

VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION

CHAPTER 969

An Act to amend and reenact §§ 2.1-1.1, 2.1-1.3, 2.1-1.5, 2.1-51.15, 2.1-116, 2.1-122, 2.1-373.13, 2.1-703.1, 2.1-762, 9-271, 9-323, 37.1-1, 37.1-84.1, 51.5-1, 51.5-2, 51.5-40, 51.5-46, 63.1-182.1 and 63.1-314.8 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 37.1-84.3, 37.1-182.3 and 37.1-185.1 and by adding in Title 51.5 a chapter numbered 8.1, consisting of sections numbered 51.5-39.1 through 51.5-39.11; and to repeal Chapter 8 (§§ 51.5-36 through 51.5-39) of Title 51.5 of the Code of Virginia, relating to persons with mental retardation, developmental disabilities, or mental illness; civil penalties.

[S 1224]

Approved April 7, 1999

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.1-1 and 37.1-84.1 are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 37.1-84.3, 37.1-182.3 and 37.1-185.1 as follows:

§ 37.1-1. Definitions.

As used in this title except where the context requires a different meaning or where it is otherwise provided, the following words shall have the meaning ascribed to them:

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the Department, excluding those operated by the Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to a person receiving care or treatment for mental illness, mental retardation or substance abuse. Examples of abuse include, but are not limited to, acts such as:

- 1. Rape, sexual assault, or other criminal sexual behavior;*
- 2. Assault or battery;*
- 3. Use of language that demeans, threatens, intimidates or humiliates the person;*
- 4. Misuse or misappropriation of the person's assets, goods, or property;*
- 5. Use of excessive force when placing a person in physical or mechanical restraint;*
- 6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professionally accepted standards of practice or the person's individualized services plan; and*
- 7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan;*

"Alcoholic" means a person who: (i) through use of alcohol has become dangerous to the public or himself; or (ii) because of such alcohol use is medically determined to be in need of medical or psychiatric care, treatment, rehabilitation or counseling;

"Board" means the State Mental Health, Mental Retardation and Substance Abuse Services Board;

"Client," as used in Chapter 10 (§ 37.1-194 et seq.) of this title, means any person receiving a service provided by personnel or facilities under the jurisdiction or supervision of a community services board;

"Commissioner" means the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services;

"Community services board" means a citizens' board established pursuant to § 37.1-195 which provides mental health, mental retardation and substance abuse programs and services within the political subdivision or political subdivisions participating on the board;

"Consumer" means a current or former direct recipient of public or private mental health, mental retardation, or substance abuse treatment or habilitation services;

"Department" means the Department of Mental Health, Mental Retardation and Substance Abuse Services;

"Director" means the chief executive officer of a hospital or of a training center for the mentally retarded;

"Drug addict" means a person who: (i) through use of habit-forming drugs or other drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.) as controlled drugs, has become dangerous to the public or himself; or (ii) because of such drug use, is medically determined to be in need of medical or psychiatric care, treatment, rehabilitation or counseling;

"Facility" means a state or private hospital, training center for the mentally retarded, psychiatric hospital, or other type of residential and ambulatory mental health or mental retardation facility and when modified by the word "state" it means a facility under the supervision and management of the Commissioner;

"Family member" means an immediate family member of a consumer or the principal caregiver of a

consumer. A principal caregiver is a person who acts in the place of an immediate family member, including other relatives and foster care providers, but does not have a proprietary interest in the care of the consumer;

"Hospital" or "hospitals" when not modified by the words "state" or "private" shall be deemed to include both state hospitals and private hospitals devoted to or with facilities for the care and treatment of the mentally ill or mentally retarded;

"Judge" includes only the judges, associate judges and substitute judges of general district courts within the meaning of Chapter 4.1 (§ 16.1-69.1 et seq.) of Title 16.1 and of juvenile and domestic relations district courts within the meaning of Chapter 11 (§ 16.1-226 et seq.) of Title 16.1, as well as the special justices authorized by § 37.1-88;

"Legal resident" means any person who is a bona fide resident of the Commonwealth of Virginia;

"Mental retardation" means substantial subaverage general intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior;

"Mentally ill" means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others, he requires care and treatment; provided, that for the purposes of Chapter 2 (§ 37.1-63 et seq.) of this title, the term "mentally ill" shall be deemed to include any person who is a drug addict or alcoholic;

"Neglect" means failure by an individual, program or facility responsible for providing services to provide nourishment, treatment, care, goods, or services necessary to the health, safety or welfare of a person receiving care or treatment for mental illness, mental retardation or substance abuse;

"Patient" or "resident" means a person voluntarily or involuntarily admitted to or residing in a facility according to the provisions of this title;

"Private hospital" means a hospital or institution which is duly licensed pursuant to the provisions of this title;

"Private institution" means an establishment which is not operated by the Department and which is licensed under Chapter 8 (§ 37.1-179 et seq.) of this title for the care or treatment of mentally ill or mentally retarded persons, including psychiatric wards of general hospitals;

"Property" as used in §§ 37.1-12 and 37.1-13 includes land and structures thereon;

"State hospital" means a hospital, training school or other such institution operated by the Department for the care and treatment of the mentally ill or mentally retarded;

"System of facilities" or "facility system" means the entire system of hospitals and training centers for the mentally retarded and other types of facilities for the residential and ambulatory treatment, training and rehabilitation of the mentally ill and mentally retarded as defined in this section under the general supervision and management of the Commissioner;

"Training center for the mentally retarded" means a regional facility for the treatment, training and habilitation of the mentally retarded in a specific geographical area.

§ 37.1-84.1. Rights of patients and residents.

A. Each person who is a patient ~~or~~, resident, *or consumer* in a hospital ~~or~~, other facility, *or program* operated, funded, or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, *excluding those operated by the Department of Corrections*, shall be assured his legal rights and care consistent with basic human dignity insofar as it is within the reasonable capabilities and limitations of the Department, *funded program*, or licensee and is consistent with sound therapeutic treatment. Each person admitted to a hospital ~~or~~, other facility, *or program* operated, funded, or licensed by the Department shall:

1. Retain his legal rights as provided by state and federal law;
2. Receive prompt evaluation and treatment or training about which he is informed insofar as he is capable of understanding;

3. Be treated with dignity as a human being and be free from abuse *or neglect*;

4. Not be the subject of experimental or investigational research without his prior written and informed consent or that of his legally authorized representative. *No employee of the Department or a community services board, behavioral health authority, or local government department with a policy-advisory community services board; a community services board, behavioral health authority, or local government with a policy-advisory community services board contractor; or any other public or private program or facility licensed or funded by the Department shall serve as a legally authorized representative for a consumer being treated in any Department, community services board, behavioral health authority, local government department with a policy-advisory community services board or other licensed or funded public or private program or facility, unless the employee is a relative or legal guardian of the consumer;*

5. Be afforded an opportunity to have access to consultation with a private physician at his own expense and, in the case of hazardous treatment or irreversible surgical procedures, have, upon request, an impartial review prior to implementation, except in case of emergency procedures required for the preservation of his health;

6. Be treated under the least restrictive conditions consistent with his condition and not be subjected to unnecessary physical restraint and isolation;

7. Be allowed to send and receive sealed letter mail;
8. Have access to his medical and mental records and be assured of their confidentiality but, notwithstanding other provisions of law, such right shall be limited to access consistent with his condition and sound therapeutic treatment; ~~and~~
9. Have the right to an impartial review of violations of the rights assured under this section and the right of access to legal counsel; *and*
10. *Be afforded appropriate opportunities, consistent with the person's capabilities and capacity, to participate in the development and implementation of his individualized services plan.*

The State Mental Health, Mental Retardation and Substance Abuse Services Board shall promulgate regulations relative to the implementation of the above after due notice and public hearing as provided for in the Administrative Process Act (§ 9-6.14:1 et seq.).

