

# VIRGINIA ACTS OF ASSEMBLY -- 2004 RECONVENED SESSION

## CHAPTER 1021

*An Act to amend and reenact §§ 2.2-3705, 17.1-503, 32.1-42, 32.1-43, 32.1-44, 32.1-45, 32.1-48, 32.1-48.01 through 32.1-48.04, 32.1-116.3, 32.1-127.1:03, 44-146.16, and 44-146.17 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 2 of Title 32.1 an article numbered 3.02, consisting of sections numbered 32.1-48.05 through 32.1-48.17, relating to communicable diseases of public health threat; quarantine and isolation; emergency.*

[S 685]

Approved April 21, 2004

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

**1. That §§ 2.2-3705, 17.1-503, 32.1-42, 32.1-43, 32.1-44, 32.1-45, 32.1-48, 32.1-48.01 through 32.1-48.04, 32.1-116.3, 32.1-127.1:03, 44-146.16, and 44-146.17 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 2 of Title 32.1 an article numbered 3.02, consisting of sections numbered 32.1-48.05 through 32.1-48.17, as follows:**

§ 2.2-3705. 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 Department of Charitable Gaming.

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 that 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 18 years. For scholastic records of students under the age of 18 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, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

4. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

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

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

Where the person who is the subject of medical and mental records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or

denied such access. In instances where the person who is the subject thereof is an emancipated minor or a student in a public institution of higher education, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any patient-identifying information.

6. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly or the Division of Legislative Services; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. 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 attached to or incorporated within any working paper or correspondence.

As used in this subdivision:

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

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

7. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies, and any other records protected by the attorney-client privilege.

8. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § 2.2-3711.

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

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

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

As used in this subdivision, "test or examination" shall include (a) any scoring key for any such test or examination and (b) any other document that would jeopardize the security of the test or examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by law, or limit access to individual records as provided by law. However, the subject of such 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 § 2.2-3711. However, no record that 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 §§ 2.2-706 and 63.2-104.

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 that 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 that 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 Human Resource Management or to such personnel of any local public body, including local school boards as are responsible for conducting such investigations in confidence. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

27. Fisheries data that 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.

29. Records and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of formulating advisory opinions to members on standards of conduct, or both.

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

31. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-2638, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

32. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

33. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and

housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § 15.2-2304 or § 15.2-2305. However, access to one's own information shall not be denied.

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

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

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

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

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

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

Those portions of engineering and construction drawings and plans that reveal critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.), the disclosure of which would jeopardize the safety or security of any public or private commercial office, multi-family residential or retail building or its occupants in the event of terrorism or other threat to public safety, to the extent that the owner or lessee of such property, equipment or system in writing (i) invokes the protections of this paragraph; (ii) identifies the drawings, plans, or other materials to be protected; and (iii) states the reasons why protection is necessary.

Nothing in this subdivision shall prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event.

40. Records concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of this title, or by any county, city, or town; and investigative notes, correspondence and information furnished in confidence with respect to an investigation of a claim or a potential claim against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision shall prohibit the disclosure of information taken from inactive reports upon expiration of the period of limitations for the filing of a civil suit.

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) 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 that 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. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or provided to the retirement system under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system or the Rector and Visitors of the University of Virginia. Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment.

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 § 2.2-4342 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 § 2.2-4317.

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

55. Financial, medical, rehabilitative and other personal information concerning applicants for or

recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

56. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a proposal filed with a public entity or an affected local jurisdiction under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), pursuant to a promise of confidentiality from the responsible public entity or affected local jurisdiction, used by the responsible public entity or affected local jurisdiction for purposes related to the development of a qualifying transportation facility or qualifying project; and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002, where, if such records were made public, the financial interest of the public or private entity involved with such proposal or the process of competition or bargaining would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the private entity 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 reasons why protection is necessary. For the purposes of this subdivision, the terms "affected local jurisdiction", "public entity" and "private entity" shall be defined as they are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and Infrastructure Act of 2002. However, nothing in this subdivision shall be construed to prohibit the release of procurement records as required by § 56-573.1 or § 56-575.16. Procurement records shall not be interpreted to include proprietary, commercial or financial information, balance sheets, financial statements, or trade secrets that may be provided by the private entity as evidence of its qualifications.

57. Plans and information to prevent or respond to terrorist activity, the disclosure of which would jeopardize the safety of any person, including (i) critical infrastructure sector or structural components; (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training manuals, and staff meeting minutes or other records; and (iii) engineering or architectural records, or records containing information derived from such records, to the extent such records reveal the location or operation of security equipment and systems, elevators, ventilation, fire protection, emergency, electrical, telecommunications or utility equipment and systems of any public building, structure or information storage facility. The same categories of records of any governmental or nongovernmental person or entity submitted to a public body for the purpose of antiterrorism response planning may be withheld from disclosure if such person or entity in writing (a) invokes the protections of this subdivision, (b) identifies with specificity the records or portions thereof for which protection is sought, and (c) states with reasonable particularity why the protection of such records from public disclosure is necessary to meet the objective of antiterrorism planning or protection. Such statement shall be a public record and shall be disclosed upon request. Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the structural or environmental soundness of any building, nor shall it prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event.

58. All records of the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

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

60. Records of the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; and the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's 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 Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.

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

62. Confidential proprietary records that are provided by a franchisee under § 15.2-2108 to its franchising authority pursuant to a promise of confidentiality from the franchising authority that relates to the franchisee's potential provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected. In order for confidential proprietary information to be excluded from the provisions 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 Chapter 3.1 (§ 51.5-12.1 et seq.) of Title 51.5, 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 that 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 Department of Charitable Gaming pursuant to subsection E of § 18.2-340.34.

67. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College Savings Plan 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 that 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 or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any governmental facility, building or structure or the safety of persons using such facility, building or structure.

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.

71. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

72. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

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

74. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

75. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1, submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

76. Records of the State Lottery Department pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations, and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

77. Records, information and statistical registries required to be kept confidential pursuant to §§ 63.2-102 and 63.2-104.

78. Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record.

79. (For effective date, see note) All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

80. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the Virginia Administrative Dispute Resolution Act.

81. The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints made to a local governing body.

82. Records relating to the negotiation and award of a specific contract where competition or bargaining is involved and where the release of such records would adversely affect the bargaining position or negotiating strategy of the public body. Such records shall not be withheld after the public body has made a decision to award or not to award the contract. In the case of procurement transactions conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the provisions of this subdivision shall not apply, and any release of records relating to such transactions shall be governed by the Virginia Public Procurement Act.

83. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the extent such records contain 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.

84. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

85. Security plans and specific vulnerability assessment components of school safety audits, as provided in § 22.1-279.8.

Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the effectiveness of security plans after (i) any school building or property has been subjected to fire, explosion, natural disaster or other catastrophic event, or (ii) any person on school property has suffered



or been threatened with any personal injury.

86. Records, investigative notes, correspondence, and information pertaining to the planning, scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents, employees or persons employed to perform an audit or examination of holder records.

87. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § 38.2-5002.2.

88. *Records of the State Health Commissioner relating to the health of any person or persons subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of statistical summaries, abstracts or other information in aggregate form.*

B. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of this title shall be construed as denying public access to (i) contracts between a public body and its officers or employees, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision A 4; (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 or Chapter 21 (§ 30-178 et seq.) of Title 30 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.

D. Nothing in this chapter shall be construed as denying public access to the nonexempt portions of a report of a consultant hired by or at the request of a local public body or the mayor or chief executive or administrative officer of such public body if (i) the contents of such report have been distributed or disclosed to members of the local public body or (ii) the local public body has scheduled any action on a matter that is the subject of the consultant's report.

§ 17.1-503. Rules of practice and procedure; rules not to preclude judges from hearing certain cases.

A. The Supreme Court may formulate rules of practice and procedure for the circuit courts following consultation with the chairmen of the House and Senate Courts of Justice Committees and the executive committee of the Judicial Conference of Virginia for courts of record. Such rules, subject to the strict construction of the provisions of § 8.01-4, which shall be the only rules of practice and procedure in the circuit courts of the Commonwealth, shall be included in the Code of Virginia as provided in § 8.01-3, subject to revision by the General Assembly.

B. No rule shall hereafter be promulgated under the limitations of § 8.01-4, or otherwise which would avoid or preclude the judge before whom an accused is arraigned in criminal cases from hearing all aspects of the case on its merits, or to avoid or preclude any judge in any case who has heard any part of the case on its merits, from hearing the case to its conclusion. However, another judge may hear portions of a case where a judge is required to disqualify himself, in cases in which a mistrial is declared, or in cases which have been reversed on appeal, or in the event of sickness, disability or vacation of the judge. The parties to any suit, action, cause or prosecution may waive the provisions of this section. Such waiver shall be entered of record.

C. *In its rules of practice and procedure for the circuit courts, the Supreme Court shall include rules relating to court decisions on any order of quarantine or isolation issued by the State Health Commissioner pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1 that shall ensure, to the extent possible, that such hearings are held in a manner that will protect the health and safety of individuals subject to any such order of quarantine or isolation, court personnel, counsels, witnesses, and the general public. The rules shall also provide for expedited reviews by the Supreme Court of decisions by any circuit court relating to appeals of any order of quarantine or isolation.*

§ 32.1-42. Emergency rules and regulations.

The Board of Health may promulgate regulations and orders to meet any emergency or to prevent a potential emergency caused by a disease dangerous to public health, including, *but not limited to*, procedures specifically responding to any disease listed pursuant to § 32.1-35 that is determined to be caused by an agent or substance used as a weapon or any communicable disease of public health threat that is involved in an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of this chapter.

§ 32.1-43. Authority of State Health Commissioner to require quarantine, etc.

The State Health Commissioner shall have the authority to require quarantine, ~~vaccination~~ isolation, immunization, decontamination, or treatment of any individual or group of individuals when he determines any such measure to be necessary to control the spread of any disease of public health

importance and the authority to issue orders of isolation pursuant to Article 3.01 (§ 32.1-48.01 et seq.) of this chapter and orders of quarantine and orders of isolation under exceptional circumstances involving any communicable disease of public health threat pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of this chapter.

§ 32.1-44. Isolated or quarantined persons.

The provisions of this chapter shall ~~not~~ be construed to ~~prevent or restrict~~ allow any isolated or quarantined person from ~~choosing to choose~~ his own method of treatment or to limit any diseased person in his right to choose or select whatever method or mode of treatment he may believe to be the most efficacious in the cure of his ailment, whenever practicable and in the best interest of the health and safety of the isolated or quarantined person and the public; however, the conditions of any order of isolation issued pursuant to Article 3.01 (§ 32.1-48.01 et seq.) of this chapter involving a communicable disease of public health significance and any order of quarantine or order of isolation involving any communicable disease of public health threat pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of this chapter shall remain in effect until the person or persons subject to such order of quarantine or order of isolation shall no longer constitute a threat to other persons.

§ 32.1-45. Expense of treatment.

Except as specifically provided by law, the provisions of this chapter shall not be construed as relieving any individual of the expense, if any, of any treatment, including any person who is subject to an order of isolation issued pursuant to Article 3.01 (§ 32.1-48.01 et seq.) of this chapter or an order of quarantine or an order of isolation issued pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of this chapter.

§ 32.1-48. Powers of Commissioner in epidemic.

A. Nothing in this article shall preclude the Commissioner from requiring immediate vaccination immunization of all persons in case of an epidemic of any disease of public health importance for which a vaccine exists other than a person to whose health the administration of a vaccine would be detrimental as certified in writing by a physician licensed to practice medicine in this Commonwealth.

B. In addition, the State Health Commissioner shall hold the powers conferred pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of this chapter to issue orders of quarantine or prepare orders of isolation for a communicable disease of public health threat.

Article 3.01.

Isolation of Certain Persons With Communicable Diseases  
of Public Health Significance.

§ 32.1-48.01. Definitions.

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

"Appropriate precautions" means those specific measures which have been demonstrated by current scientific evidence to assist in preventing transmission of a communicable disease of public health significance. Appropriate precautions will vary according to the disease.

"At-risk behavior" means engaging in acts which a person, who has been informed that he is infected with a communicable disease of public health significance, knows may infect other persons without taking appropriate precautions to protect the health of the other persons.

"Communicable disease of public health significance" means an illness of public health significance, as determined by the State Health Commissioner of Health, caused by a specific or suspected infectious agent which that may be transmitted directly or indirectly from one person individual to another.

"Communicable disease of public health significance" shall include, but may not be limited to, infections caused by human immunodeficiency viruses, blood-borne pathogens, and tubercle bacillus. The State Health Commissioner may determine that diseases caused by other pathogens constitute communicable diseases of public health significance. Further, "a communicable disease of public health significance" shall become a "communicable disease of public health threat" upon the finding of the State Health Commissioner of exceptional circumstances pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of this chapter.

§ 32.1-48.02. Investigations of verified reports or medical evidence; counseling; outpatient and emergency treatment orders; custody upon emergency order; application of article.

A. Upon receiving at least two verified reports or upon receiving medical evidence that any person who is reputed to know that he is infected with a communicable disease of public health significance is engaging in at-risk behavior, the Commissioner or his designee may conduct an investigation through an examination of the records of the Department and other medical records to determine the disease status of the individual and that there is cause to believe he is engaging in at-risk behavior.

B. If the investigation indicates that the person has a communicable disease of public health significance caused by a non-airborne microorganism and that there is cause to believe he is engaging in at-risk behavior, the Commissioner or his designee may issue an order for such person to report to the local or district health department in the jurisdiction in which he resides to receive counseling on the etiology, effects and prevention of the specific disease of public health significance. The person conducting the counseling shall prepare and submit a report to the Commissioner or his designee on the counseling session or sessions in which he shall document that the person so counseled has been informed about the acts that constitute at-risk behavior, appropriate precautions, and the need to use

appropriate precautions. The counselor shall also report any statements indicating the intentions or understanding of the person so counseled.

