

006174756

**HOUSE BILL NO. 1471**

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Education and Health  
on March 2, 2000)

(Patron Prior to Substitute—Delegate Hall)

*A BILL to amend and reenact §§ 2.1-1.5, as it is currently in effect and as it will become effective, 2.1-20.1, 2.1-20.1:2, 2.1-116, 2.1-342.01, 2.1-344, 23-50.16:1, 23-50.16:3, 23-50.16:4, 23-50.16:5, 23-50.16:7, 23-232, 32.1-85, 32.1-276.3 and 51.1-126.1 of the Code of Virginia, relating to Medical College of Virginia Hospitals Authority.*

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

**1. That §§ 2.1-1.5, as it is currently in effect and as it will become effective, 2.1-20.1, 2.1-20.1:2, 2.1-116, 2.1-342.01, 2.1-344, 23-50.16:1, 23-50.16:3, 23-50.16:4, 23-50.16:5, 23-50.16:7, 23-232, 32.1-85, 32.1-276.3 and 51.1-126.1 of the Code of Virginia are amended and reenacted as follows:**

§ 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 Commonwealth University Health System 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 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 Commonwealth University Health System 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.

SENATE SUBSTITUTE

HB1471S1

60 Board of Visitors, Mary Washington College.  
61 Board of Visitors, Norfolk State University.  
62 Board of Visitors, Old Dominion University.  
63 Board of Visitors, Radford University.  
64 Board of Visitors, The College of William and Mary in Virginia.  
65 Board of Visitors to Mount Vernon.  
66 Board of Visitors, University of Virginia.  
67 Board of Visitors, Virginia Commonwealth University.  
68 Board of Visitors, Virginia Military Institute.  
69 Board of Visitors, Virginia Polytechnic Institute and State University.  
70 Board of Visitors, Virginia State University.  
71 Commonwealth Health Research Board.  
72 Governing Board, Virginia College Building Authority.  
73 Governing Board, Virginia Public School Authority.  
74 Library Board, The Library of Virginia.  
75 Motor Vehicle Dealer Board.  
76 State Board for Community Colleges, Virginia Community College System.  
77 Virginia-Israel Advisory Board.  
78 (Effective until July 1, 2002) Wireless E-911 Service Board.  
79 Commissions  
80 Advisory Commission on the Virginia Schools for the Deaf and the Blind.  
81 Alexandria Historical Restoration and Preservation Commission.  
82 Charitable Gaming Commission.  
83 Chesapeake Bay Bridge and Tunnel Commission.  
84 Hampton Roads Sanitation District Commission.  
85 Tobacco Indemnification and Community Revitalization Commission.  
86 Districts  
87 Chesapeake Bay Bridge and Tunnel District.  
88 Hampton Roads Sanitation District.  
89 Educational Institutions  
90 Christopher Newport University.  
91 Frontier Culture Museum of Virginia.  
92 George Mason University.  
93 James Madison University.  
94 Jamestown-Yorktown Foundation.  
95 Longwood College.  
96 Mary Washington College.  
97 Miller School of Albemarle.  
98 Norfolk State University.  
99 Old Dominion University.  
100 Radford University.  
101 The College of William and Mary in Virginia.  
102 The Library of Virginia.  
103 The Science Museum of Virginia.  
104 University of Virginia.  
105 Virginia Commonwealth University.  
106 Virginia Community College System.  
107 Virginia Military Institute.  
108 Virginia Museum of Fine Arts.  
109 Virginia Polytechnic Institute and State University.  
110 Virginia State University.  
111 Foundations  
112 Chippokes Plantation Farm Foundation.  
113 Rural Virginia Development Foundation.  
114 Virginia Arts Foundation.  
115 Virginia Land Conservation Foundation.  
116 Virginia Historic Preservation Foundation.  
117 Virginia Outdoor Foundation.  
118 Virginia Tobacco Settlement Foundation.  
119 Museum  
120 Virginia Museum of Natural History.  
121 Partnership

122 A. L. Philpott Manufacturing Extension Partnership.  
 123 Plantation  
 124 Gunston Hall Plantation.  
 125 § 2.1-1.5. (Delayed effective date) Entities not subject to standard nomenclature.  
 126 The following entities are not subject to the provisions of § 2.1-1.2 due to the unique characteristics  
 127 or the enabling legislation of the entities:  
 128 Authorities  
 129 Assistive Technology Loan Fund Authority.  
 130 ~~Medical College of Virginia Hospitals Authority.~~  
 131 Richmond Eye and Ear Hospital Authority.  
 132 Small Business Financing Authority.  
 133 Virginia Agriculture Development Authority.  
 134 Virginia College Building Authority.  
 135 *Virginia Commonwealth University Health System Authority.*  
 136 Virginia Economic Development Partnership.  
 137 Virginia Housing Development Authority.  
 138 Virginia Information Providers Network Authority.  
 139 Virginia Innovative Technology Authority.  
 140 Virginia Port Authority.  
 141 Virginia Public Building Authority.  
 142 Virginia Public School Authority.  
 143 Virginia Resources Authority.  
 144 Boards  
 145 Board of Commissioners, Virginia Agriculture Development Authority.  
 146 Board of Commissioners, Virginia Port Authority.  
 147 Board of Directors, Assistive Technology Loan Fund Authority.  
 148 ~~Board of Directors, Medical College of Virginia Hospitals Authority.~~  
 149 Board of Directors, Richmond Eye and Ear Hospital Authority.  
 150 Board of Directors, Small Business Financing Authority.  
 151 Board of Directors, Virginia Economic Development Partnership.  
 152 *Board of Directors, Virginia Commonwealth University Health System Authority.*  
 153 Board of Directors, Virginia Innovative Technology Authority.  
 154 Board of Directors, Virginia Resources Authority.  
 155 Board of Regents, Gunston Hall Plantation.  
 156 Board of Regents, James Monroe Memorial Law Office and Library.  
 157 Board of Trustees, Family and Children's Trust Fund.  
 158 Board of Trustees, Frontier Culture Museum of Virginia.  
 159 Board of Trustees, Jamestown-Yorktown Foundation.  
 160 Board of Trustees, Miller School of Albemarle.  
 161 Board of Trustees, Rural Virginia Development Foundation.  
 162 Board of Trustees, The Science Museum of Virginia.  
 163 Board of Trustees, Virginia Museum of Fine Arts.  
 164 Board of Trustees, Virginia Museum of Natural History.  
 165 Board of Trustees, Virginia Outdoor Foundation.  
 166 Board of Visitors, Christopher Newport University.  
 167 Board of Visitors, The College of William and Mary in Virginia.  
 168 Board of Visitors, George Mason University.  
 169 Board of Visitors, Gunston Hall Plantation.  
 170 Board of Visitors, James Madison University.  
 171 Board of Visitors, Longwood College.  
 172 Board of Visitors, Mary Washington College.  
 173 Board of Visitors to Mount Vernon.  
 174 Board of Visitors, Norfolk State University.  
 175 Board of Visitors, Old Dominion University.  
 176 Board of Visitors, Radford University.  
 177 Board of Visitors, University of Virginia.  
 178 Board of Visitors, Virginia Commonwealth University.  
 179 Board of Visitors, Virginia Military Institute.  
 180 Board of Visitors, Virginia Polytechnic Institute and State University.  
 181 Board of Visitors, Virginia State University.  
 182 Commonwealth Health Research Board.