The Board shall also promulgate regulations delineating the rights of patients ~~and~~, residents, *and consumers* with respect to nutritionally adequate diet, safe and sanitary housing, participation in nontherapeutic labor, attendance or nonattendance at religious services, participation in treatment decision-making, including due process procedures to be followed when a patient ~~or~~, resident, *or consumer* may be unable to make an informed decision, use of telephones, suitable clothing, and possession of money and valuables and related matters. *Licensure pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title shall be contingent upon substantial compliance with human rights regulations as determined by periodic human rights reviews performed by the Department. Human rights reviews will be conducted as part of the Department's licensure reviews or, at the Department's discretion, whenever human rights issues arise.* Such latter regulations shall be applicable to all hospitals ~~and~~, other facilities, *and programs* operated, funded, or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services but such hospitals ~~or~~, facilities, *or programs* may be classified as to patient ~~or~~, resident, *or consumer* population, size, type of services, or other reasonable classification.

B. The Board shall promulgate regulations requiring public and private facilities and programs licensed or funded by the Department to provide nonprivileged information and statistical data to the Department related to (i) the results of investigations of abuse or neglect, (ii) deaths and serious injuries, (iii) instances of seclusion and restraint, including the duration, type and rationale for use per consumer, and (iv) findings by state or local human rights committees or the Office of Human Rights within the Department of human rights violations, abuse or neglect. The Board's regulations shall address the procedures for collecting, compiling, encrypting and releasing the data. Such information and statistical data shall be made available to the public in a format from which all provider, patient, resident and consumer-identifying information has been removed. The Board's regulations shall specifically exclude all proceedings, minutes, records, and reports of any committee or nonprofit entity providing a centralized credentialing service which are identified as privileged pursuant to § 8.01-581.17.

§ 37.1-84.3. Appointments to state and local human rights committees.

The Board shall appoint a state human rights committee, which shall appoint local human rights committees to address alleged violations of consumers' human rights. One-third of the appointments made to the state or local human rights committees shall be consumers or family members of consumers, with at least two consumers who are receiving services on each committee. Remaining appointments shall include lawyers, health care providers, and persons with interest or knowledge or training in the mental health, mental retardation or substance abuse field. No current employee of the Department or a community services board, behavioral health authority, or local government department with a policy-advisory community services board shall serve as a member of the state human rights committee. No current employee of the Department; a community services board, behavioral health authority or local government department with a policy-advisory community services board; or any facility or program licensed or funded by the Department shall serve as a member of any local human rights committee that serves an oversight function for the employing facility, program or organization.

§ 37.1-182.3. Human rights review.

Licensure pursuant to this chapter shall be contingent upon substantial compliance with § 37.1-84.1 and acceptable implementation of the human rights regulations promulgated pursuant thereto as determined by periodic human rights reviews performed by the Department. Such reviews shall be conducted as part of the Department's licensure reviews or, at the agency's discretion, whenever human rights issues arise.

§ 37.1-185.1. Human rights enforcement and sanctions.

A. Notwithstanding any other provision of law, following a proceeding as provided in § 9-6.14:11, the Commissioner may issue a special order for a violation of any of the provisions of § 37.1-84.1 or any rule or regulation promulgated under any provision of § 37.1-84.1 or of this chapter that adversely impacts the human rights of consumers or poses an imminent and substantial threat to the health, safety or welfare of consumers. The issuance of a special order shall be considered a case decision as defined in § 9-6.14:4. The Commissioner shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders. The Commissioner may take the following actions to sanction public and private hospitals, facilities or programs licensed or funded by the Department for noncompliance

with § 37.1-84.1, the human rights regulations or this chapter:

1. Place any such hospital, facility or program on probation upon finding that it is substantially out of compliance with the human rights regulations and that the health or safety of consumers is at risk.

2. Reduce licensed capacity or prohibit new admissions when the Commissioner concludes that the hospital, facility or program cannot make necessary corrections to achieve compliance with regulations except by a temporary restriction of its scope of service.

3. Require that probationary status announcements, provisional licenses, and denial or revocation notices be of sufficient size and distinction and be posted in a prominent place at each public entrance of the hospital, facility or program.

4. Mandate training for hospital, facility or program employees, with any costs to be borne by the hospital, facility or program, when the Commissioner concludes that the lack of such training has led directly to violations of regulations.

5. Assess civil penalties of not more than \$500 per violation per day upon finding that the licensed or funded hospital, facility or program is substantially out of compliance with the human rights regulations and that the health or safety of consumers is at risk.

6. Withhold funds from licensees or programs receiving public funds that are in violation of the human rights regulations.

7. Inform other public agencies that provide funds to the licensee or the program, such as the Department of Social Services and the Department of Medical Assistance Services, of any licensee or program that is in violation of the human rights regulations.

B. "Special order" means an administrative order issued to any party licensed or funded by the Department pursuant to this chapter that has a stated duration of not more than twelve months and that may include a civil penalty that shall not exceed \$500 per violation per day, prohibition of new admissions or reduction of licensed capacity for violations of § 37.1-84.1, the human rights regulations or this chapter.

C. The Board shall promulgate regulations to implement the provisions of this section.

2. That §§ 2.1-1.1, 2.1-1.3, 2.1-1.5, 2.1-51.15, 2.1-116, 2.1-122, 2.1-373.13, 2.1-703.1, 2.1-762, 9-271, 9-323, 51.5-1, 51.5-2, 51.5-40, 51.5-46, 63.1-182.1 and 63.1-314.8 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 51.5 a chapter numbered 8.1, consisting of sections numbered 51.5-39.1 through 51.5-39.11, as follows:

§ 2.1-1.1. Departments generally.