C. If the investigation, described in subsection A, indicates that the person has a communicable disease ~~which~~ *of public health significance* caused by an airborne microorganism, *such as tubercle bacillus*, that causes serious disease and can result in death and that the person has refused or failed to adhere to a prescribed course of treatment and, despite counseling, is engaging in conduct that places uninfected persons at risk of contracting such airborne communicable disease *of public health significance*, the Commissioner or his designee may issue an outpatient treatment order for such person to report to the local or district health department in the jurisdiction in which he resides to receive appropriate outpatient treatment and education concerning his disease.

D. If the investigation, described in subsection A, indicates that the person has a communicable disease *of public health significance* caused by an airborne microorganism, *such as tubercle bacillus*, which causes serious disease and can result in death and, despite documented and appropriate counseling, is engaging in conduct that unreasonably places uninfected persons at risk of contracting such airborne communicable disease *of public health significance, such as tuberculosis*, and medical data demonstrate that he poses an imminent threat to the health of others, the Commissioner may issue an emergency order requiring such person to be taken immediately into custody and placed, for a period, not to exceed ~~forty-eight~~ 48 hours, in the least restrictive, willing facility providing protection of the health of others and appropriate treatment to the person upon finding that at least one of the following conditions is met:

1. The person has refused or failed to report to the local health department after having been ordered to do so pursuant to subsection C, for appropriate outpatient treatment and education concerning his disease;
2. The person has a documented history of failure to adhere to a prescribed course of treatment; or
3. Documentation exists that the person has indicated that he will not comply with the prescribed treatment.

If the specified ~~forty-eight~~ 48-hour period terminates on a Saturday, Sunday or legal holiday, such person may be detained until the next day which is not a Saturday, Sunday, or legal holiday. During this period, the Commissioner shall proceed in accordance with § 32.1-48.03.

E. In order to implement an emergency order issued pursuant to subsection D of this section, all state and local law-enforcement officers are authorized to take custody of the subject of such emergency order immediately upon issuance of the emergency order by the Commissioner.

*F. The provisions of this article shall only apply to communicable diseases of public health significance and shall not apply to communicable diseases of public health threat.*

§ 32.1-48.03. Petition for hearing; temporary detention.

A. Upon receiving a verified report or upon receiving medical evidence that any person who has been counseled pursuant to § 32.1-48.02 has continued to engage in at-risk behavior, the Commissioner or his designee may petition the general district court of the county or city in which such person resides to order the person to appear before the court to determine whether isolation is necessary to protect the public health *from the risk of infection with a communicable disease of public health significance*.

B. If such person cannot be conveniently brought before the court, the court may issue an order of temporary detention. The officer executing the order of temporary detention shall order such person to remain confined in his home or another's residence or in some convenient and willing institution or other willing place for a period not to exceed ~~forty-eight~~ 48 hours prior to a hearing. An electronic device may be used to enforce such detention in the person's home or another's residence. The institution or other place of temporary detention shall not include a jail or other place of confinement for persons charged with criminal offenses.

If the specified ~~forty-eight~~ 48-hour period terminates on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, such person may be detained until the next day which is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

C. Any person ordered to appear before the court pursuant to this section shall be informed of his right to be represented by counsel. The court shall provide the person with reasonable opportunity to employ counsel at his own expense, if so requested. If the person is not represented by counsel, the court shall appoint an attorney-at-law to represent him. Counsel so appointed shall be paid a fee of ~~seventy-five dollars~~ \$75 and his necessary expenses.

§ 32.1-48.04. Isolation hearing; conditions; order for isolation; right to appeal.

A. The isolation hearing shall be held within ~~forty-eight~~ 48 hours of the execution of any temporary detention order issued or, if the ~~forty-eight~~ 48-hour period terminates on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the isolation hearing shall be the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

Prior to the hearing, the court shall fully inform the person *who is infected with the communicable disease of public health significance* of the basis for his detention, if any, the basis upon which he may be isolated, and the right of appeal of its decision.

B. An order for isolation in the person's home or another's residence or an institution or other place,

including a jail when no other reasonable alternative is available, may be issued upon a finding by the court that the following conditions are met:

1. The person is infected with a communicable disease *of public health significance*.
2. The person is engaging in at-risk behavior.
3. The person has demonstrated an intentional disregard for the health of the public by engaging in behavior which has placed others at risk for infection *with the communicable disease of public health significance*.

4. There is no other reasonable alternative means of reducing the risk to public health.

C. Any order for isolation in the person's home or another's residence or an institution or other place shall be valid for no more than 120 days, or for a shorter period of time if the Commissioner or his designee, or the court upon petition, determines that the person no longer poses a substantial threat to the health of others. Orders for isolation in the person's home or another's residence may be enforced through the use of electronic devices. Orders for isolation may include additional requirements such as participation in counseling or education programs. The court may, upon finding that the person no longer poses a substantial threat to the health of others, issue an order solely for participation in counseling or educational programs.

D. Isolation orders shall not be renewed without affording the person all rights conferred in this article.

Any person under an isolation order pursuant to this section shall have the right to appeal such order to the circuit court in the jurisdiction in which he resides. Such appeal shall be filed within thirty days from the date of the order. Notwithstanding the provisions of § 19.2-241 relating to the time within which the court shall set criminal cases for trial, any appeal of an isolation order shall be given priority over all other pending matters before the court, except those matters under appeal pursuant to § 37.1-67.6, and shall be heard as soon possible by the court. The clerk of the court from which an appeal is taken shall immediately transmit the record to the clerk of the appellate court.

The appeal shall be heard *de novo*. An order continuing the isolation shall only be entered if the conditions set forth in subsection B are met at the time the appeal is heard.

If the person under an isolation order is not represented by counsel, the judge shall appoint an attorney-at-law to represent him. Counsel so appointed shall be paid a fee of \$150 and his necessary expenses. The order of the court from which the appeal is taken shall be defended by the attorney for the Commonwealth.