- 183 Governing Board, Virginia College Building Authority.
- 184 Governing Board, Virginia Public School Authority.
- 185 Library Board, The Library of Virginia.
- 186 Motor Vehicle Dealer Board.
- 187 State Board for Community Colleges, Virginia Community College System.
- 188 Virginia-Israel Advisory Board.
- 189 (Effective until July 1, 2002) Wireless E-911 Service Board.
- 190 Commissions
- 191 Advisory Commission on the Virginia Schools for the Deaf and the Blind.
- 192 Alexandria Historical Restoration and Preservation Commission.
- 193 Charitable Gaming Commission.
- 194 Chesapeake Bay Bridge and Tunnel Commission.
- 195 Hampton Roads Sanitation District Commission.
- 196 Districts
- 197 Chesapeake Bay Bridge and Tunnel District.
- 198 Hampton Roads Sanitation District.
- 199 Educational Institutions
- 200 Christopher Newport University.
- 201 Frontier Culture Museum of Virginia.
- 202 George Mason University.
- 203 James Madison University.
- 204 Jamestown-Yorktown Foundation.
- 205 Longwood College.
- 206 Mary Washington College.
- 207 Miller School of Albemarle.
- 208 Norfolk State University.
- 209 Old Dominion University.
- 210 Radford University.
- 211 The College of William and Mary in Virginia.
- 212 The Library of Virginia.
- 213 The Science Museum of Virginia.
- 214 University of Virginia.
- 215 Virginia Commonwealth University.
- 216 Virginia Community College System.
- 217 Virginia Military Institute.
- 218 Virginia Museum of Fine Arts.
- 219 Virginia Polytechnic Institute and State University.
- 220 Virginia State University.
- 221 Foundations
- 222 Chippokes Plantation Farm Foundation.
- 223 Rural Virginia Development Foundation.
- 224 Virginia Arts Foundation.
- 225 Virginia Conservation and Recreation Foundation.
- 226 Virginia Outdoor Foundation.
- 227 Museum
- 228 Virginia Museum of Natural History.
- 229 Partnership
- 230 A. L. Philpott Manufacturing Extension Partnership.
- 231 Plantation
- 232 Gunston Hall Plantation.
- 233 § 2.1-20.1. Health and related insurance for state employees.
- 234 A. 1. The Governor shall establish a plan for providing health insurance coverage, including
- 235 chiropractic treatment, hospitalization, medical, surgical and major medical coverage, for state employees
- 236 and retired state employees with the Commonwealth paying the cost thereof to the extent of the
- 237 coverage included in such plan. The Department of Personnel and Training shall administer this section.
- 238 The plan chosen shall provide means whereby coverage for the families or dependents of state
- 239 employees may be purchased. The Commonwealth may pay all or a portion of the cost thereof, and for
- 240 such portion as the Commonwealth does not pay, the employee may purchase the coverage by paying
- 241 the additional cost over the cost of coverage for an employee.
- 242 2. Such contribution shall be financed through appropriations provided by law.
- 243 B. The plan shall:
- 244 1. a. Include coverage for low-dose screening mammograms for determining the presence of occult

breast cancer. Such coverage shall make available one screening mammogram to persons age thirty-five through thirty-nine, one such mammogram biennially to persons age forty through forty-nine, and one such mammogram annually to persons age fifty and over and may be limited to a benefit of fifty dollars per mammogram subject to such dollar limits, deductibles, and coinsurance factors as are no less favorable than for physical illness generally. The term "mammogram" shall mean an X-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the X-ray tube, filter, compression device, screens, film, and cassettes, with an average radiation exposure of less than one rad mid-breast, two views of each breast.

b. In order to be considered a screening mammogram for which coverage shall be made available under this section:

(1) The mammogram must be (i) ordered by a health care practitioner acting within the scope of his licensure and, in the case of an enrollee of a health maintenance organization, by the health maintenance organization physician, (ii) performed by a registered technologist, (iii) interpreted by a qualified radiologist, and (iv) performed under the direction of a person licensed to practice medicine and surgery and certified by the American Board of Radiology or an equivalent examining body. A copy of the mammogram report must be sent or delivered to the health care practitioner who ordered it;

(2) The equipment used to perform the mammogram shall meet the standards set forth by the Virginia Department of Health in its radiation protection regulations; and

(3) The mammography film shall be retained by the radiologic facility performing the examination in accordance with the American College of Radiology guidelines or state law.

2. Include coverage for the treatment of breast cancer by dose-intensive chemotherapy with autologous bone marrow transplants or stem cell support when performed at a clinical program authorized to provide such therapies as a part of clinical trials sponsored by the National Cancer Institute. For persons previously covered under the plan, there shall be no denial of coverage due to the existence of a preexisting condition.

3. Include coverage for postpartum services providing inpatient care and a home visit or visits which shall be in accordance with the medical criteria outlined in the most current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards for Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and Gynecologists. Such coverage shall be provided incorporating any changes in such Guidelines or Standards within six months of the publication of such Guidelines or Standards or any official amendment thereto.

4. a. Include an appeals process for resolution of written complaints concerning denials or partial denials of claims that shall provide reasonable procedures for resolution of such written complaints and shall be published and disseminated to all covered state employees. Such appeals process shall include a separate expedited emergency appeals procedure which shall provide resolution within one business day of receipt of a complaint concerning situations requiring immediate medical care. For appeals involving adverse decisions as defined in § 32.1-137.7, the Department shall contract with one or more impartial health entities to review such decisions. Impartial health entities may include medical peer review organizations and independent utilization review companies. The Department shall adopt regulations to assure that the impartial health entity conducting the reviews has adequate standards, credentials and experience for such review. The impartial health entity shall examine the final denial of claims to determine whether the decision is objective, clinically valid, and compatible with established principles of health care. The decision of the impartial health entity shall (i) be in writing, (ii) contain findings of fact as to the material issues in the case and the basis for those findings, and (iii) be final and binding if consistent with law and policy.

b. Prior to assigning an appeal to an impartial health entity, the Department shall verify that the impartial health entity conducting the review of a denial of claims has no relationship or association with (i) the covered employee, (ii) the treating health care provider, or any of its employees or affiliates, (iii) the medical care facility at which the covered service would be provided, or any of its employees or affiliates, or (iv) the development or manufacture of the drug, device, procedure or other therapy which is the subject of the final denial of a claim. The impartial health entity shall not be a subsidiary of, nor owned or controlled by, a health plan, a trade association of health plans, or a professional association of health care providers. There shall be no liability on the part of and no cause of action shall arise against any officer or employee of an impartial health entity for any actions taken or not taken or statements made by such officer or employee in good faith in the performance of his powers and duties.

5. Include coverage for early intervention services. For purposes of this section, "early intervention services" means medically necessary speech and language therapy, occupational therapy, physical therapy and assistive technology services and devices for dependents from birth to age three who are certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services as eligible for services under Part H of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.).

306 Medically necessary early intervention services for the population certified by the Department of Mental  
307 Health, Mental Retardation and Substance Abuse Services shall mean those services designed to help an  
308 individual attain or retain the capability to function age-appropriately within his environment, and shall  
309 include services which enhance functional ability without effecting a cure.

310 For persons previously covered under the plan, there shall be no denial of coverage due to the  
311 existence of a preexisting condition. The cost of early intervention services shall not be applied to any  
312 contractual provision limiting the total amount of coverage paid by the insurer to or on behalf of the  
313 insured during the insured's lifetime.

314 6. Include coverage for prescription drugs and devices approved by the United States Food and Drug  
315 Administration for use as contraceptives.

316 7. Not deny coverage for any drug approved by the United States Food and Drug Administration for  
317 use in the treatment of cancer on the basis that the drug has not been approved by the United States  
318 Food and Drug Administration for the treatment of the specific type of cancer for which the drug has  
319 been prescribed, if the drug has been recognized as safe and effective for treatment of that specific type  
320 of cancer in one of the standard reference compendia.

321 8. Not deny coverage for any drug prescribed to treat a covered indication so long as the drug has  
322 been approved by the United States Food and Drug Administration for at least one indication and the  
323 drug is recognized for treatment of the covered indication in one of the standard reference compendia or  
324 in substantially accepted peer-reviewed medical literature.

325 9. Include coverage for equipment, supplies and outpatient self-management training and education,  
326 including medical nutrition therapy, for the treatment of insulin-dependent diabetes, insulin-using  
327 diabetes, gestational diabetes and noninsulin-using diabetes if prescribed by a health care professional  
328 legally authorized to prescribe such items under law. To qualify for coverage under this subdivision,  
329 diabetes outpatient self-management training and education shall be provided by a certified, registered or  
330 licensed health care professional.

331 10. Include coverage for reconstructive breast surgery. For purposes of this section, "reconstructive  
332 breast surgery" means surgery performed on and after July 1, 1998, (i) coincident with a mastectomy  
333 performed for breast cancer or (ii) following a mastectomy performed for breast cancer to reestablish  
334 symmetry between the two breasts. For persons previously covered under the plan, there may be no  
335 denial of coverage due to preexisting conditions.