There shall be, in addition to such others as may be established by law, the following administrative departments of the state government:

- Chesapeake Bay Local Assistance Department.
- Department for the Aging.
- Department for the Deaf and Hard-of-Hearing.
- ~~Department for Rights of Virginians With Disabilities.~~
- Department for the Visually Handicapped.
- Department of Accounts.
- Department of Agriculture and Consumer Services.
- Department of Alcoholic Beverage Control.
- Department of Aviation.
- Department of Business Assistance.
- Department of Conservation and Recreation.
- Department of Corporations.
- Department of Correctional Education.
- Department of Corrections.
- Department of Criminal Justice Services.
- Department of Education.
- Department of Emergency Services.
- Department of Employee Relations Counselors.
- Department of Environmental Quality.
- Department of Fire Programs.
- Department of Forestry.
- Department of Game and Inland Fisheries.
- Department of General Services.
- Department of Health.
- Department of Health Professions.
- Department of Historic Resources.
- Department of Housing and Community Development.
- Department of Information Technology.
- Department of Juvenile Justice.
- Department of Labor and Industry.
- Department of Law.

Department of Medical Assistance Services.
Department of Mental Health, Mental Retardation and Substance Abuse Services.
Department of Military Affairs.
Department of Mines, Minerals and Energy.
Department of Minority Business Enterprise.
Department of Motor Vehicles.
Department of Personnel and Training.
Department of Planning and Budget.
Department of Professional and Occupational Regulation.
Department of Rail and Public Transportation.
Department of Rehabilitative Services.
Department of Social Services.
Department of State Police.
Department of Taxation.
Department of Transportation.
Department of the Treasury.
Department of Veterans' Affairs.
Governor's Employment and Training Department.

§ 2.1-1.3. Entities subject to standard nomenclature.

The following independent administrative entities are subject to the standard nomenclature provisions of § 2.1-1.2:

Chesapeake Bay Local Assistance Department.
Department for the Aging.
Department for the Deaf and Hard-of-Hearing.
~~Department for Rights of Virginians With Disabilities.~~
Department for the Visually Handicapped.
Department of Accounts.
Department of Agriculture and Consumer Services.
Department of Alcoholic Beverage Control.
Department of Aviation.
Department of Business Assistance.
Department of Conservation and Recreation.
Department of Correctional Education.
Department of Corrections.
Department of Criminal Justice Services.
Department of Education.
Department of Emergency Services.
Department of Environmental Quality.
Department of Employee Relations Counselors.
Department of Fire Programs.
Department of Forestry.
Department of Game and Inland Fisheries.
Department of General Services.
Department of Health.
Department of Health Professions.
Department of Historic Resources.
Department of Housing and Community Development.
Department of Information Technology.
Department of Juvenile Justice.
Department of Labor and Industry.
Department of Medical Assistance Services.
Department of Mental Health, Mental Retardation and Substance Abuse Services.
Department of Military Affairs.
Department of Mines, Minerals and Energy.
Department of Minority Business Enterprise.
Department of Motor Vehicles.
Department of Personnel and Training.
Department of Planning and Budget.
Department of Professional and Occupational Regulation.
Department of Rail and Public Transportation.
Department of Rehabilitative Services.
Department of Social Services.
Department of State Police.
Department of Taxation.

Department of Transportation.
Department of the Treasury.
Department of Veterans' Affairs.
Governor's Employment and Training Department.

§ 2.1-1.5. Entities not subject to standard nomenclature.

The following entities are not subject to the provisions of § 2.1-1.2 due to the unique characteristics or the enabling legislation of the entities:

Authorities

Assistive Technology Loan Fund Authority.
Medical College of Virginia Hospitals Authority.
Richmond Eye and Ear Hospital Authority.
Small Business Financing Authority.
Virginia Agriculture Development Authority.
Virginia College Building Authority.
Virginia Economic Development Partnership.
Virginia Housing Development Authority.
Virginia Information Providers Network Authority.
Virginia Innovative Technology Authority.
Virginia Port Authority.
Virginia Public Building Authority.
Virginia Public School Authority.
Virginia Resources Authority.

Boards

Board for Protection and Advocacy.
Board of Commissioners, Virginia Agriculture Development Authority.
Board of Commissioners, Virginia Port Authority.
Board of Directors, Assistive Technology Loan Fund Authority.
Board of Directors, Medical College of Virginia Hospitals Authority.
Board of Directors, Richmond Eye and Ear Hospital Authority.
Board of Directors, Small Business Financing Authority.
Board of Directors, Virginia Economic Development Partnership.
Board of Directors, Virginia Innovative Technology Authority.
Board of Directors, Virginia Resources Authority.
Board of Regents, Gunston Hall Plantation.
Board of Regents, James Monroe Memorial Law Office and Library.
Board of Trustees, Family and Children's Trust Fund.
Board of Trustees, Frontier Culture Museum of Virginia.
Board of Trustees, Jamestown-Yorktown Foundation.
Board of Trustees, Miller School of Albemarle.
Board of Trustees, Rural Virginia Development Foundation.
Board of Trustees, The Science Museum of Virginia.
Board of Trustees, Virginia Museum of Fine Arts.
Board of Trustees, Virginia Museum of Natural History.
Board of Trustees, Virginia Outdoor Foundation.
Board of Visitors, Christopher Newport University.
Board of Visitors, George Mason University.
Board of Visitors, Gunston Hall Plantation.
Board of Visitors, James Madison University.
Board of Visitors, Longwood College.
Board of Visitors, Mary Washington College.
Board of Visitors, Norfolk State University.
Board of Visitors, Old Dominion University.
Board of Visitors, Radford University.
Board of Visitors, The College of William and Mary in Virginia.
Board of Visitors to Mount Vernon.
Board of Visitors, University of Virginia.
Board of Visitors, Virginia Commonwealth University.
Board of Visitors, Virginia Military Institute.
Board of Visitors, Virginia Polytechnic Institute and State University.
Board of Visitors, Virginia State University.
Commonwealth Health Research Board.
Governing Board, Virginia College Building Authority.
Governing Board, Virginia Public School Authority.
Library Board, The Library of Virginia.

Motor Vehicle Dealer Board.
State Board for Community Colleges, Virginia Community College System.
Virginia-Israel Advisory Board.
(Effective until July 1, 2002) Wireless E-911 Service Board.

Commissions

Advisory Commission on the Virginia Schools for the Deaf and the Blind.
Alexandria Historical Restoration and Preservation Commission.
Charitable Gaming Commission.
Chesapeake Bay Bridge and Tunnel Commission.
Hampton Roads Sanitation District Commission.

Districts

Chesapeake Bay Bridge and Tunnel District.
Hampton Roads Sanitation District.

Educational Institutions

Christopher Newport University.
Frontier Culture Museum of Virginia.
George Mason University.
James Madison University.
Jamestown-Yorktown Foundation.
Longwood College.
Mary Washington College.
Miller School of Albemarle.
Norfolk State University.
Old Dominion University.
Radford University.
The College of William and Mary in Virginia.
The Library of Virginia.
The Science Museum of Virginia.
University of Virginia.
Virginia Commonwealth University.
Virginia Community College System.
Virginia Military Institute.
Virginia Museum of Fine Arts.
Virginia Polytechnic Institute and State University.
Virginia State University.