#### Article 3.02.

##### *Quarantine and Isolation of Persons With Communicable Diseases of Public Health Threat.*

§ 32.1-48.05. *Application of article; determination of exceptional circumstances; regulations; duties of the State Health Commissioner not be delegated.*

A. *Upon a determination by the State Health Commissioner that exceptional circumstances exist relating to one or more persons in the Commonwealth who are known to have been exposed to or infected with or reasonably suspected to have been exposed to or infected with a communicable disease of public health threat and that such exceptional circumstances render the procedures of Article 3.01 (§ 32.1-48.01 et seq.) of this chapter to be insufficient control measures or that the individuals have failed or refused to comply voluntarily with the control measures directed by the State Health Commissioner in response to a communicable disease of public health threat, the State Health Commissioner may invoke the provisions of this article relating to quarantine and isolation.*

B. *The Board of Health shall promulgate regulations for the implementation of this article that shall (i) address the circumstances that are subject to the application of Article 3.01 (§ 32.1-48.01 et seq.) of this chapter and the exceptional circumstances in which this article may be invoked by the State Health Commissioner; (ii) provide procedures to assure that any quarantine or isolation is implemented in the least restrictive environment; (iii) ensure that the essential needs of persons subject to an order of isolation issued pursuant to this article shall be met, including, but not limited to, food, water, and health care, e.g., medications, therapies, testing, and durable medical equipment; (iv) provide procedures for proper notice of orders of quarantine and orders of isolation; (v) provide procedures for the State Health Commissioner to issue an emergency detention order for persons for whom he has probable cause to believe that they may fail or refuse to comply with an order of quarantine or an order of isolation; and (vi) address any other issue or procedure covered herein that the Board deems to be properly the subject of regulation.*

C. *The powers granted to the State Health Commissioner pursuant to this article shall not be delegated to or invoked by any local or district health department director. However, in the event the State Health Commissioner, duly appointed and confirmed pursuant to § 32.1-17, shall be unable to perform his duties pursuant to this article, any Deputy Commissioner, appointed by the State Health Commissioner and approved by the Board pursuant to § 32.1-22, shall be authorized to invoke the provisions of this article.*

##### § 32.1-48.06. *Definitions.*

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

*"Affected area" means any part or the whole of the Commonwealth, which has been identified as*

where persons reside, or may be located, who are known to have been exposed to or infected with or who are reasonably suspected to have been exposed to or infected with a communicable disease of public health threat.

"Communicable disease of public health threat" means an illness of public health significance, as determined by the State Health Commissioner in accordance with regulations of the Board of Health, caused by a specific or suspected infectious agent that may be reasonably expected or is known to be readily transmitted directly or indirectly from one individual to another and has been found to create a risk of death or significant injury or impairment; this definition shall not, however, be construed to include human immunodeficiency viruses or tuberculosis, unless used as a bioterrorism weapon. "Individual" shall include any companion animal. Further, whenever "person or persons" is used herein it shall be deemed, when the context requires it, to include any individual.

"Companion animal" means, consistent with the provisions of § 3.1-796.66, any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purposes of this article.

"Isolation" means the physical separation, including confinement or restriction of movement, of an individual or individuals who are infected with or are reasonably suspected to be infected with a communicable disease of public health threat in order to prevent or limit the transmission of the communicable disease of public health threat to other uninfected and unexposed individuals.

"Law-enforcement agency" means any sheriff's office, police department, adult or youth correctional officer, or other agency or department that employs persons who have law-enforcement authority that is under the direction and control of the Commonwealth or any local governing body. "Law-enforcement agency" shall include, by order of the Governor, the Virginia National Guard.

"Quarantine" means the physical separation, including confinement or restriction of movement, of an individual or individuals who are present within an affected area, as defined herein, or who are known to have been exposed or may reasonably be suspected to have been exposed to a communicable disease of public health threat and who do not yet show signs or symptoms of infection with the communicable disease of public health threat in order to prevent or limit the transmission of the communicable disease of public health threat to other unexposed and uninfected individuals.

§ 32.1-48.07. Conditions for invoking the provisions of this article.

A. Prior to issuing any order of quarantine or any order of isolation pursuant to this article, the State Health Commissioner shall ensure that:

1. Any quarantine or isolation is implemented in the least restrictive environment necessary to contain the communicable disease of public health threat;

2. Any quarantined persons shall be confined separately from any isolated persons, to the maximum extent practicable;

3. Upon determining that any quarantined person can be reasonably believed to have become infected with a communicable disease of public health threat, the infected person shall be promptly removed from quarantine and placed in isolation;

4. The health and disease status of any quarantined and isolated persons shall be monitored regularly to determine if such persons require continued quarantine or isolation;

5. Any quarantined or isolated persons shall be immediately released from quarantine or isolation upon a determination by the State Health Commissioner that such quarantined or isolated persons pose no risk of transmitting the communicable disease of public health threat to other persons; and

6. The site of any quarantine or isolation shall be, to the extent practicable, safely and hygienically maintained with adequate food, clothing, health care, and other essential needs made available to the persons who are subject to any order of quarantine or isolation.

B. All persons subject to an order of quarantine or an order of isolation shall comply with the order and the conditions governing their quarantine or isolation.

C. In the case of any person who has been quarantined or isolated in a location other than a medical care facility, the State Health Commissioner shall authorize health care professionals to enter the premises of quarantine or isolation. No person, other than such authorized health care professionals, shall enter the premises of quarantine or isolation, unless authorized by the State Health Commissioner. Upon determining that any person, who has entered the premises of quarantine or isolation, poses a threat to public health and safety, the State Health Commissioner may quarantine or isolate such person.

§ 32.1-48.08. Declaration of quarantine.

A. The State Health Commissioner may declare a quarantine of any person or persons or any affected area after he finds that the quarantine is the necessary means to contain a communicable disease of public health threat as defined in § 32.1-48.06 to which such person or persons or the people of an affected area have been or may have been exposed and thus may become infected.

B. The State Health Commissioner shall record his findings and any information on which he has

relied in making the finding required for quarantine pursuant to subsection A. The State Health Commissioner's record of findings concerning any communicable disease of public health threat shall be confidential and shall not be disclosed in accordance with subdivision A 88 of § 2.2-3705.

C. The State Health Commissioner may order the quarantined person or persons to remain in their residences, to remain in another place where they are present, or to report to a place or places designated by the State Health Commissioner for the duration of their quarantine. An electronic device may be used to enforce any such quarantine. The Commissioner's order of quarantine shall be for a duration consistent with the known incubation period for such disease or, if the incubation period is unknown, for a period anticipated as being consistent with the incubation period for other similar infectious agents.

§ 32.1-48.09. Order of quarantine.

A. The State Health Commissioner shall, prior to placing any person or persons under quarantine, issue an order of quarantine that shall: (i) identify the communicable disease of public health threat that is reasonably believed to be involved and the reasons why exceptional circumstances apply and the quarantine is the necessary means to contain the risks of transmission of the disease; (ii) contain sufficient information to provide reasonable notice to persons who are affected by the order of quarantine that they are subject to the order; (iii) specify the means by which the quarantine is to be implemented; (iv) establish clearly the geographic parameters of the quarantine, if involving an affected area; (v) specify the duration of the quarantine; (vi) provide sufficient directions for compliance with the quarantine to enable persons subject to the order to comply; (vii) provide timely opportunities, if not readily available under the circumstances, for the person or persons who are subject to the order to notify employers, next of kin or legally authorized representatives and the attorneys of their choice of the situation; (viii) specify the penalty or penalties that may be imposed for noncompliance with the order of quarantine pursuant to § 32.1-27; and (ix) include a copy of § 32.1-48.10 to inform any person or persons subject to an order of quarantine of the right to seek judicial review of the order.