336 11. Include coverage for annual pap smears, including coverage, on and after July 1, 1999, for  
337 annual testing performed by any FDA-approved gynecologic cytology screening technologies.

338 12. Include coverage providing a minimum stay in the hospital of not less than forty-eight hours for  
339 a patient following a radical or modified radical mastectomy and twenty-four hours of inpatient care  
340 following a total mastectomy or a partial mastectomy with lymph node dissection for treatment of breast  
341 cancer. Nothing in this subdivision shall be construed as requiring the provision of inpatient coverage  
342 where the attending physician in consultation with the patient determines that a shorter period of  
343 hospital stay is appropriate.

344 13. Include coverage (i) to persons age fifty and over and (ii) to persons age forty and over who are  
345 at high risk for prostate cancer, according to the most recent published guidelines of the American  
346 Cancer Society, for one PSA test in a twelve-month period and digital rectal examinations, all in  
347 accordance with American Cancer Society guidelines. For the purpose of this subdivision, "PSA testing"  
348 means the analysis of a blood sample to determine the level of prostate specific antigen.

349 14. Permit any individual covered under the plan direct access to the health care services of a  
350 participating specialist (i) authorized to provide services under the plan and (ii) selected by the covered  
351 individual. The plan shall have a procedure by which an individual who has an ongoing special  
352 condition may, after consultation with the primary care physician, receive a referral to a specialist for  
353 such condition who shall be responsible for and capable of providing and coordinating the individual's  
354 primary and specialty care related to the initial specialty care referral. If such an individual's care would  
355 most appropriately be coordinated by such a specialist, the plan shall refer the individual to a specialist.  
356 For the purposes of this subdivision, "special condition" means a condition or disease that is (i)  
357 life-threatening, degenerative, or disabling and (ii) requires specialized medical care over a prolonged  
358 period of time. Within the treatment period authorized by the referral, such specialist shall be permitted  
359 to treat the individual without a further referral from the individual's primary care provider and may  
360 authorize such referrals, procedures, tests, and other medical services related to the initial referral as the  
361 individual's primary care provider would otherwise be permitted to provide or authorize. The plan shall  
362 have a procedure by which an individual who has an ongoing special condition that requires ongoing  
363 care from a specialist may receive a standing referral to such specialist for the treatment of the special  
364 condition. If the primary care provider, in consultation with the plan and the specialist, if any,  
365 determines that such a standing referral is appropriate, the plan or issuer shall make such a referral to a  
366 specialist. Nothing contained herein shall prohibit the plan from requiring a participating specialist to  
367 provide written notification to the covered individual's primary care physician of any visit to such

specialist. Such notification may include a description of the health care services rendered at the time of the visit.

15. a. Include provisions allowing employees to continue receiving health care services for a period of up to ninety days from the date of the primary care physician's notice of termination from any of the plan's provider panels.

b. The plan shall notify any provider at least ninety days prior to the date of termination of the provider, except when the provider is terminated for cause.

c. For a period of at least ninety days from the date of the notice of a provider's termination from any of the plan's provider panels, except when a provider is terminated for cause, a provider shall be permitted by the plan to render health care services to any of the covered employees who (i) were in an active course of treatment from the provider prior to the notice of termination and (ii) request to continue receiving health care services from the provider.

d. Notwithstanding the provisions of clause a, any provider shall be permitted by the plan to continue rendering health services to any covered employee who has entered the second trimester of pregnancy at the time of the provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue through the provision of postpartum care directly related to the delivery.

e. Notwithstanding the provisions of clause a, any provider shall be permitted by the plan to continue rendering health services to any covered employee who is determined to be terminally ill (as defined under § 1861 (dd) (3) (A) of the Social Security Act) at the time of a provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue for the remainder of the employee's life for care directly related to the treatment of the terminal illness.

f. A provider who continues to render health care services pursuant to this subdivision shall be reimbursed in accordance with the carrier's agreement with such provider existing immediately before the provider's termination of participation.

16. a. Include coverage for patient costs incurred during participation in clinical trials for treatment studies on cancer, including ovarian cancer trials.

b. The reimbursement for patient costs incurred during participation in clinical trials for treatment studies on cancer shall be determined in the same manner as reimbursement is determined for other medical and surgical procedures. Such coverage shall have durational limits, dollar limits, deductibles, copayments and coinsurance factors that are no less favorable than for physical illness generally.

c. For purposes of this subdivision:

"Cooperative group" means a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group. "Cooperative group" includes (i) the National Cancer Institute Clinical Cooperative Group and (ii) the National Cancer Institute Community Clinical Oncology Program.

"FDA" means the Federal Food and Drug Administration.

"Multiple project assurance contract" means a contract between an institution and the federal Department of Health and Human Services that defines the relationship of the institution to the federal Department of Health and Human Services and sets out the responsibilities of the institution and the procedures that will be used by the institution to protect human subjects.

"NCI" means the National Cancer Institute.

"NIH" means the National Institutes of Health.

"Patient" means a person covered under the plan established pursuant to this section.

"Patient cost" means the cost of a medically necessary health care service that is incurred as a result of the treatment being provided to a patient for purposes of a clinical trial. "Patient cost" does not include (i) the cost of nonhealth care services that a patient may be required to receive as a result of the treatment being provided for purposes of a clinical trial, (ii) costs associated with managing the research associated with the clinical trial, or (iii) the cost of the investigational drug or device.

d. Coverage for patient costs incurred during clinical trials for treatment studies on cancer shall be provided if the treatment is being conducted in a Phase II, Phase III, or Phase IV clinical trial. Such treatment may, however, be provided on a case-by-case basis if the treatment is being provided in a Phase I clinical trial.

e. The treatment described in clause d shall be provided by a clinical trial approved by:

- (1) The National Cancer Institute;
- (2) An NCI cooperative group or an NCI center;
- (3) The FDA in the form of an investigational new drug application;
- (4) The federal Department of Veterans Affairs; or
- (5) An institutional review board of an institution in the Commonwealth that has a multiple project assurance contract approved by the Office of Protection from Research Risks of the NCI.

429 f. The facility and personnel providing the treatment shall be capable of doing so by virtue of their  
430 experience, training, and expertise.

431 g. Coverage under this section shall apply only if:

432 (1) There is no clearly superior, noninvestigational treatment alternative;

433 (2) The available clinical or preclinical data provide a reasonable expectation that the treatment will  
434 be at least as effective as the noninvestigational alternative; and

435 (3) The patient and the physician or health care provider who provides services to the patient under  
436 the plan conclude that the patient's participation in the clinical trial would be appropriate, pursuant to  
437 procedures established by the plan.

438 17. Include coverage providing a minimum stay in the hospital of not less than twenty-three hours  
439 for a covered employee following a laparoscopy-assisted vaginal hysterectomy and forty-eight hours for  
440 a covered employee following a vaginal hysterectomy, as outlined in Milliman & Robertson's nationally  
441 recognized guidelines. Nothing in this subdivision shall be construed as requiring the provision of the  
442 total hours referenced when the attending physician, in consultation with the covered employee,  
443 determines that a shorter hospital stay is appropriate.

444 18. (Effective until July 1, 2004) a. Include coverage for biologically based mental illness.

445 b. For purposes of this subdivision, a "biologically based mental illness" is any mental or nervous  
446 condition caused by a biological disorder of the brain that results in a clinically significant syndrome  
447 that substantially limits the person's functioning; specifically, the following diagnoses are defined as  
448 biologically based mental illness as they apply to adults and children: schizophrenia, schizoaffective  
449 disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder,  
450 attention deficit hyperactivity disorder, autism, and drug and alcoholism addiction.

451 c. Coverage for biologically based mental illnesses shall neither be different nor separate from  
452 coverage for any other illness, condition or disorder for purposes of determining deductibles, benefit  
453 year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment  
454 limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayment  
455 and coinsurance factors.

456 d. Nothing shall preclude the undertaking of usual and customary procedures to determine the  
457 appropriateness of, and medical necessity for, treatment of biologically based mental illnesses under this  
458 option, provided that all such appropriateness and medical necessity determinations are made in the same  
459 manner as those determinations made for the treatment of any other illness, condition or disorder  
460 covered by such policy or contract.

461 e. In no case, however, shall coverage for mental disorders provided pursuant to this section be  
462 diminished or reduced below the coverage in effect for such disorders on January 1, 1999.