Foundations

Chippokes Plantation Farm Foundation.
Rural Virginia Development Foundation.
Virginia Arts Foundation.
Virginia Conservation and Recreation Foundation.
Virginia Historic Preservation Foundation.
Virginia Outdoor Foundation.

Museum

Virginia Museum of Natural History.

Office

Virginia Office for Protection and Advocacy.

Partnership

A. L. Philpott Manufacturing Extension Partnership.

Plantation

Gunston Hall Plantation.

§ 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, ~~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, and the Virginia Council on Coordinating Prevention. 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.

§ 2.1-116. Certain officers and employees exempt from chapter.

The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;
2. Officers and employees of the Supreme Court and the Court of Appeals;

3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;

4. Officers elected by popular vote or by the General Assembly or either house thereof;

5. Members of boards and commissions however selected;

6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;

7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;

8. The presidents, and teaching and research staffs of state educational institutions;

9. Commissioned officers and enlisted personnel of the national guard and the naval militia;

10. Student employees in institutions of learning, and patient or inmate help in other state institutions;

11. Upon general or special authorization of the Governor, laborers, temporary employees and employees compensated on an hourly or daily basis;

12. County, city, town and district officers, deputies, assistants and employees;

13. The employees of the Virginia Workers' Compensation Commission;

14. The officers and employees of the Virginia Retirement System;

15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, the Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History and The Library of Virginia, and approved by the Director of the Department of Personnel and Training as requiring specialized and professional training;

16. Employees of the State Lottery Department;

17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs;

18. [Repealed.]

19. Employees of the Medical College of Virginia Hospitals Authority;

20. Employees of the University of Virginia Medical Center. Any changes in compensation plans for such employees shall be subject to the review and approval of the Board of Visitors of the University of Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the provisions of Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1;

21. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions shall be deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve in this exempt capacity;

22. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the provisions of Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1;

23. Officers and employees of the Virginia Port Authority; ~~and~~

24. Employees of the Virginia Higher Education Tuition Trust Fund; *and*

25. *The Director of the Virginia Office for Protection and Advocacy.*

§ 2.1-122. Employment of special counsel generally.

No special counsel shall be employed for or by the Governor or any state department, institution, division, commission, board, bureau, agency, entity, official, justice of the Supreme Court, or judge of any circuit court or district court except in the following cases:

(a) Where because of the nature of the service to be performed, the Attorney General's office is unable to render same, the Governor after issuing an exemption order stating with particularity the facts and reasons upon which he bases his conclusion that the Attorney General's office is unable to render such service, may employ special counsel to render such service as the Governor may deem necessary and proper.

(b) In cases of legal services in civil matters to be performed for the Commonwealth, where it is impracticable or uneconomical for the Attorney General to render same, he may employ special counsel whose compensation shall be paid out of the appropriation for the Attorney General's office.

(c) In cases of legal services in civil matters to be performed for any state department, institution, division, commission, board, bureau, agency, entity, official, justice of the Supreme Court, or judge of any circuit court or district court where it is impracticable or uneconomical for the Attorney General's office to render same, special counsel may be employed but only upon the written recommendation of the Attorney General, who shall approve all requisitions drawn upon the Comptroller for warrants as compensation for such special counsel before the Comptroller shall have authority to issue such warrants.

(d) In cases where the Attorney General certifies to the Governor that it would be improper for the Attorney General's office to render legal services due to a conflict of interests, or that he is unable to render certain legal services, the Governor may employ special counsel or other assistance to render

such services as may be necessary.

(e) In cases of legal services in civil matters to be performed by the Virginia Office for Protection and Advocacy pursuant to Chapter 8.1 (§ 51.5-39.1 et seq.) of Title 51.5.

§ 2.1-373.13. Public Guardian and Conservator Advisory Board created; duties; membership; terms.

There is hereby created the Public Guardian and Conservator Advisory Board (the Board) which shall report to and advise the Commissioner on the means for effectuating the purposes of this article and shall assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators pursuant to Chapter 4 (§ 37.1-128.01 et seq.) of Title 37.1. The Board shall provide advice and counsel on the provision of high quality guardianship service and avoidance of conflicts of interest, promote the mobilization of activities and resources of public and private sector entities to effectuate the purposes of this article, and make recommendations regarding appropriate legislative and executive actions, including, but not limited to, recommendations governing alternatives for local programs to follow upon repeal of the authority granted to the courts pursuant to § 37.1-134.19 to appoint the sheriff as guardian or conservator when the maximum staff to client ratio of the local program is met or exceeded.

The Board shall consist of no more than fifteen members who shall be appointed by the Governor as follows: one representative of the Virginia Guardianship Association; one representative of the Virginia Area Agencies on Aging, one representative of the Virginia State Bar, one active or retired circuit court judge upon recommendation of the Chief Justice of the Supreme Court, one representative of the Association of Retarded Citizens, one representative of the Virginia Alliance for the Mentally Ill, one representative of the Virginia League of Social Service Executives, one representative of the Association of Community Service Boards, the Commissioner of the Department of Social Services or his designee, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services or his designee, the Director of the Virginia Department for the Rights of Virginians with Disabilities Office for Protection and Advocacy or his designee, and one person who is a member of the Governor's Advisory Board for the Department for the Aging and such other individuals who may be qualified to assist in the duties of the Board.

The Commissioners of the Departments of Social Services and Mental Health, Mental Retardation and Substance Abuse Services or their designees, the Director of the Virginia Department for the Rights of Virginians with Disabilities Office for Protection and Advocacy or his designee, and the representative of the Board for the Department for the Aging, shall serve terms coincident with their terms of office or in the case of designees, the term of the Commissioner or Director. Of the other members of the Board, five of the appointees shall serve for four-year terms and the remainder shall serve for three-year terms. No member shall serve more than two successive terms. A vacancy occurring other than by expiration of term shall be filled for the unexpired term. Each year, the Board shall elect a chairman and a vice-chairman from among its members. Five members of the Board shall constitute a quorum. Members shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as members of the Board.

§ 2.1-703.1. Interagency Coordinating Council on Housing for the Disabled.

There shall be an Interagency Coordinating Council on Housing for the Disabled, hereinafter referred to as "Council." The Council shall consist of one representative, to be appointed by the agency executive, from each of the following: Department of Professional and Occupational Regulation, Department of Housing and Community Development, Virginia Housing Development Authority, Department for Rights of Virginians With Disabilities Virginia Office for Protection and Advocacy, Department for the Aging, Department for the Deaf and Hard-of-Hearing, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services, Department of Social Services and Department for the Visually Handicapped. The Secretary of Commerce and Trade and Secretary of Health and Human Resources shall serve ex officio on the Council. The appropriate agency executive may appoint additional members as required. The Council shall annually elect a chairman. Each agency shall contribute a pro rata share of the required support services.