B. No affected area shall be the subject to an order of quarantine issued by the State Health Commissioner unless the Governor, pursuant to the authority vested in him pursuant to Chapter 3.2 (§ 44-146.13 et seq.) of Title 44, has declared a state of emergency for such affected area of the Commonwealth.

C. The order of quarantine shall be delivered to any person or persons affected by the quarantine, in so far as practicable. However, if, in the opinion of the State Health Commissioner, the number of quarantined persons is too great to make delivery of copies of the order of quarantine to each person possible in a timely manner, or if the order of quarantine designates an affected area instead of a specific person or persons, the State Health Commissioner shall cause the order of quarantine to be communicated to the persons residing or located in the affected area.

D. The State Health Commissioner or his legal representative shall, as soon as practicable following the issuance of an order of quarantine, file a petition seeking an ex parte court review and confirmation of the quarantine or to extend, when necessary, the duration of the quarantine.

E. The petition shall be filed in the circuit court for the city or county in which the person or persons resides or, in the case of an affected area, in the circuit court of the affected jurisdiction or jurisdictions.

The petition shall include (i) a copy of the order of quarantine or all information contained in the State Health Commissioner's order of quarantine in some other format and (ii) a summary of the findings on which the Commissioner relied in deciding to issue the order of quarantine.

F. In reviewing the petition for review and confirmation of the order of quarantine or an extension of the order of quarantine, the court shall give due deference to the specialized expertise of the State Health Commissioner. The court shall grant the petition to extend the quarantine upon finding probable cause that quarantine was the necessary means to contain the disease of public health threat and is being implemented in the least restrictive environment to address the public health threat effectively, given the reasonably available information on effective control measures and the nature of the communicable disease of public health threat.

G. The State Health Commissioner may, if he reasonably believes that public disclosure of the information contained in the order of quarantine or the petition for court review and confirmation or extension of the order of quarantine will exacerbate the public health threat or compromise any current or future criminal investigation or compromise national security, file some or all of any petition relating to an order of quarantine under seal. After reviewing any information filed under seal by the State Health Commissioner, the court shall reseal the relevant materials to the extent necessary to protect public health and safety.

H. The State Health Commissioner shall ensure that the protected health information of any person or persons subject to the order of quarantine shall only be disclosed in compliance with § 32.1-127.1:03 of this title and the regulations relating to privacy of health records promulgated by the federal Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.).

§ 32.1-48.10. Appeal of any order of quarantine.

A. Any person or persons subject to an order of quarantine or a court-ordered extension of any such order pursuant to this article may file an appeal of the order of quarantine as such order applies to such person or persons in the circuit court for the city or county in which the subject or subjects of the order reside or the circuit court for the jurisdiction or jurisdictions for any affected area. Any petition for appeal shall be in writing, shall set forth the grounds on which the order of quarantine is being challenged vis-a-vis the subject person or persons or affected area, and shall be served upon the State Health Commissioner or his legal representative.

B. A hearing on the appeal of the order of quarantine shall be held within 48 hours of the filing of the petition for appeal or, if the 48-hour period terminates on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the hearing shall be held on the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

In extraordinary circumstances, for good cause shown, the Commissioner may request a continuance of the hearing, which the court shall only grant after giving due regard to the rights of the affected individuals, the protection of the public health and safety, the severity of the emergency, and the availability of witnesses and evidence.

C. Any person appealing an order of quarantine shall have the burden of proving that he is not properly the subject of the order of quarantine.

D. The filing of an appeal shall not stay any order of quarantine.

E. Upon receiving multiple appeals of an order of quarantine that applies to a group of persons or an affected area, the court may, on the motion of any party or on the court's own motion, consolidate the cases in a single proceeding for all appeals when (i) there are common questions of law or fact relating to the individual claims or rights to be determined; (ii) the claims of the consolidated cases are substantially similar; and (iii) all parties to the appeals will be adequately represented in the consolidation.

F. The circuit court shall not conduct a de novo review of the order of quarantine; however, the court shall consider the existing record and such supplemental evidence as the court shall consider relevant. The court shall conduct the hearing on an appeal of an order of quarantine in a manner that will protect the health and safety of court personnel, counsels, witnesses, and the general public and in accordance with rules of the Supreme Court of Virginia pursuant to subsection C of § 17.1-503. The court may, for good cause shown, hold all or any portion of the hearings in camera upon motion of any party or upon the court's own motion.

G. Upon completion of the hearing, the court may (i) vacate or modify the order of quarantine as such order applies to any person who filed the appeal and who is not, according to the record and the supplemental evidence, appropriately subject to the order of quarantine; (ii) vacate or modify the order of quarantine as such order applies to all persons who filed an appeal and who are not, according to the record and the supplemental evidence, appropriately subject to the order of quarantine; (iii) confirm the order of quarantine as it applies to any person or all appealing parties upon a finding that such person or persons are appropriately subject to the order of quarantine and that quarantine is being implemented in the least restrictive environment to address the public health threat effectively, given the reasonably available information on effective control measures and the nature of the communicable disease of public health threat; or (iv) confirm the order of quarantine as it applies to all persons subject to the order upon finding that all such persons are appropriately subject to the order of quarantine and that quarantine is being implemented in the least restrictive environment to address the public health threat effectively, given the reasonably available information on effective control measures and the nature of the communicable disease of public health threat.

In any case in which the court shall vacate the order of quarantine as it applies to any person who has filed a request for review of such order and who is subject to such order or as it applies to all persons seeking judicial review who are subject to such order, the person or persons shall be immediately released from quarantine unless such order to vacate the quarantine shall be stayed by the filing of an appeal to the Supreme Court of Virginia. Any party to the case may file an appeal of the circuit court decisions to the Supreme Court of Virginia. Parties to the case shall include any person who is subject to an order of quarantine and has filed an appeal of such order with the circuit court and the State Health Commissioner.

H. Appeals of any final order of any circuit court regarding the State Health Commissioner's petition for review and confirmation or extension of an order of quarantine or any appeal of an order of quarantine by a person or persons who are subject to such order shall be appealable directly to the Supreme Court of Virginia, with an expedited review in accordance with the rules of the court pursuant to subsection C of § 17.1-503.

I. Appeals of any circuit court order relating to an order of quarantine shall not stay any order of quarantine.

J. Persons requesting judicial review of any order of quarantine shall have the right to be represented by an attorney in all proceedings. If the person is unable to afford an attorney, counsel shall be appointed for the person by the circuit court for the jurisdiction in which the person or persons who are subject to the order of quarantine reside or, in the case of an affected area, by the circuit

court for the jurisdiction or jurisdictions for the affected area. Counsel so appointed shall be paid at a rate established by the Supreme Court of Virginia from the Commonwealth's criminal fund.

§ 32.1-48.11. Isolation may be ordered under certain exceptional circumstances; Commissioner authorized to require hospitalization or other health care.

A. Whenever the State Health Commissioner makes a determination of exceptional circumstances pursuant to § 32.1-48.05 and that the isolation procedures set forth in Article 3.01 (§ 32.1-48.01 et seq.) of this chapter are insufficient control measures to contain a communicable disease of public health threat, the isolation procedures herein may be invoked.