463 C. Claims incurred during a fiscal year but not reported during that fiscal year shall be paid from  
464 such funds as shall be appropriated by law. Appropriations, premiums and other payments shall be  
465 deposited in the employee health insurance fund, from which payments for claims, premiums, cost  
466 containment programs and administrative expenses shall be withdrawn from time to time. The funds of  
467 the health insurance fund shall be deemed separate and independent trust funds, shall be segregated from  
468 all other funds of the Commonwealth, and shall be invested and administered solely in the interests of  
469 the employees and beneficiaries thereof. Neither the General Assembly nor any public officer, employee,  
470 or agency shall use or authorize the use of such trust funds for any purpose other than as provided in  
471 law for benefits, refunds, and administrative expenses, including but not limited to legislative oversight  
472 of the health insurance fund.

473 D. For the purposes of this section:

474 "Peer-reviewed medical literature" means a scientific study published only after having been critically  
475 reviewed for scientific accuracy, validity, and reliability by unbiased independent experts in a journal  
476 that has been determined by the International Committee of Medical Journal Editors to have met the  
477 Uniform Requirements for Manuscripts submitted to biomedical journals. Peer-reviewed medical  
478 literature does not include publications or supplements to publications that are sponsored to a significant  
479 extent by a pharmaceutical manufacturing company or health carrier.

480 "Standard reference compendia" means the American Medical Association Drug Evaluations, the  
481 American Hospital Formulary Service Drug Information, or the United States Pharmacopoeia Dispensing  
482 Information.

483 "State employee" means state employee as defined in § 51.1-124.3, employee as defined in  
484 § 51.1-201, the Governor, Lieutenant Governor and Attorney General, judge as defined in § 51.1-301  
485 and judges, clerks and deputy clerks of regional juvenile and domestic relations, county juvenile and  
486 domestic relations, and district courts of the Commonwealth, interns and residents employed by the  
487 School of Medicine and Hospital of the University of Virginia, and interns, residents, and employees of  
488 the Medical College of Virginia Hospitals Virginia Commonwealth University Health System Authority  
489 as provided in § 23-50.16:24.

490 E. Provisions shall be made for retired employees to obtain coverage under the above plan. The



Commonwealth may, but shall not be obligated to, pay all or any portion of the cost thereof.

F. Any self-insured group health insurance plan established by the Department of Personnel and Training which utilizes a network of preferred providers shall not exclude any physician solely on the basis of a reprimand or censure from the Board of Medicine, so long as the physician otherwise meets the plan criteria established by the Department.

G. The plan established by the Department shall include, in each planning district, at least two health coverage options, each sponsored by unrelated entities. In each planning district that does not have an available health coverage alternative, the Department shall voluntarily enter into negotiations at any time with any health coverage provider who seeks to provide coverage under the plan. This section shall not apply to any state agency authorized by the Department to establish and administer its own health insurance coverage plan separate from the plan established by the Department.

H. 1. Any self-insured group health insurance plan established by the Department of Personnel that includes coverage for prescription drugs on an outpatient basis may apply a formulary to the prescription drug benefits provided by the plan if the formulary is developed, reviewed at least annually, and updated as necessary in consultation with and with the approval of a pharmacy and therapeutics committee, a majority of whose members are actively practicing licensed (i) pharmacists, (ii) physicians, and (iii) other health care providers.

2. If the plan maintains one or more drug formularies, the plan shall establish a process to allow a person to obtain, without additional cost-sharing beyond that provided for formulary prescription drugs in the plan, a specific, medically necessary nonformulary prescription drug if, after reasonable investigation and consultation with the prescribing physician, the formulary drug is determined to be an inappropriate therapy for the medical condition of the person. The plan shall act on such requests within one business day of receipt of the request.

I. Any plan established by the Department of Personnel and Training requiring preauthorization prior to rendering medical treatment shall have personnel available to provide authorization at all times when such preauthorization is required.

J. Any plan established by the Department of Personnel and Training shall provide to all covered employees written notice of any benefit reductions during the contract period at least thirty days before such reductions become effective.

K. No contract between a provider and any plan established by the Department of Personnel and Training shall include provisions which require a health care provider or health care provider group to deny covered services that such provider or group knows to be medically necessary and appropriate that are provided with respect to a covered employee with similar medical conditions.

L. 1. The Department of Personnel and Training shall appoint an Ombudsman to promote and protect the interests of covered employees under any state employee's health plan.

2. The Ombudsman shall:

a. Assist covered employees in understanding their rights and the processes available to them according to their state health plan.

b. Answer inquiries from covered employees by telephone and electronic mail.

c. Provide to covered employees information concerning the state health plans.

d. Develop information on the types of health plans available, including benefits and complaint procedures and appeals.

e. Make available, either separately or through an existing Internet web site utilized by the Department of Personnel and Training, information as set forth in clause d and such additional information as he deems appropriate.

f. Maintain data on inquiries received, the types of assistance requested, any actions taken and the disposition of each such matter.

g. Upon request, assist covered employees in using the procedures and processes available to them from their health plan, including all appeal procedures. Such assistance may require the review of health care records of a covered employee, which shall be done only with that employee's express written consent. The confidentiality of any such medical records shall be maintained in accordance with the confidentiality and disclosure laws of the Commonwealth.

h. Ensure that covered employees have access to the services provided by the Ombudsman and that the covered employees receive timely responses from the Ombudsman or his representatives to the inquiries.

i. Report annually on his activities to the standing committees of the General Assembly having jurisdiction over insurance and over health and the Joint Commission on Health Care by December 1 of each year.

M. 1. The plan established by the Department of Personnel and Training shall not refuse to accept or make reimbursement pursuant to an assignment of benefits made to a dentist or oral surgeon by a covered employee.

2. For purposes of this subsection, "assignment of benefits" means the transfer of dental care coverage reimbursement benefits or other rights under the plan. The assignment of benefits shall not be effective until the covered employee notifies the plan in writing of the assignment.

§ 2.1-20.1:2. Health insurance credits for retired state employees.

A. The Commonwealth shall provide a credit toward the cost of health insurance coverage for any former state employee, as defined in § 2.1-20.1, who retired under the Virginia Retirement System, State Police Officers Retirement System, Judicial Retirement System or any retirement system authorized pursuant to § 51.1-126 and who (i) rendered at least fifteen years of total creditable service under the Retirement System or (ii) rendered service as a temporary employee of the General Assembly in 1972 and became a member of the retirement system from 1972 to 1985 immediately following such temporary service. The amount of each monthly health insurance credit payable under this section shall be four dollars per year of creditable service, not to exceed a maximum monthly allowance of \$120, which amount shall be credited monthly to any retired state employee participating in the state retiree health benefits program pursuant to § 2.1-20.1:6 or an alternative personal health insurance plan as provided herein. However, such credit shall not exceed the health insurance premium for retiree-only coverage as provided under such alternative personal health insurance plan. Any retired state employee retired under the provisions of §§ 51.1-156 and 51.1-307 shall receive the maximum credit provided by this section. Any person included in the membership of a retirement system provided by Chapter 1 (§ 51.1-124.1 et seq.), 2 (§ 51.1-200 et seq.) or 3 (§ 51.1-300 et seq.) of Title 51.1 who elects to defer his retirement pursuant to subsection C of §§ 51.1-153, 51.1-205 or § 51.1-305 shall be entitled to receive the allowable credit provided by this section on the effective date of his retirement.

B. 1. For those retired state employees participating in the state retiree health benefits program, such credit shall be applied to the monthly premium deducted from benefits payable to retired state employees in accordance with Chapters 1 (§ 51.1-124.1 et seq.), 2 (§ 51.1-200 et seq.) and 3 (§ 51.1-300 et seq.) of Title 51.1. In the event that either no benefit is payable or the benefit payable is insufficient to deduct the entire health care premium, the payment of the credit shall be determined in the manner prescribed by the Virginia Retirement System. Eligibility for the credit shall be determined in a manner prescribed by the Virginia Retirement System.

2. For those retired state employees not electing or eligible to participate in the state retiree health benefits program and who purchase an alternative personal health insurance policy from a carrier or organization of his own choosing, such retirees shall be eligible to receive a credit in the amount specified in subsection A. Eligibility for the credit and payment for the credit shall be determined in a manner prescribed by the Virginia Retirement System.