The Council shall provide and promote cross-secretariat interagency leadership for comprehensive planning and coordinated implementation of proposals to increase and maximize use of existing low-income housing for the disabled and to ensure development of accompanying community support services. The Council shall stimulate action by government agencies and enlist the cooperation of the nonprofit and private sectors. The Council shall develop a state policy on housing for the disabled for submission to the Governor. The policy shall be reviewed and updated as necessary. The Council shall submit to the Governor and various agency executives a report and recommendations at least annually.

§ 2.1-762. Early intervention agencies committee.

An early intervention agencies committee shall be established to ensure the implementation of a comprehensive system for early intervention services. The committee shall be composed of the Commissioner of the Department of Health, the Director of the Department for the Deaf and Hard-of-Hearing, the Superintendent of Public Instruction, the Director of the Department of Medical Assistance Services, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Commissioner of the Department of Social Services, the Commissioner of

the Department for the Visually Handicapped, the Director of the ~~Department for Rights of Virginians with Disabilities~~ *Virginia Office for Protection and Advocacy*, and the Commissioner of the Bureau of Insurance within the State Corporation Commission. The committee shall meet at least twice each fiscal year and shall make annual recommendations to the Secretary of Health and Human Resources and the Secretary of Education on issues that require interagency planning, financing, and resolution. Each member of the committee shall appoint a representative from his agency to serve on the Virginia Interagency Coordinating Council.

§ 9-271. Comprehensive Prevention Plan.

A Comprehensive Prevention Plan shall be jointly developed biennially by the following agencies:

Department for the Aging, Department of Alcoholic Beverage Control, Department of Correctional Education, Department of Corrections, Department of Juvenile Justice, Department of Criminal Justice Services, Department of Education, Department of Health, Department of Medical Assistance Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Motor Vehicles, ~~Department for Rights of Virginians With Disabilities~~ *Virginia Office for Protection and Advocacy*, and Department of Social Services. The Secretary of Health and Human Resources shall designate an agency to coordinate development of the Plan. The Comprehensive Prevention Plan shall coordinate and integrate the planning efforts of the state agencies listed above and the private sector in order to provide a broad prevention agenda for the Commonwealth, enable communities to design and implement prevention programs that meet the identified needs of the community and facilitate the development of interagency and broad-based community involvement in the development of prevention programs. The Comprehensive Prevention Plan shall identify priority prevention issues and challenges, prevention goals and objectives and public and private strategies to achieve goals and objectives. For the purposes of the Plan, prevention activities, issues and programs shall be those activities which promote the objective identified in subsection B of § 9-270. The Plan with a cost analysis of the proposed strategies shall be submitted to the House Committee on Health, Welfare and Institutions and the Senate Committees on Rehabilitation and Social Services and Education and Health for the purpose of analysis, review and comment prior to implementation.

§ 9-323. Specialized Transportation Technical Advisory Committee.

A Specialized Transportation Technical Advisory Committee shall assist the Council. The Committee shall be composed of representatives from the following agencies: the Department for the Aging, the Department for the Deaf and Hard-of-Hearing, the Department of Education, the Department of Medical Assistance Services, the Department of Mental Health, Mental Retardation and Substance Abuse Services, the ~~Department for Rights of Virginians with Disabilities~~ *Virginia Office for Protection and Advocacy*, the Department of Rehabilitative Services, the Department of Social Services, the Department of Transportation's Directorate of Rail and Public Transportation or its successor agency and the Department for the Visually Handicapped and three representatives of public transportation providers or transportation district commissions to be appointed by the Council.

§ 51.5-1. Declaration of policy.

It is the policy of this Commonwealth to encourage and enable persons with disabilities to participate fully and equally in the social and economic life of the Commonwealth and to engage in remunerative employment. To these ends, the General Assembly directs the Governor, ~~Department for Rights of Virginians with Disabilities~~, *Virginia Office for Protection and Advocacy*, Department for the Aging, Department for the Deaf and Hard-of-Hearing, Department of Education, Department of Health, Department of Housing and Community Development, Department of Mental Health, Mental Retardation and Substance Abuse Services, Board for Rights of Virginians with Disabilities, Department of Rehabilitative Services, Department of Social Services, Department for the Visually Handicapped, and such other agencies as the Governor deems appropriate, to provide, in a comprehensive and coordinated manner which makes the best use of available resources, those services necessary to assure equal opportunity to persons with disabilities in the Commonwealth.

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

§ 51.5-2. Plan of cooperation.

The ~~Department for Rights of Virginians with Disabilities~~, *Virginia Office for Protection and Advocacy*, Department for the Aging, Department for the Deaf and Hard-of-Hearing, Department of Education, Department of Health, Department of Housing and Community Development, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services, Department of Social Services, Department for the Visually Handicapped and such other agencies as are designated by the Governor which serve persons with disabilities shall formulate a plan of cooperation in accordance with the provisions of this title and the federal Rehabilitation Act. The goal of this plan shall be to promote the fair and efficient provision of rehabilitative and other services to persons with disabilities and to protect the rights of persons with disabilities.

The plan of cooperation shall include an annual update of budgetary commitment under the plan, specifying how many persons with disabilities, by type of impairment, will be served under the plan. The plan of cooperation shall include consideration of first pay provisions for entitlement programs of a

cooperating agency. If entitlement services are part of a client's individualized written rehabilitation program or equivalent plan for services, funds shall be paid from the entitlement program when possible. The plan and budgetary commitments shall be reviewed by the respective boards of the cooperating agencies, reviewed by the Virginia Board for People with Disabilities and submitted for approval to the appropriate secretaries within the Governor's Office before implementation.

CHAPTER 8.1.

PROTECTION AND ADVOCACY SERVICES.

§ 51.5-39.1. Definitions.

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

"Abuse" means any act or failure to act by an employee of a facility or program rendering care or treatment to individuals with mental, cognitive, sensory, physical or other disabilities that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to a person receiving care or treatment for mental, cognitive, sensory, physical or other disabilities. Examples of abuse include, but are not limited to, acts such as:

- 1. Rape, sexual assault, or other criminal sexual behavior;*
- 2. Assault or battery;*
- 3. Use of language that demeans, threatens, intimidates or humiliates the person;*
- 4. Misuse or misappropriation of the person's assets, goods, or property;*
- 5. Use of excessive force when placing a person in physical or mechanical restraint;*
- 6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professionally accepted standards of practice or the person's individualized services plan; and*
- 7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan.*

"Board" means the Board for Protection and Advocacy.

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

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

"Office" means the Virginia Office for Protection and Advocacy.

§ 51.5-39.2. The Virginia Office for Protection and Advocacy established; governing board; terms.