B. The State Health Commissioner may order the isolation of a person or persons upon a finding that (i) such person or persons are infected with or may reasonably be suspected to be infected with a communicable disease of public health threat and (ii) isolation is necessary to protect the public health, to ensure such isolated person or persons receive appropriate medical treatment, and to protect health care providers and others who may come into contact with such infected person or persons.

C. The State Health Commissioner shall record his findings and any information on which he has relied in making the finding required for isolation pursuant to this section. The State Health Commissioner's record of findings concerning any communicable disease of public health threat that is involved in an order of isolation shall be confidential and shall not be disclosed in accordance with subdivision A 88 of § 2.2-3705.

D. The Commissioner may order the isolated person or persons to remain in their places of residence, to remain in another place where they are present, or to report to a place or facility designated by the Commissioner for the duration of their isolation. An electronic device may be used to enforce any such isolation. The Commissioner's order of isolation shall be for a duration consistent with the known course of such communicable disease of public health threat or, if the course of the disease is unknown or uncertain, for a period consistent with the probable course of the communicable disease of public health threat.

E. To the extent that persons subject to an order of isolation pursuant to this article require hospitalization or other health care services, the State Health Commissioner shall be authorized to require that such services be provided.

F. The State Health Commissioner shall also have the authority to monitor the medical condition of any person or persons subject to an order of isolation pursuant to this article through regular visits by public health nurses or such other means as the Commissioner shall determine to be necessary.

§ 32.1-48.12. Isolation order.

A. The State Health Commissioner shall, prior to placing any person or persons in isolation, prepare a written order of isolation that shall: (i) identify the person or persons subject to such order of isolation; (ii) identify the site of isolation, which may, in the Commissioner's discretion, include the residence of any isolated individual; (iii) specify the date and time that isolation is to commence; (iv) identify the communicable disease of public health threat or the suspected communicable disease of public health threat with which the person or persons are known to be infected or reasonably suspected to be infected; (v) specify the bases for isolation, including why isolation is the necessary means to contain transmission of the disease, and any conditions of the isolation; (vi) provide timely opportunities, if not readily available under the circumstances, for the person or person who are subject to the order to notify employers, next of kin or legally authorized representatives and the attorneys of their choice of the situation; (vii) specify the penalty or penalties that may be imposed for noncompliance with order of isolation pursuant to § 32.1-27; and (viii) include a copy of § 32.1-48.13 to inform any person or persons subject to an order of isolation of the right to seek judicial review or the order.

B. No affected area shall be the subject of an order of isolation prepared by the State Health Commissioner unless the Governor, pursuant to the authority vested in him pursuant to Chapter 3.2 (§ 44-146.13 et seq.) of Title 44, has declared a state of emergency for such affected area of the Commonwealth.

C. The order of isolation shall be delivered to any person or persons affected by the isolation, in so far as practicable. However, if, in the opinion of the State Health Commissioner, the number of isolated persons is too great to make delivery of copies of the order of isolation to each person possible in a timely manner, or if the order of isolation designates an affected area instead of a specific person or persons, the State Health Commissioner shall cause the order of isolation to be communicated to the persons residing or located in the affected area.

D. The State Health Commissioner shall, as soon as practicable following the issuance of an order of isolation, file a petition seeking an ex parte court order to review and confirm, or if necessary, to extend the isolation.

E. The petition shall be filed in the circuit court for the city or county in which the person or persons resides or, in the case of an affected area, in the circuit court of the affected jurisdiction or jurisdictions.

F. The petition shall include (i) a copy of the order of isolation or all information contained in the State Health Commissioner's order of isolation in some other format and (ii) a summary of the findings



on which the Commissioner relied in determining that an order of isolation was required to contain the transmission of the communicable disease of public health threat.

G. In reviewing any petition for review and confirmation or extension of the order of isolation, the court shall give due deference to the specialized expertise of the State Health Commissioner. The court shall grant the petition to confirm or extend the isolation upon finding probable cause that isolation was the necessary means and remains the least restrictive environment to address the public health threat effectively, given the reasonably available information on effective control measures and the nature of the communicable disease of public health threat.

H. The State Health Commissioner may, if he reasonably believes that public disclosure of the information contained in the order of isolation or the petition for review and confirmation or extension of the order of isolation will exacerbate the public health threat or compromise any current or future criminal investigation or compromise national security, file some or all of any petition to extend an order of isolation under seal. After reviewing any information filed under seal by the State Health Commissioner, the court shall reseal the relevant materials to the extent necessary to protect public health and safety.

I. The State Health Commissioner shall ensure that the protected health information of any person or persons subject to the order of isolation shall only be disclosed in compliance with the regulations relating to privacy of health records promulgated by the federal Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996.

**§ 32.1-48.13. Appeal of any order of isolation.**

A. Any person or persons subject to an order of isolation or a court-ordered confirmation or extension of any such order pursuant to this article may file an appeal of the order of isolation in the circuit court for the city or county in which such person or persons reside or, in the case of an affected area, in the circuit court for any affected jurisdiction or jurisdictions. Any petition for appeal shall be in writing, shall set forth the grounds on which the order of isolation is being challenged vis-a-vis the subject person or persons or affected area, and shall be served upon the State Health Commissioner or his legal representative.

B. A hearing on the appeal of the order of isolation shall be held within 48 hours of the filing of the petition for appeal or, if the 48-hour period terminates on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the hearing shall be held on the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

In extraordinary circumstances, for good cause shown, the Commissioner may request a continuance of the hearing, which the court shall only grant after giving due regard to the rights of the affected individuals, the protection of the public health and safety, the severity of the emergency, and the availability of witnesses and evidence.

C. Any person appealing an order of isolation shall have the burden of proving that he is not properly the subject of the order of isolation.

D. An appeal shall not stay any order of isolation.

E. Upon receiving multiple appeals of an order of isolation, the court may, on the motion of any party or on the court's own motion, consolidate the cases in a single proceeding for all appeals when (i) there are common questions of law or fact relating to the individual claims or rights to be determined; (ii) the claims of the consolidated cases are substantially similar; and (iii) all parties to the appeals will be adequately represented in the consolidation.

F. The circuit court shall not conduct a de novo review of the order of isolation; however, the court shall consider the existing record and such supplemental evidence as the court shall consider relevant. The court shall conduct the hearing on an appeal of an order of isolation in a manner that will protect the health and safety of court personnel, counsels, witnesses, and the general public and in accordance with rules of the Supreme Court of Virginia pursuant to subsection C of § 17.1-503. The court may, for good cause shown, hold all or any portion of the hearings in camera upon motion of any party or the court's own motion.