3. Any person included in the membership of a retirement system provided by Chapter 1 (§ 51.1-124.1 et seq.), 2 (§ 51.1-200 et seq.), or 3 (§ 51.1-300 et seq.) of Title 51.1 who (i) rendered at least fifteen years of total creditable service as a state employee as defined in § 2.1-20.1 and (ii) after terminating state service, was employed by a local government that does not elect to provide a health insurance credit under § 2.1-20.1:3 or § 2.1-20.1:4, shall be eligible for the credit provided by subsection A, provided that the retired employee is participating in a health insurance plan. The Commonwealth shall be charged with the credit as provided for in subsection C. In such case, the health insurance credit shall be determined based upon the amount of state service or service as a teacher rendered by the employee.

C. The Virginia Retirement System shall actuarially determine the amount necessary to fund all credits provided by this section to reflect the cost of such credits in the employer contribution rate pursuant to § 51.1-145, and prescribe such terms and conditions as are necessary to carry out the provisions of this section. The costs associated with the administration of the health insurance credit program provided for in this section shall be recovered from the health insurance credit trust fund.

D. Notwithstanding anything contained in this section to the contrary, the ~~Medical College of Virginia Hospitals~~ *Virginia Commonwealth University Health System* Authority shall pay the cost of coverage for employees of such Authority who (i) retired under the Virginia Retirement System or any retirement system authorized pursuant to §§ 23-50.16:24.1, 51.1-126, 51.1-126.1, or former § 51.1-126.2; (ii) were employed by such Authority prior to July 1, 1998, and were not subsequently rehired by such Authority on or after July 1, 1998; and (iii) served no less than fifteen years of creditable service as regularly employed full-time employees of such Authority or the Commonwealth.

§ 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~~ *Virginia Commonwealth University Health System 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;

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

25. Directors of state facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to § 37.1-42.2.

§ 2.1-342.01. Exclusions to application of chapter.

A. 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. 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, the Virginia Racing Commission, or the Charitable Gaming Commission.

2. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.

3. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of eighteen years. For scholastic records of students under the age of eighteen years, the right of access may be asserted only by his legal guardian or 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. For scholastic records of students who are emancipated or attending a state-supported institution of higher education,

675 the right of access may be asserted by the student.

676 Any person who is the subject of any scholastic record and who is eighteen years of age or older  
677 may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the  
678 public body shall open such records for inspection and copying.

679 4. Personnel records containing information concerning identifiable individuals, except that access  
680 shall not be denied to the person who is the subject thereof. Any person who is the subject of any  
681 personnel record and who is eighteen years of age or older may waive, in writing, the protections  
682 afforded by this subdivision. If the protections are so waived, the public body shall open such records  
683 for inspection and copying.

684 5. Medical and mental records, except that such records may be personally reviewed by the subject  
685 person or a physician of the subject person's choice. However, the subject person's mental records may  
686 not be personally reviewed by such person when the subject person's treating physician has made a part  
687 of such person's records a written statement that in his opinion a review of such records by the subject  
688 person would be injurious to the subject person's physical or mental health or well-being.

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

697 For the purposes of this chapter, statistical summaries of incidents and statistical data concerning  
698 patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental  
699 Retardation and Substance Abuse Services shall be open to inspection and copying as provided in  
700 § 2.1-342. No such summaries or data shall include any patient-identifying information. Where the  
701 person who is the subject of medical and mental records is under the age of eighteen, his right of access  
702 may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's  
703 parental rights have been terminated or a court of competent jurisdiction has restricted or denied such  
704 access. In instances where the person who is the subject thereof is an emancipated minor or a student in  
705 a public institution of higher education, the right of access may be asserted by the subject person.

706 6. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the  
707 Attorney General; the members of the General Assembly or the Division of Legislative Services; the  
708 mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or  
709 other chief executive officer of any public institution of higher education. However, no record which is  
710 otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has  
711 been attached to or incorporated within any working paper or correspondence.

712 As used in this subdivision:

713 "Working papers" means those records prepared by or for an above-named public official for his  
714 personal or deliberative use.

715 "Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet  
716 Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor  
717 has delegated his authority pursuant to § 2.1-39.1.

718 7. Written advice of the county, city and town attorneys to their local government clients and any  
719 other records protected by the attorney-client privilege.

720 8. Legal memoranda and other work product compiled specifically for use in litigation or for use in  
721 an active administrative investigation concerning a matter which is properly the subject of a closed  
722 meeting under § 2.1-344.

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

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

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

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

12. 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.

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

14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2.1-344. However, no record which is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

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

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

17. 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 and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

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

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

20. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, 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.

21. 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.

22. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Department of Business Assistance, the Virginia Economic Development Partnership, the Virginia Tourism Authority, or local or regional industrial or economic development authorities or organizations, used by the Department, the Partnership, the Authority, 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.

23. 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.

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

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

26. 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.

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

28. 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.

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

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

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

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

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

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

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

831 36. Records containing information on the site specific location of rare, threatened, endangered or  
832 otherwise imperiled plant and animal species, natural communities, caves, and significant historic and  
833 archaeological sites if, in the opinion of the public body which has the responsibility for such  
834 information, disclosure of the information would jeopardize the continued existence or the integrity of  
835 the resource. This exemption shall not apply to requests from the owner of the land upon which the  
836 resource is located.

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

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

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

859 40. 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.

41. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

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

43. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i) Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; or (iv) the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be 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. If 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.

44. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the 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.

45. 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.

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

47. In the case of corporations organized by the Virginia Retirement System (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.

48. 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.

49. 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.

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

51. 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.

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

53. 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.

54. 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, during a review of any child death by a local

921 or regional child fatality review team established pursuant to § 32.1-283.2, and all information and  
922 records acquired during a review of any death by a family violence fatality review team established  
923 pursuant to § 32.1-283.3.

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

927 56. Confidential proprietary records which are voluntarily provided by a private entity pursuant to a  
928 proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ 56-556 et  
929 seq.), pursuant to a promise of confidentiality from the responsible public entity, used by the responsible  
930 public entity for purposes related to the development of a qualifying transportation facility; and  
931 memoranda, working papers or other records related to proposals filed under the Public-Private  
932 Transportation Act of 1995, where, if such records were made public, the financial interest of the public  
933 or private entity involved with such proposal or the process of competition or bargaining would be  
934 adversely affected. In order for confidential proprietary information to be excluded from the provisions  
935 of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other  
936 materials for which protection from disclosure is sought, (ii) identify the data or other materials for  
937 which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of  
938 this subdivision, the terms "public entity" and "private entity" shall be defined as they are defined in the  
939 Public-Private Transportation Act of 1995.

940 57. Records of law-enforcement agencies, to the extent that such records contain specific tactical  
941 plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or  
942 the general public; or records of emergency service agencies to the extent that such records contain  
943 specific tactical plans relating to antiterrorist activity.

944 58. All records of the University of Virginia or the University of Virginia Medical Center which  
945 contain proprietary, business-related information pertaining to the operations of the University of  
946 Virginia Medical Center, including its business development or marketing strategies and its activities  
947 with existing or future joint venturers, partners, or other parties with whom the University of Virginia  
948 Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of  
949 such information would be harmful to the competitive position of the Medical Center.

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

953 60. Records of the ~~Medical College of Virginia Hospitals~~ *Virginia Commonwealth University Health*  
954 *System* Authority pertaining to any of the following: an individual's qualifications for or continued  
955 membership on its medical or teaching staffs; proprietary information gathered by or in the possession  
956 of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates  
957 prepared for confidential use in awarding contracts for construction or the purchase of goods or services;  
958 data, records or information of a proprietary nature produced or collected by or for the Authority or  
959 members of its medical or teaching staffs; financial statements not publicly available that may be filed  
960 with the Authority from third parties; the identity, accounts or account status of any customer of the  
961 Authority; consulting or other reports paid for by the Authority to assist the Authority in connection  
962 with its strategic planning and goals; and the determination of marketing and operational strategies  
963 where disclosure of such strategies would be harmful to the competitive position of the Authority; and  
964 data, records or information of a proprietary nature produced or collected by or for employees of the  
965 Authority, other than the Authority's financial or administrative records, in the conduct of or as a result  
966 of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the  
967 Authority alone or in conjunction with a governmental body or a private concern, when such data,  
968 records or information have not been publicly released, published, copyrighted or patented.