A. The Department for Rights of Virginians with Disabilities is hereby reestablished as an independent state agency, the Virginia Office for Protection and Advocacy. The Office is designated as the agency to protect and advocate for the rights of persons with mental, cognitive, sensory, physical or other disabilities and to receive federal funds on behalf of the Commonwealth of Virginia to implement the federal Protection and Advocacy for Individuals with Mental Illness Act, the federal Developmental Disabilities Assistance and Bill of Rights Act, the federal Rehabilitation Act, the Virginians with Disabilities Act and such other related programs as may be established by state and federal law. Notwithstanding any other provision of law, the Office shall be independent of the Office of the Attorney General and shall have the authority, pursuant to § 2.1-122 (e), to employ and contract with legal counsel to carry out the purposes of this chapter and to employ and contract with legal counsel to advise and represent the Office, to initiate actions on behalf of the Office, and to defend the Office, its officers, agents and employees in the course and scope of their employment or authorization, in any matter, including state, federal and administrative proceedings. Compensation for legal counsel shall be paid out of the funds appropriated for the administration of the Office. However, in the event defense is provided under Article 5.1 (§ 2.1-526.1 et seq.) of Chapter 32 of Title 2.1, counsel shall be appointed pursuant to § 2.1-122 (d). The Office shall provide ombudsman, advocacy and legal services to persons with disabilities who may be represented by the Office. The Office is authorized to receive and act upon complaints concerning discrimination on the basis of disability, abuse and neglect or other denial of rights, and practices and conditions in institutions, hospitals, and programs for persons with disabilities, and to investigate complaints relating to abuse and neglect or other violation of the rights of persons with disabilities in proceedings under state or federal law, and to initiate any proceedings to secure the rights of such persons.

B. The Office shall be governed by a thirteen-member board. The Board shall be composed of members who broadly represent or are knowledgeable about the needs of persons with disabilities served by the Office. Two or more members shall have experience in the fields of developmental disabilities and mental health. Persons with mental, cognitive, sensory or physical disabilities or family members, guardians, advocates, or authorized representatives of such persons shall be included. No elected official shall serve on the Board. No current employee of the Departments of Mental Health, Mental Retardation and Substance Abuse Services, Social Services, Health, Rehabilitative Services or for

the Visually Handicapped or a community services board, behavioral health authority, or local government department with a policy-advisory community services board shall serve as a member. In appointing the members of the Board, consideration shall be given to persons nominated by statewide groups that advocate for the physically, developmentally and mentally disabled. The Governor and General Assembly shall not be limited in their appointments to persons so nominated; however, the Governor and General Assembly shall seriously consider the persons nominated and appoint such persons whenever feasible.

C. The Governor shall appoint seven members of the Board who shall be confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. The Speaker of the House of Delegates shall appoint three members, and the Senate Committee on Privileges and Elections shall appoint three members of the Board. The Board appointments shall be made to give representation insofar as feasible to various geographic areas of the Commonwealth.

D. For the initial term of the Board, the schedule below shall be followed:

- 1. One gubernatorial appointee and one legislative appointee shall be appointed for a term of one year;*
 - 2. Two gubernatorial appointees and one legislative appointee shall be appointed for a term of two years;*
 - 3. Two gubernatorial and two legislative appointees shall be appointed for a term of three years;*
 - 4. Two gubernatorial and two legislative appointees shall be appointed for a term of four years.*
- Thereafter, members shall be appointed for four-year terms.*

E. Appointments to fill vacancies shall be for the unexpired terms. A vacancy of a legislatively appointed member shall be filled by either the Speaker of the House or Delegates or the Senate Committee on Privileges and Elections, and any such appointee shall enter upon and continue in office, subject to confirmation at the next session of the General Assembly. If the General Assembly fails to confirm his appointment, such person shall not be eligible for reappointment. Members shall continue to serve until such time as their successors have been appointed and duly qualified to serve.

F. A member who has been appointed to a four-year term shall not be eligible for reappointment during the two-year period beginning on the date on which such four-year term expired. However, upon the expiration of an appointment to an unexpired term, or an appointment described in subdivision D 1, 2, or 3 of this section, a member may be reappointed to a four-year term.

G. The Board shall elect a chairman and a vice-chairman from its members and appoint a secretary who may or may not be a member of the Board. A majority of the members of the Board shall constitute a quorum. The chairman shall preside over meetings of the Board and perform additional duties as may be set by resolution of the Board.

H. The Board shall meet at least four times each year. Members shall be reimbursed for their necessary and actual expenses incurred in the performance of their official duties.

I. Members of the Board shall be subject to removal from office only as set forth in Article 7 (§ 24.2-230 et seq.) of Chapter 2 of Title 24.2. The Circuit Court of the City of Richmond shall have exclusive jurisdiction over all proceedings for such removal.

§ 51.5-39.3. Application of State and Local Government Conflict of Interests Act.

The provisions of the State and Local Government Conflict of Interests Act (§ 2.1-639.1 et seq.) shall apply to the members of the Board and employees of the Office.

§ 51.5-39.4. Powers and duties of the Office.

The Office shall have the following powers and duties:

1. To monitor the implementation of Chapter 9 (§ 51.5-40 et seq.) of this title and to render assistance to persons with disabilities in the protection of their rights under the laws of the Commonwealth and of the United States.

2. To exhaust in a timely manner all appropriate administrative remedies to resolve complaints concerning violations of rights of persons with disabilities, when those rights are related to such disabilities. When such procedures fail or if, in pursuing administrative remedies, the Office determines that any matter with respect to an individual with a disability will not be resolved in a reasonable time, the Office shall have the authority to pursue legal and other alternative remedies to protect the rights of such persons.

3. To access during normal business hours and at other reasonable times all records relating to expenditures of state and federal funds or to the admission, care, treatment, habilitation, or provision of other services to individuals with disabilities, that are maintained by any state or local government department or agency, contractors of those departments or agencies, and any other entity or person providing services to a person with disabilities who may be represented by the Office, where such records relate to any complaint or investigation received by the Office. When such records contain personal identifying information about the person or persons, such information shall not be released nor shall the Office have access to it unless, he or they, or his or their designated representative, consents to such release or access. However, there shall be no right of access to privileged communications pursuant to § 8.01-581.17.

4. To access any records maintained in computerized data banks of the state and local government

departments or agencies, contractors of those departments or agencies, or any other entities or persons that provide services to a person who may be represented by the Office. When such records contain personal identifying information about the person or persons, such information shall not be released nor shall the Office have access to it unless he or they, or his or their designated representative, consents to such release or access. However, there shall be no right of access to privileged communications pursuant to § 8.01-581.17.

5. To access, during normal working hours, personnel of the state or local government departments or agencies, contractors of those departments or agencies, and other service-providing entities or persons providing services to a person with disabilities who may be represented by the Office.

6. To access, at any time, all persons with disabilities detained, hospitalized, institutionalized, or receiving services or who may be represented by the Office.

