No portion of the fund shall be used for a purpose other than that described in this chapter.
 1077 Any money remaining in the fund at the end of a biennium shall not revert to the general fund but shall
 1078 remain in the fund to be used only for the purpose described in this chapter, including any money
 1079 voluntarily contributed or donated for the purpose of subsidizing pilot health care projects for the
 1080 uninsured, whether from private or public sources.

1081 **2. That Chapter 26 (§§ 9-156 through 9-166.7) of Title 9 of the Code of Virginia is repealed.**

1082 **3. That the regulations of the Virginia Health Services Cost Review Council shall remain in effect**
 1083 **until superseded by regulations promulgated by the Board of Health.**

1084 **4. That any contracts entered into by the Executive Director of the Virginia Health Services Cost**
 1085 **Review Council and any nonprofit health data organization pursuant to § 9-166.4 shall continue,**
 1086 **and that the State Health Commissioner shall assume the rights, duties and responsibilities of the**
 1087 **Executive Director under any such contracts.**

1088 **5. That Chapter 7.2 of Title 32.1 and subsection K of § 11-45 of the Code of Virginia shall expire**
 1089 **on July 1, 1999.**

1090 **6. That the data submission requirements for implementation of programs pursuant §§ 9-161.1 and**
 1091 **9-166.3 shall remain in effect until such modifications are approved and any implementing laws**
 1092 **and regulations take effect.**