969 61. Confidential proprietary information or trade secrets, not publicly available, provided by a private  
970 person or entity to the Virginia Resources Authority or to a fund administered in connection with  
971 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such  
972 information were made public, the financial interest of the private person or entity would be adversely  
973 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of  
974 confidentiality.

975 62. Confidential proprietary records which are provided by a franchisee under § 15.2-2108 to its  
976 franchising authority pursuant to a promise of confidentiality from the franchising authority which  
977 relates to the franchisee's potential provision of new services, adoption of new technologies or  
978 implementation of improvements, where such new services, technologies or improvements have not been  
979 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such  
980 records were made public, the competitive advantage or financial interests of the franchisee would be  
981 adversely affected. In order for confidential proprietary information to be excluded from the provisions  
982 of this chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other



materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

63. Records of the Intervention Program Committee within the Department of Health Professions, to the extent such records may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § 54.1-2517.

64. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of Chapter 2 of Title 32.1, to the extent such records contain (i) medical or mental records, or other data identifying individual patients or (ii) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

65. Information which would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

66. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Charitable Gaming Commission pursuant to subsection E of § 18.2-340.34.

67. Personal information, as defined in § 2.1-379, provided to the Board of the Virginia Higher Education Tuition Trust Fund or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form which does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

68. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

69. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security or employee safety of (i) the Virginia Museum of Fine Arts or any of its warehouses; (ii) any government store or warehouse controlled by the Department of Alcoholic Beverage Control; (iii) any courthouse, jail, detention or law-enforcement facility; or (iv) any correctional or juvenile facility or institution under the supervision of the Department of Corrections or the Department of Juvenile Justice.

70. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ 3.1-622 and 3.1-624.

B. 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 (i) contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 4 of subsection A; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

C. No provision of this chapter shall be construed to afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an incarcerated person from exercising his constitutionally protected rights, including, but not limited to, his rights to call for evidence in his favor in a criminal prosecution.

§ 2.1-344. Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings 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

1044 schools of public institutions of higher education where such evaluation will necessarily involve  
1045 discussion of the performance of specific individuals. Any teacher shall be permitted to be present  
1046 during a closed meeting in which there is a discussion or consideration of a disciplinary matter which  
1047 involves the teacher and some student and the student involved in the matter is present, provided the  
1048 teacher makes a written request to be present to the presiding officer of the appropriate board.

1049 2. Discussion or consideration of admission or disciplinary matters concerning any student of any  
1050 public institution of higher education or any state school system. However, any such student, legal  
1051 counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be  
1052 present during the taking of testimony or presentation of evidence at a closed meeting, if such student,  
1053 parents or guardians so request in writing and such request is submitted to the presiding officer of the  
1054 appropriate board.

1055 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the  
1056 disposition of publicly held real property, where discussion in an open meeting would adversely affect  
1057 the bargaining position or negotiating strategy of the public body.

1058 4. The protection of the privacy of individuals in personal matters not related to public business.

1059 5. Discussion concerning a prospective business or industry or the expansion of an existing business  
1060 or industry where no previous announcement has been made of the 'business' or industry's interest in  
1061 locating or expanding its facilities in the community.

1062 6. The investing of public funds where competition or bargaining is involved, where, if made public  
1063 initially, the financial interest of the governmental unit would be adversely affected.

1064 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual  
1065 or probable litigation, where such consultation or briefing in open meeting would adversely affect the  
1066 negotiating or litigating posture of the public body; and consultation with legal counsel employed or  
1067 retained by a public body regarding specific legal matters requiring the provision of legal advice by such  
1068 counsel. For the purposes of this subdivision, "probable litigation" means litigation which has been  
1069 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe  
1070 will be commenced by or against a known party. Nothing in this subdivision shall be construed to  
1071 permit the closure of a meeting merely because an attorney representing the public body is in attendance  
1072 or is consulted on a matter.

1073 8. In the case of boards of visitors of public institutions of higher education, discussion or  
1074 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts  
1075 for services or work to be performed by such institution. However, the terms and conditions of any such  
1076 gifts, bequests, grants and contracts made by a foreign government, a foreign legal entity or a foreign  
1077 person and accepted by a public institution of higher education shall be subject to public disclosure upon  
1078 written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign  
1079 government" means any government other than the United States government or the government of a  
1080 state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the  
1081 laws of the United States or of any state thereof if a majority of the ownership of the stock of such  
1082 legal entity is owned by foreign governments or foreign persons or if a majority of the membership of  
1083 any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under  
1084 the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen  
1085 or national of the United States or a trust territory or protectorate thereof.

1086 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts and The Science  
1087 Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and  
1088 grants.

1089 10. Discussion or consideration of honorary degrees or special awards.

1090 11. Discussion or consideration of tests, examinations or other records excluded from this chapter  
1091 pursuant to § 2.1-342.01 A 11.

1092 12. Discussion, consideration or review by the appropriate House or Senate committees of possible  
1093 disciplinary action against a member arising out of the possible inadequacy of the disclosure statement  
1094 filed by the member, provided the member may request in writing that the committee meeting not be  
1095 conducted in a closed meeting.

1096 13. Discussion of strategy with respect to the negotiation of a siting agreement or to consider the  
1097 terms, conditions, and provisions of a siting agreement if the governing body in open meeting finds that  
1098 an open meeting will have an adverse effect upon the negotiating position of the governing body or the  
1099 establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions  
1100 with the applicant or its representatives may be conducted in a closed meeting.

1101 14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic  
1102 activity and estimating general and nongeneral fund revenues.

1103 15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to  
1104 § 2.1-342.01 A 5, and those portions of disciplinary proceedings by any regulatory board within the  
1105 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 A of § 2.1-342.01.

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 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.

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

21. In the case of corporations organized by the Virginia Retirement System, 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.

22. 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, and those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3.

23. Those portions of meetings of the University of Virginia Board of Visitors and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center, including its business development or marketing strategies and its activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center.

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

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

26. Meetings or portions of meetings of the Board of the Virginia Higher Education Tuition Trust Fund wherein personal information, as defined in § 2.1-379, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a 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.

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

1167 procedures for holding closed meetings as are applicable to any other public body.

1168 E. This section shall not be construed to (i) require the disclosure of any contract between the  
1169 Intervention Program Committee within the Department of Health Professions and an impaired  
1170 practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the  
1171 board of directors of any authority created pursuant to the Industrial Development and Revenue Bond  
1172 Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or  
1173 special law, to identify a business or industry to which subdivision A 5 applies. However, such business  
1174 or industry shall be identified as a matter of public record at least thirty days prior to the actual date of  
1175 the board's authorization of the sale or issuance of such bonds.

1176 § 23-50.16:1. Short title.

1177 This chapter shall be known and may be cited as the " ~~Medical College of Virginia Hospitals~~  
1178 *Virginia Commonwealth University Health System Authority Act.*"

1179 § 23-50.16:3. Authority created; purposes.

1180 A. There is hereby created as a public body corporate and as a political subdivision of the  
1181 Commonwealth, the ~~Medical College of Virginia Hospitals~~ *Virginia Commonwealth University Health*  
1182 *System Authority*, referred to in this chapter as the Authority, with such public and corporate powers as  
1183 are set forth in this chapter. The Authority is hereby constituted a public instrumentality, exercising  
1184 public and essential governmental functions with the power and purpose to provide for the health,  
1185 welfare, convenience, knowledge, benefit and prosperity of the residents of the Commonwealth and such  
1186 other persons who might be served by the Authority by delivering and supporting the delivery of  
1187 medical care and related services to such residents and persons, by providing educational opportunities  
1188 in the medical field and related disciplines, by conducting and facilitating research in the medical field  
1189 and related disciplines, and by enhancing the delivery of health care and related services to the  
1190 Commonwealth's indigent population.