7. To monitor compliance with the human rights regulations promulgated pursuant to Article 3 (§ 37.1-84.1 et seq.) of Chapter 2 of Title 37.1.

§ 51.5-39.5. Powers and duties of the Board; protection and advocacy fund.

A. The Virginia Office for Protection and Advocacy shall be administered by the Board, whose powers and duties include but are not limited to:

1. Appointing and annually evaluating the performance of a director, who shall not be a member of the Board, to serve as the chief executive officer of the Virginia Office for Protection and Advocacy at the pleasure of the Board. The Director shall be a person qualified by knowledge, skills, and abilities to administer and direct the provision of protection and advocacy services regarding the rights of persons with disabilities.

2. Preparing and submitting a budget to the General Assembly for the operation of the Office and the Board.

3. Establishing general policies for the Office and advising and assisting the Director in developing annual program priorities.

4. Establishing annual program priorities of the Office.

5. Adopting regulations, policies and procedures and making determinations necessary to carry out the provisions of this chapter and Chapter 9 (§ 51.5-40 et seq.) of this title. The adoption of such regulations shall be consistent with the provisions of Article 2 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act.

6. Monitoring and evaluating the operations of the Office.

7. Maintaining records of its proceedings and making such records available for inspection by the public.

8. To perform such acts necessary to carry out the provisions of this chapter.

B. The Board shall have the authority to apply for and accept gifts, donations, grants, and bequests on behalf of the Office from the United States government and agencies and instrumentalities thereof and from any other source and to deposit all moneys received in the Protection and Advocacy Fund created pursuant to this subsection. To these ends, the Board shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable, consistent with policies, rules, and regulations of the Board.

There is hereby created in the Department of the Treasury a special nonreverting fund which shall be known as the Protection and Advocacy Fund to be administered by the Board which consists of (i) gifts, donations, grants, and bequests on behalf of the Office from the United States government and agencies and instrumentalities thereof; (ii) such other funds as may be appropriated by the General Assembly from time to time, and designated for this Fund; (iii) funds from any other source; and (iv) all interest, dividends and appreciation which may accrue thereto. Any moneys remaining in the Fund at the end of a biennium shall not revert to the General Fund, but shall remain in the Fund.

The total costs for the operation and administration of the Office shall be funded from the Fund and shall be in such amount as provided in the general appropriation act.

§ 51.5-39.6. Powers and duties of Director.

The Director shall have the following duties and powers:

1. To supervise and manage the daily operations of the Office and to carry out such duties as provided in this section.

2. To employ such qualified staff, including ombudsmen, advocates and legal counsel, as shall be necessary for carrying out the purposes of this chapter and Chapter 9 (§ 51.5-40 et seq.) of this title. The Director shall appoint a legal director, subject to the approval of the Board, who shall be an attorney who is qualified by knowledge, skills and abilities to direct the provision of protection and advocacy legal services regarding the rights of persons with disabilities.

3. To make and enter into all contracts and agreements, subject to ratification by the Board, necessary or incidental to the performance of the Office's duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, and agencies and political subdivisions of the Commonwealth, consistent with policies, rules and regulations of the Board.

4. To advise and assist the Board in developing a budget.

5. To annually prepare a report of activities of the Board and Office and submit copies of the report to the Governor, the chairs of the Senate Committee on Education and Health, the House Committee on Health, Welfare and Institutions, and the House Appropriations and Senate Finance Committees, and make the report available to the public.

6. To prepare reports, at the direction of the Board, on compliance with the human rights regulations promulgated pursuant to Article 3 (§ 37.1-84.1 et seq.) of Chapter 2 of Title 37.1 and make such reports available to the public.

7. To exercise such powers and perform such duties as are assigned to him by the Board.

§ 51.5-39.7. Ombudsman services for persons with disabilities.

A. There is hereby created within the Office an ombudsman section. The Director shall establish procedures for receiving complaints and conducting investigations for the purposes of resolving and mediating complaints regarding any activity, practice, policy, or procedure of any hospital, facility or program operated, funded or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Department of Rehabilitative Services, the Department of Social Services, or other state or local agency, which is adversely affecting the health, safety, welfare, or civil or human rights of any person with mental, cognitive, sensory or physical disabilities. After initial investigation, the section may decline to accept any complaint it determines is frivolous or not made in good faith. The ombudsman section shall attempt to resolve the complaint at the lowest appropriate level, unless otherwise provided by law. The procedures shall require the section to:

1. Acknowledge the receipt of a complaint by sending written notice to the complainant within seven days after receiving the complaint.

2. When appropriate, provide written notice of a complaint to the Department of Mental Health, Mental Retardation and Substance Abuse Services or any other appropriate agency within seven days after receiving the complaint. The Department or agency receiving the complaint shall report its findings and actions no later than fourteen days after receiving the complaint.

3. Immediately refer a complaint made under this section to the Department of Mental Health, Mental Retardation and Substance Abuse Services or any other appropriate governmental agency, whenever the complaint involves an immediate and substantial threat to the health or safety of a person with mental retardation, developmental disabilities, mental illness, or other disability. The Department or agency receiving the complaint shall report its findings and actions no later than forty-eight hours following its receipt of the complaint.

4. Within seven days after identifying a deficiency in the treatment of a person with a disability that is in violation of state or federal law or regulation, refer the matter in writing to the appropriate state agency. The state agency shall report on its findings and actions within seven days of receiving notice of the matter.

5. Advise the complainant and any person with a disability affected by the complaint, no more than thirty days after it receives the complaint, of any action it has taken and of any opinions and recommendations it has with respect to the complaint. The ombudsman section may request any party affected by the opinions or recommendations to notify the section, within a time period specified by the section, of any action the party has taken on its recommendations.

6. Any complaint not resolved through negotiation, mediation, or conciliation shall be referred by the ombudsman section to the Director or the Director's designee to determine whether further protection and advocacy services shall be provided by the Office.

B. The ombudsman section may make public any of its opinions or recommendations concerning a complaint, the responses of persons and governmental agencies to its opinions or recommendations, and any act, practice, policy, or procedure that adversely affects or may adversely affect the health, safety, welfare, or civil or human rights of a person with a disability, subject to the provisions of § 51.5-39.8.

C. The Office shall publicize its existence, functions, and activities, and the procedures for filing a complaint under this section, and send this information in written form to each provider of services to persons with disabilities, with instructions that the information is to be posted in a conspicuous place accessible to patients, residents, consumers, clients, visitors, and employees. The Office shall establish, maintain and publicize a toll-free number for receiving complaints.

§ 51.5-39.8. Confidentiality of records and communications of the Office.

A. All documentary and other evidence received or maintained by the Office or its agents in connection with specific complaints or investigations shall be confidential and not subject to the mandatory disclosure requirements of the Virginia Freedom of Information Act (§ 2.1-340 et seq.). However, access to one's own records shall not be denied unless otherwise prohibited by state or federal law.