G. Upon completion of the hearing, the court may (i) vacate or modify the order of isolation as such order applies to any person who filed the appeal and who is not, according to the record and the supplemental evidence, appropriately subject to the order of isolation; (ii) vacate or modify the order of isolation as such order applies to all persons who filed an appeal and who are not, according to the record and the supplemental evidence, appropriately subject to the order of isolation; (iii) confirm the order of isolation as it applies to any person or all appealing parties upon a finding that such person or persons are appropriately subject to the order of isolation and that isolation is being implemented in the least restrictive environment to address the public health threat effectively, given the reasonably available information on effective infection control measures and the nature of the communicable disease of public health threat; or (iv) confirm the order of isolation as it applies to all persons subject to the order upon finding that all such persons are appropriately subject to the order of isolation and that isolation is being implemented in the least restrictive environment to address the public health threat effectively given the reasonably available information on effective control measures and the nature of the communicable disease of public health threat.

*In any case in which the court shall vacate the order of isolation as it applies to any person who has filed a request for review of such order and who is subject to such order or as it applies to all persons seeking judicial review who are subject to such order, the person or persons shall be immediately released from isolation unless such order to vacate the isolation shall be stayed by the filing of an appeal to the Supreme Court of Virginia. Any party to the case may file an appeal of the circuit court decisions to the Supreme Court of Virginia. Parties to the case shall include any person who is subject to an order of isolation and has filed an appeal of such order with the circuit court and the State Health Commissioner.*

*H. Appeals of any final order of any circuit court regarding the State Health Commissioner's petition for review and confirmation or extension of an order of isolation or any appeal of an order of isolation by a person or persons who are subject to such order shall be appealable directly to the Supreme Court of Virginia, with an expedited review in accordance with the rules of the court pursuant to subsection C of § 17.1-503.*

*I. Appeals of any circuit court order relating to an order of isolation shall not stay any order of isolation.*

*J. Persons appealing any order of isolation shall have the right to be represented by an attorney in all proceedings. If the person is unable to afford an attorney, counsel shall be appointed for the person by the circuit court for the jurisdiction in which the person or persons who are subject to the order of isolation reside or, in the case of an affected area, by the circuit court for the jurisdiction or jurisdictions for the affected area. Counsel so appointed shall be paid at a rate established by the Supreme Court of Virginia from the Commonwealth's criminal fund.*

*§ 32.1-48.14. Enforcement of orders of quarantine or isolation; penalties.*

*A. Any person who does not comply with a validly issued order of quarantine or order of isolation issued pursuant to this article shall be subject to the penalties provided in § 32.1-27, including, upon conviction, a Class 1 misdemeanor and payment of civil penalties.*

*B. Upon finding that there is probable cause to believe that any person or persons who are subject to an order of quarantine or an order of isolation may fail or refuse to comply with such order, the State Health Commissioner may issue an emergency detention order pursuant to this article requiring such person or persons to be taken immediately into custody and detained for the duration of the order of quarantine or isolation or until the Commissioner determines that the risk of noncompliance is no longer present.*

*Any person or persons so detained shall be held in the least restrictive environment that can provide any required health care or other services for such person.*

*C. Any order of quarantine or isolation shall be enforced by law-enforcement agencies, as directed by the State Health Commissioner. Any enforcement authority directed to law-enforcement agencies by the Commissioner shall expressly include, but need not be limited to, the power to detain or arrest any person or persons identified as, or for whom probable cause exists that he may be, in violation of any order of quarantine or order of isolation.*

*To implement an emergency detention order, any law-enforcement officer shall take the subject of the emergency detention order into custody immediately upon the issuance of the emergency detention order by the Commissioner.*

*D. Every attorney for the Commonwealth shall have the duty to prosecute, without delay, any violation of this chapter in accordance with the penalties set forth in § 32.1-27.*

*§ 32.1-48.15. Authorization to disclose health records.*

*A. The provisions of this article are hereby declared to be necessary to prevent serious harm and serious threats to the health and safety of individuals and the public in Virginia for purposes of authorizing the State Health Commissioner or his designee to examine and review any health records of any person or persons subject to any order of quarantine or order of isolation pursuant to this article and the regulations of the Department of Health and Human Services promulgated in compliance with the Health Insurance Portability and Accountability Act of 1996, as amended. The State Health Commissioner shall authorize any designee in writing to so examine and review any health records of any person or persons subject to any order of quarantine or order of isolation pursuant to this article.*

*B. Pursuant to the regulations concerning patient privacy promulgated by the federal Department of Health and Human Services, covered entities may disclose protected health information to the State Health Commissioner or his designee without obtaining consent or authorization for such disclosure from the person who is the subject of the records. Such protected health information shall be used to facilitate the health care of any person or persons who are subject to an order of quarantine or an order of isolation. The State Health Commissioner or his designee shall only redisclose such protected health information in compliance with the aforementioned federal regulations. Further, the protected health information disclosed to the State Health Commissioner or his designee shall be held confidential and shall not be disclosed pursuant to the provisions of subdivision A 88 of § 2.2-3705.*

*§ 32.1-48.16. Immunity from liability.*

*Any person who, in good faith and in the performance of his duties, acts in compliance with this article and the Board of Health's regulations shall not be liable for any civil damages for any act or*

*omission resulting from such actions unless such act or omission was the result of gross negligence or willful misconduct.*

*§ 32.1-48.17. Use of public or private property or facilities.*

*A. Upon the declaration by the Governor of a state of emergency pursuant to § 44-146.17, the State Health Commissioner, acting in concert with the Governor, shall be authorized to require the use of any public or private property, building or facility to implement any order of quarantine or order of isolation. The State Health Commissioner and the Governor shall find, together, that the use of the property, building or facility is necessary and appropriate to enforce an order of quarantine or an order of isolation in the least restrictive environment.*

*B. If the Commissioner and the Governor elect to use any public or private property, building or facility pursuant to this article and this section, the Commissioner shall make accommodations, in conjunction with the owner or operator of the property, building or facility, for persons who are employed in, using or occupying the property, building or facility and who are not covered by the relevant order of quarantine or order of isolation.*

*C. Owners or operators of any property, building or facility so commandeered shall be entitled to compensation.*

*§ 32.1-116.3. Reporting of communicable diseases; definition.*

*A. For the purposes of this section,:*

*"Communicable diseases" means any airborne infection or disease, including, but not limited to, tuberculosis, measles, certain meningococcal infections, mumps, chicken pox and Hemophilus Influenzae Type b, and those transmitted by contact with blood or other human body fluids, including, but not limited to, human immunodeficiency virus, Hepatitis B and Non-A, Non-B Hepatitis.*

*"Communicable disease of public health threat" means an illness of public health significance, as determined by the State Health Commissioner in accordance with regulations of the Board of Health, caused by a specific or suspected infectious agent that may be reasonably expected or is known to be readily transmitted directly or indirectly from one individual or person to another or to uninfected persons through airborne or nonairborne means and has been found to create a risk of death or significant injury or impairment; this definition shall not, however, be construed to include human immunodeficiency viruses or tuberculosis, unless used as a bioterrorism weapon. "Individual" shall include any companion animal.*