1191 B. The Authority is authorized to provide, promote, support and sponsor education, public knowledge  
1192 and scientific research in medicine, public health and related fields; to administer programs to assist in  
1193 the delivery of medical and related services to the citizens of the Commonwealth and others; and to  
1194 participate in and administer federal, state and local programs affecting, supporting or carrying out any  
1195 of its purposes. The Authority is further authorized to exercise independently the powers conferred by  
1196 this chapter in furtherance of its corporate and public purposes, and the Authority is directed to  
1197 undertake the operation of teaching hospitals and related facilities and to maintain and, as appropriate, to  
1198 expand the same, all for the benefit of the Commonwealth, its citizens and such other persons who  
1199 might be served by the Authority.

1200 § 23-50.16:4. Definitions.

1201 As used in this chapter, the following terms have the following meanings, unless the context requires  
1202 otherwise:

1203 "Authority" means the ~~Medical College of Virginia Hospitals~~ *Virginia Commonwealth University*  
1204 *Health System Authority*.

1205 "Board" means the Board of Directors of the Authority.

1206 "Bonds" means bonds, notes, revenue certificates, lease participation certificates or other evidences of  
1207 indebtedness or deferred purchase financing arrangements.

1208 "Costs" means costs of construction, reconstruction, renovation, site work and acquisition of lands,  
1209 structures, rights-of-way, franchises, easements and other property rights and interests; costs of  
1210 demolition, removal or relocation of buildings or structures; costs of labor, materials, machinery and all  
1211 other kinds of equipment; financing charges; costs of engineering and inspections; costs of financial,  
1212 legal and accounting services; costs of plans, specifications, studies, and surveys; estimates of costs and  
1213 of revenues; feasibility studies and administrative expenses, including administrative expenses during the  
1214 start-up of any project; costs of issuance of bonds, including printing, engraving, advertising, legal and  
1215 other similar expenses; credit enhancement and liquidity facility fees; fees for interest rate caps, collars,  
1216 swaps or other financial derivative products; interest on bonds in connection with a project prior to and  
1217 during construction or acquisition thereof and for a period not exceeding one year thereafter; provisions  
1218 for working capital to be used in connection with any project; redemption premiums, obligations  
1219 purchased to provide for the payment of bonds being refunded and other costs necessary or incident to  
1220 refunding of bonds; operating and maintenance reserve funds, debt reserve funds and other reserves for  
1221 the payment of principal and interest on bonds; and all other expenses necessary, desirable or incidental  
1222 to the operation of the Authority's facilities or the construction, reconstruction, renovation, acquisition or  
1223 financing of projects or other facilities or equipment appropriate for carrying out the purposes of this  
1224 chapter and the placing of the same in operation; or the refunding of bonds.

1225 "~~Director~~" "*Chief executive officer*" means the ~~director~~ *chief executive officer* of the ~~Medical College~~  
1226 ~~of Virginia Hospitals~~ *Virginia Commonwealth University Health System Authority*.

1227 "Hospital facilities" means all property or rights in property, real and personal, tangible and  
1228 intangible, including all facilities suitable for providing hospital and health care services and including

any and all structures, buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, furnishings, landscaping, approaches, roadways and other related and supporting facilities, now or hereafter owned, leased, operated or used, in whole or in part, by Virginia Commonwealth University as part of, or in connection with, the Medical College of Virginia Hospitals in the normal course of its operations as a teaching, research and medical treatment facility.

"Hospital obligations" means all debts or other obligations, contingent or certain, owing to any person or other entity on the transfer date, arising out of the operation of the Medical College of Virginia Hospitals as a medical treatment facility or arising out of the financing or refinancing of hospital facilities, and including all bonds and other debts for the purchase of goods and services, whether or not delivered, and obligations for the delivery of services, whether or not performed.

"Project" means any health care, research or educational facility or equipment necessary or convenient to or consistent with the purposes of the Authority, whether or not owned by the Authority, including, without limitation, hospitals; nursing homes; continuing care facilities; self-care facilities; wellness and health maintenance centers; medical office facilities; clinics; out-patient clinics; surgical centers; alcohol, substance abuse, and drug treatment centers; laboratories; sanitariums; hospices; facilities for the residence or care of the elderly, the handicapped, or the chronically ill; residential facilities for nurses, interns, and physicians; other kinds of facilities for the treatment of sick, disturbed, or infirm persons or the prevention of disease or maintenance of health; colleges, schools or divisions offering undergraduate or graduate programs for the health professions and sciences and such other branches of learning as may be appropriate, together with research, training, and teaching facilities; all related and supporting facilities and equipment necessary or desirable in connection therewith or incidental thereto; or equipment alone, including, without limitation, parking, kitchen, laundry, laboratory, wellness, pharmaceutical, administrative, communications, computer, and recreational facilities; power plants and equipment; storage space; mobile medical facilities; vehicles; air transport equipment and other equipment necessary or desirable for the transportation of medical equipment, medical personnel or patients; and all lands, buildings, improvements, approaches and appurtenances necessary or desirable in connection with or incidental to any project.

"Transfer date" means a date or dates agreed to by the Board of Visitors of Virginia Commonwealth University and the Authority for the transfer of employees to the Authority and for the transfer of hospital facilities, or any parts thereof, to and the assumption, directly or indirectly, of hospital obligations by the Authority, which dates for the various transfers and the various assumptions may be different, but in no event shall any date be later than June 30, 1997.

"University" means Virginia Commonwealth University.

§ 23-50.16:5. Board of Directors; appointment; officers; employees.

A. The Authority shall be governed by a Board of Directors consisting of ~~sixteen~~ *twenty-one* members as follows: ~~four~~ *six* members, *including two physician-faculty members*, to be appointed by the Governor; ~~three~~ *five* members, *including two physician-faculty members*, to be appointed by the Speaker of the House of Delegates; ~~two~~ *three* members, *including one physician-faculty member*, to be appointed by the Senate Committee on Privileges and Elections; five members of the Board of Visitors of Virginia Commonwealth University, to be appointed by the Rector, all of whom shall also be members of the Board of Visitors of ~~Virginia Commonwealth~~ *the* University at all times while serving on the Board; and the President of ~~Virginia Commonwealth~~ *the* University and the ~~Dean of the Virginia Commonwealth University School of Medicine~~ *Vice President for Health Sciences of the University, or the person who holds such other title as subsequently may be established by the Board of Visitors of the University for the chief academic and administrative officer for the Health Sciences Campus of the University, who both of whom shall serve as ex officio voting members during their respective terms of office. The five physician-faculty members shall be faculty members of Virginia Commonwealth University with hospital privileges at Medical College of Virginia Hospitals at all times while serving on the Board.*

Of the *non-faculty physician* appointments to be made on and after July 1, 1996, two gubernatorial appointees shall be appointed for three-year terms, one for a two-year term, and one for a one-year term; one appointee each by the Speaker of the House of Delegates and the Senate Committee on Privileges and Elections shall be appointed for three-year terms, and one each for two-year terms; one appointee by the Speaker of the House shall be appointed for a one-year term; and two Board of Visitors members shall be appointed for three-year terms, two for two-year terms, and one for a one-year term. Thereafter, all appointments shall be for terms of three years each, except appointments to fill unexpired vacancies which shall be made for the remainder of the unexpired terms.

*Of the physician-faculty appointments to be made on and after July 1, 2000, the two appointees of the Governor shall be appointed for initial terms of one and two years, respectively; the two appointees of the Speaker of the House of Delegates shall be appointed for initial terms of two and three years, respectively; the one appointee of the Senate Committee on Privileges and Elections shall be appointed for an initial term of three years. Thereafter, all appointments shall be for terms of three years each,*

1290 *except appointments to fill unexpired vacancies which shall be made for the remainder of the unexpired*  
1291 *terms. The Governor, the Speaker of the House of Delegates, and the Senate Committee on Privileges*  
1292 *and Elections shall appoint faculty physicians from lists submitted by the faculty physicians of the*  
1293 *School of Medicine of Virginia Commonwealth University through the Vice President for Health*  
1294 *Sciences of the University. The initial list submitted to the Governor shall be a list of not less than four*  
1295 *names. The initial list submitted to the Speaker of the House of Delegates shall be a list of not less than*  
1296 *four names. The initial list submitted to the Senate Committee on Privileges and Elections shall be a list*  
1297 *of not less than two names. Thereafter, the list shall be a list of not less than two names for each*  
1298 *expired or unexpired vacancy that occurs.*

1299 No person shall be eligible to serve more than two consecutive full three-year terms as an appointed  
1300 member, but after the expiration of a term of two years or less, or after the expiration of the remainder  
1301 of a term to which appointed to fill a vacancy, or after one year following the expiration of a second  
1302 full three-year term, two additional three-year terms may be served by a member if so appointed. The  
1303 terms of members serving by virtue of their office shall expire upon termination of their holding such  
1304 office. All members shall continue to hold office until their successors have been appointed and have  
1305 qualified.