B. Communications between employees and agents of the Office and its clients or individuals requesting its services shall be privileged, as if between attorney and client.

C. Notwithstanding the provisions of this section, the Office shall be permitted to:

1. Issue a public report of the results of an investigation of a complaint which does not release the identity of any complainant or any person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents

in writing to such disclosure or (ii) such disclosure is required by court order.

2. Report the results of an investigation to responsible investigative or enforcement agencies should an investigation reveal information concerning any hospital, facility or other entity, its staff or employees, warranting possible sanctions or corrective action. This information may be reported to agencies responsible for licensing or accreditation, employee discipline, employee licensing or certification, or criminal prosecution.

§ 51.5-39.9. Cooperative agreements with state agencies regarding advocacy services for their clients.

Notwithstanding the foregoing, state agencies providing services to persons with disabilities may develop and maintain advocacy, client assistance or ombudsman services for their clients, which services may be within the agency and independent of the Office. The Office may enter into cooperative agreements with any state agency providing advocacy, client assistance, or ombudsman services for the agencies' clients, in order to assure the protection of and advocacy for persons with disabilities, provided that such agreements do not restrict such authority as the Office may otherwise have to pursue any legal or administrative remedy on behalf of persons with disabilities.

§ 51.5-39.10. Immunity.

Any person who in good faith complains to the Office on behalf of a person with a disability, or who provides information or participates in the investigation of any such complaint, shall have immunity from any civil liability and shall not be subject to any penalties, sanctions, restrictions or retaliation as a consequence of making such complaint, providing such information or participating in such investigation.

§ 51.5-39.11. Employees of the Virginia Office for Protection and Advocacy.

Except as otherwise provided by law, the employees of the Virginia Office for Protection and Advocacy shall be subject to the provisions of the Virginia Personnel Act (§ 2.1-116.01 et seq.).

§ 51.5-40. Nondiscrimination under state grants and programs.

No otherwise qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving state financial assistance or under any program or activity conducted by or on behalf of any state agency. The ~~Department for Rights of Virginians with Disabilities~~ *Virginia Office for Protection and Advocacy* shall promulgate such regulations as may be necessary to implement this section. Such regulations shall be consistent, whenever applicable, with regulations imposed under the federal Rehabilitation Act of 1973, as amended, and the federal Americans with Disabilities Act of 1990.

§ 51.5-46. Remedies.

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

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

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

D. In any action in which the petitioner is represented by the ~~Department for Rights of Virginians With Disabilities~~ *Virginia Office for Protection and Advocacy*, no attorneys' fees shall be awarded, nor shall the ~~Department for Rights of Virginians With Disabilities~~ *Virginia Office for Protection and Advocacy* have the authority to institute any class action under this chapter.

§ 63.1-182.1. Rights and responsibilities of residents of adult care residences; certification of licensure.

A. Any resident of an adult care residence has the rights and responsibilities enumerated in this section. The operator or administrator of an adult care residence shall establish written policies and procedures to ensure that, at the minimum, each person who becomes a resident of the adult care residence:

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

informed, which shall be filed in his record;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. Is free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician;

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

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

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

c. In communications, in writing or by telephone;

d. During visitations with other persons;

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

f. In visits with his spouse; if both are residents of the residence they are permitted but not required to share a room unless otherwise provided in the residents' agreements;

18. Is permitted to meet with and participate in activities of social, religious, and community groups at his discretion unless medically contraindicated as documented by his physician in his medical record.

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

C. The residence shall make available in an easily accessible place a copy of these rights and

responsibilities and shall include in them the name and telephone number of the regional licensing supervisor of the Department of Social Services as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program, any sub-state ombudsman program serving the area, and the toll-free number of the ~~Department for the Rights of Virginians With Disabilities~~ *Virginia Office for Protection and Advocacy*.

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

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

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

G. The State Board of Social Services shall promulgate regulations as necessary to carry out the full intent of this section.

H. It shall be the responsibility of the Commissioner of Social Services to ensure that the provisions of this section are observed and implemented by adult care residences as a condition to the issuance, renewal, or continuation of the license required by this article.

§ 63.1-314.8. Technical Assistance Committee created; duties; membership.

A. There is hereby created a Technical Assistance Committee, which shall provide technical and support services on the operations of the information and referral system as the Council may deem appropriate and shall advise the Council in performing its powers and duties.

B. The membership of the Technical Assistance Committee shall include but not be limited to:

1. Two directors of local departments of public welfare or social services, one serving a rural and one an urban locality, to be appointed by the Commissioner of Social Services; and

2. The Commissioners or Directors, or their designees, of the Department of Medical Assistance Services; Department of Health; Department of Mental Health, Mental Retardation and Substance Abuse Services; Department of Rehabilitative Services; Department for the Aging; Department for the Visually Handicapped; ~~Department for Rights of Virginians With Disabilities~~ *Virginia Office for Protection and Advocacy*; Department of Information Technology; Department for the Deaf and Hard-of-Hearing; Department of Health Professions; Department of Corrections; Department of Education; Department of Juvenile Justice; and the Virginia Employment Commission.

3. That Chapter 8 (§§ 51.5-36 through 51.5-39) of Title 51.5 of the Code of Virginia is repealed.

4. That the Governor is hereby requested to designate the Virginia Office for Protection and Advocacy as the agency accountable for the proper use of funds and conduct of the state Protection and Advocacy agency to administer the Protection and Advocacy for Individuals with Mental Illness Program, the Developmental Disabilities Program, the Client Assistance Program, the Assistive Technology Program and such other federal and state programs for the protection and advocacy of persons with mental, cognitive, sensory, physical, or other disabilities as determined by federal and state law.

5. That the provisions of this act shall not become effective until the Governor, pursuant to applicable federal statutes and regulations, completes the process for redesignation of the Virginia Office for Protection and Advocacy.

6. That the regulations of the Department for Rights of Virginians with Disabilities in effect on the effective date of this act shall continue in effect until such time as amended or repealed by the Virginia Office for Protection and Advocacy.

7. That the Governor may transfer an appropriation or any portion thereof or any employees within an agency established, abolished or altered by the provisions of this act, or from one such agency to another, to support the changes in organization or responsibility resulting from or required by the provisions of this act.

8. That as of the effective date of this act, the Virginia Office for Protection and Advocacy shall be deemed the successor in interest to the Department for Rights of Virginians with Disabilities to the extent that this act transfers powers and duties. All right, title and interest in and to any real or tangible personal property vested in the Department for Rights of Virginians with Disabilities to the extent that this act transfers powers and duties as of the effective date of this act shall be transferred to and taken as standing in the name of the Virginia Office for Protection and Advocacy.

9. That the provisions of enactments 2 through 8 shall not become effective unless reenacted by the 2000 Session of the General Assembly.