1306 All appointed members, other than those who are members of the Board of Visitors, shall have  
1307 demonstrated experience or expertise in business, health-care management or legal affairs. Immediately  
1308 after their appointments, members shall enter upon the performance of their duties. The Board members  
1309 appointed from the Board of Visitors and the ex officio members shall not vote on matters that would  
1310 require them to breach their fiduciary duties to the University or to the Authority.

1311 B. All appointments, including the initial appointments to the Board and appointments to fill  
1312 vacancies, are subject to confirmation by the affirmative vote of a majority of those voting in each  
1313 house of the General Assembly if in session when such appointments are made and, if not in session, at  
1314 its first regular session subsequent to such appointment. Any member whose nomination is subject to  
1315 confirmation during a regular session of the General Assembly shall be deemed terminated when the  
1316 General Assembly rejects the nomination or when it adjourns without confirming the nomination,  
1317 whichever is earlier. No such termination shall affect the validity of any action taken by such member  
1318 prior to such termination.

1319 C. A Board member may be removed for malfeasance, misfeasance, incompetence or gross neglect of  
1320 duty by the individual or entity that appointed him or, if such appointing individual no longer holds the  
1321 office creating the right of appointment, by the current holder of that office.

1322 D. The Board of Directors of the Authority shall elect annually one of their number as chairman and  
1323 another as vice-chairman. The Board shall also elect a secretary and treasurer and such assistant  
1324 secretaries and assistant treasurers as the Board may authorize for terms determined by the Board, each  
1325 of whom may or may not be a member of the Board. The same person may serve as both secretary and  
1326 treasurer. The Board may also appoint an executive committee and other standing or special committees  
1327 and prescribe their duties and powers, and any executive committee may exercise all such powers and  
1328 duties of the Board under this chapter as the Board may delegate.

1329 E. The Board may provide for the appointment, employment and removal of a director, officers,  
1330 employees and agents of the Authority, including engineers, consultants, lawyers and accountants, for  
1331 such compensation and upon other terms as the Board deems appropriate.

1332 F. The Board shall meet at least four times each year and may hold such special meetings as it  
1333 deems appropriate. The Board may adopt, amend and repeal such rules, regulations, procedures and  
1334 bylaws, not contrary to law or inconsistent with this chapter, as it deems expedient for its own  
1335 governance and for the governance and management of the Authority. A majority of the Board shall  
1336 constitute a quorum for meetings, and the Board may act by a majority of those present at any meeting.

1337 G. Board members shall be entitled to reimbursement for necessary and reasonable travel and other  
1338 expenses incurred while engaged in the performance of their duties.

1339 H. The provisions of the State and Local Government Conflict of Interests Act (§ 2.1-639.1 et seq.)  
1340 shall apply to the members of the Board and the employees of the Authority.

1341 § 23-50.16:7. Appointment, salary and powers of the Chief Executive Officer.

1342 A. The Authority shall be under the immediate supervision and direction of a ~~Director~~ Chief Executive  
1343 Officer, subject to the policies and direction established by the Board. The ~~Director~~ Chief Executive  
1344 Officer shall be appointed by and serve at the pleasure of the Board. The ~~Director~~ shall receive a salary  
1345 as determined by the Board the person who holds the title of Vice President for Health Sciences of  
1346 Virginia Commonwealth University, or such other title as subsequently may be established by the Board  
1347 of Visitors of the University for the chief academic and administrative officer for the Health Sciences  
1348 Campus of the University, subject to the following: notwithstanding any other provision of law to the  
1349 contrary, the selection and removal of the Chief Executive Officer, as well as the conditions of  
1350 appointment, including salary, shall be made jointly by the Board and the Board of Visitors of the  
1351 University at a joint meeting of the Board and the Board of Visitors of the University upon a vote of a

majority of the members of each board, present and voting at the aforementioned joint meeting, acting separately in accordance with applicable provisions of law.

B. The ~~Director~~ Chief Executive Officer shall devote his full time to the performance of his official duties and shall not be engaged in any other profession or occupation.

C. The ~~Director~~ Chief Executive Officer shall supervise and administer the operation of the Authority in accordance with the provisions of this chapter.

§ 23-232. Establishment authorized; employment of officers.

A. The governing board of each public institution of higher learning named in § 23-14, hereafter sometimes referred to in this chapter as "institution," is authorized to establish a campus police department and to employ campus police officers and auxiliary forces upon appointment as provided in §§ 23-233 and 23-233.1. Such employment shall be governed by the Virginia Personnel Act, as set forth in Chapter 10 (§ 2.1-110 et seq.) of Title 2.1.

B. The ~~Medical College of Virginia Hospitals~~ Virginia Commonwealth University Health System Authority shall be authorized to employ police officers and auxiliary forces as provided in this chapter and in § 23-50.15:11, except that the employment of such officers and forces shall not be governed by the Virginia Personnel Act.

§ 32.1-85. Adoption.

A formulary of another state or of any agency of the United States, a formulary in use at the University of Virginia Hospital or the ~~Medical College of Virginia Hospitals~~ Virginia Commonwealth University Health System Authority or any combination of such formularies may be adopted for use as the Virginia Voluntary Formulary pending the adoption of an original Formulary. Not later than July 1, 1981, the Council shall commence to compile an original Formulary.

§ 32.1-276.3. (Effective until July 1, 2003) 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 of Chapter 5 (§ 32.1-123 et seq.) of 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 Department of Mental Health, Mental Retardation and Substance Abuse Services; (iv) a hospital operated by the University of Virginia or the ~~Medical College of Virginia Hospitals~~ Virginia Commonwealth University Health System Authority; (v) 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 (vi) 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, a hospital operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services for the care and treatment of the mentally ill, or a hospital operated by the University of Virginia or the ~~Medical College of Virginia Hospitals~~ Virginia Commonwealth University Health System Authority.

"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.

§ 51.1-126.1. Certain employees of teaching hospitals.

A. Any teaching hospital affiliated with an institution of higher education, other than the ~~Medical College of Virginia Hospitals~~ Virginia Commonwealth University Health System Authority or the University of Virginia Medical Center, may establish a retirement plan covering in whole or in part its employees who are health care providers, as determined by the Department of Personnel and Training pursuant to § 2.1-116, and is authorized to make contributions for the benefit of its employees who elect to participate in such plan or arrangement rather than in the retirement system established by this chapter. Any such alternative retirement plan shall not become effective until July 1, 1991, or any time

1413 thereafter, as determined by such teaching hospital. Any health care provider employed by such teaching  
1414 hospital on or after July 1, 1991, may make an irrevocable election to participate in either the retirement  
1415 plan established by this chapter or the plan provided by the teaching hospital, in accordance with  
1416 guidelines established by the Virginia Retirement System. The election herein provided shall, as to any  
1417 health care provider employed after the alternative retirement plan implementation date, be exercised not  
1418 later than thirty-one days from the time of entry upon the performance of his duties.

1419 B. No health care provider employed by a teaching hospital who is an active member of a plan  
1420 established under this section shall also be an active member of the retirement system or a beneficiary  
1421 other than a contingent annuitant.

1422 C. The contribution by the Commonwealth to any other retirement plan established on behalf of  
1423 health care providers as provided in subsection A shall be the contribution by the Commonwealth which  
1424 would be required if the health care provider were a member of the retirement system or eight percent  
1425 of creditable compensation, whichever is less.

1426 D. If the institution of higher education with which the teaching hospital is affiliated has adopted a  
1427 retirement plan under § 51.1-126 for its employees who are engaged in the performance of teaching,  
1428 administrative, or research duties, the plan established under this section shall offer the same investment  
1429 opportunities as are available to the participants of the plan established under § 51.1-126.

1430 E. The Virginia Retirement System shall develop policies and procedures for the administration of  
1431 the retirement plan established under this section.