*B. Every licensed health care facility which transfers or receives patients via emergency medical services ambulances or mobile intensive care units shall notify the emergency medical services agencies providing such patient transport of the name and telephone number of the individual who is the infection control practitioner with the responsibility of investigating exposure to infectious diseases in the facility.*

*Every licensed emergency medical services agency established in the Commonwealth shall notify all facilities to which they transport patients or from which they transfer patients of the names and telephone numbers of the members, not to exceed three persons, who have been appointed to serve as the communicable disease liaison officers. Every licensed emergency medical services agency shall implement universal precautions and shall ensure that these precautions are appropriately followed and enforced.*

*C. Upon requesting any licensed emergency medical services agency to transfer (i) a patient who is known to be positive for or who suffers from any communicable disease which, in the judgment of the physician authorizing the transfer or the facility's infection control practitioner, presents any risk to the transporting emergency medical services personnel or to patients who may be subsequently transported in the same vehicle, or (ii) a patient who is known to be subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title, the transferring facility shall inform the attendant-in-charge of the transferring crew of the general condition of the patient and the types of precautions to be taken to prevent the spread of the disease. The identity of the patient shall be confidential.*

*D. If any firefighter, law-enforcement officer, emergency medical services technician or paramedic has an exposure of blood or body fluid to mucous membrane, non-intact skin, or a contaminated needlestick injury, his communicable disease liaison officer shall be notified, a report completed and the infection control practitioner at the receiving facility notified.*

*E. If, during the course of medical care and treatment, any physician determines that a patient who was transported to a receiving facility by any licensed emergency medical services agency (i) is positive for or has been diagnosed as suffering from an airborne infectious disease or (ii) is subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title, then the infection control practitioner in the facility shall immediately notify the communicable disease liaison officer who represents the transporting emergency medical services agency of the name of the patient, and the date and time of the patient's admittance to the facility. The communicable disease liaison officer for the transporting emergency medical services agency shall investigate the incident to determine if any exposure of emergency medical services personnel or other emergency personnel occurred. The identity of the patient and all personnel involved in any such investigation shall be confidential.*

F. If any firefighter, law-enforcement officer, emergency medical services technician or paramedic shall be exposed to a communicable disease, the communicable disease liaison officer shall immediately notify the infection control practitioner of the receiving facility. The infection control practitioner of the facility shall conduct an investigation and provide information concerning the extent and severity of the exposure and the recommended course of action to the communicable disease liaison officer of the transporting agency. This section shall not be construed to create a duty by the receiving facility to perform any test or tests beyond those necessary for the medical management of the patient delivered by an emergency medical services agency to the receiving facility nor shall it affect the operation of the provisions of § 32.1-45.1.

G. Any person requesting or requiring any employee of a public safety agency as defined in subsection J of § 32.1-45.2 to arrest, transfer, or otherwise exercise custodial supervision over an individual known to the requesting person *(i) to be infected with any communicable disease or (ii) to be subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title* shall inform such public safety agency employee of a potential risk of exposure to a communicable disease.

H. Local or state correctional facilities which transfer patients known to have a communicable disease *or to be subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title* shall notify the emergency medical services agency providing transportation services of a potential risk of exposure to a communicable disease, *including a communicable disease of public health threat*. For the purposes of this section, the chief medical person at a local or state correctional facility or the facility director or his designee shall be responsible for providing such information to the transporting agency.

I. Any person who, as a result of this provision, becomes aware of the identity or condition of a person known to be *(i) positive for or to suffer from any communicable disease, or to have suffered exposure to a communicable disease or (ii) subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title*, shall keep such information confidential, except as expressly authorized by this provision.

J. No person known to be *(i) positive for or to suffer from any communicable disease, including any communicable disease of public health threat, or (ii) subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title*, shall be refused transportation or service for that reason by an emergency medical services, law-enforcement, or public safety agency.

#### § 32.1-127.1:03. Patient health records privacy.

A. There is hereby recognized a patient's right of privacy in the content of a patient's medical record. Patient records are the property of the provider maintaining them, and, except when permitted by this section or by another provision of state or federal law, no provider, or other person working in a health care setting, may disclose the records of a patient.

Patient records shall not be removed from the premises where they are maintained without the approval of the provider, except in accordance with a court order or subpoena consistent with § 8.01-413 C or with this section or in accordance with the regulations relating to change of ownership of patient records promulgated by a health regulatory board established in Title 54.1.

No person to whom disclosure of patient records was made by a patient or a provider shall redisclose or otherwise reveal the records of a patient, beyond the purpose for which such disclosure was made, without first obtaining the patient's specific consent to such redisclosure. This redisclosure prohibition shall not, however, prevent (i) any provider who receives records from another provider from making subsequent disclosures as permitted under this section and the federal Department of Health and Human Services regulations relating to the electronic transmission of data and patient privacy promulgated as required by the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) or (ii) any provider from furnishing records and aggregate or other data, from which patient-identifying prescription information has been removed, encoded or encrypted, to qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health services research.

B. As used in this section:

"Agent" means a person who has been appointed as a patient's agent under a power of attorney for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

"Certification" means a written representation that is delivered by hand, by first-class mail, by overnight delivery service, or by facsimile if the sender obtains a facsimile-machine-generated confirmation reflecting that all facsimile pages were successfully transmitted.

"Guardian" means a court-appointed guardian of the person.

"Health services" includes, but is not limited to, examination, diagnosis, evaluation, treatment, pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind.

"Parent" means a biological, adoptive or foster parent.

"Patient" means a person who is receiving or has received health services from a provider.

"Patient-identifying prescription information" means all prescriptions, drug orders or any other

prescription information that specifically identifies an individual patient.

"Provider" shall have the same meaning as set forth in the definition of "health care provider" in § 8.01-581.1, except that state-operated facilities shall also be considered providers for the purposes of this section. Provider shall also include all persons who are licensed, certified, registered or permitted by any of the health regulatory boards within the Department of Health Professions, except persons regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Record" means any written, printed or electronically recorded material maintained by a provider in the course of providing health services to a patient concerning the patient and the services provided. "Record" also includes the substance of any communication made by a patient to a provider in confidence during or in connection with the provision of health services to a patient or information otherwise acquired by the provider about a patient in confidence and in connection with the provision of health services to the patient.

C. The provisions of this section shall not apply to any of the following:

1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia Workers' Compensation Act;
2. Except where specifically provided herein, the records of minor patients; or
3. The release of juvenile records to a secure facility or a shelter care facility pursuant to § 16.1-248.3.

D. Providers may disclose the records of a patient:

1. As set forth in subsection E of this section, pursuant to the written consent of the patient or in the case of a minor patient, his custodial parent, guardian or other person authorized to consent to treatment of minors pursuant to § 54.1-2969; also, in emergency cases or situations where it is impractical to obtain the patient's written consent, pursuant to the patient's oral consent for a provider to discuss the patient's records with a third party specified by the patient;

2. In compliance with a subpoena issued in accord with subsection H of this section, pursuant to court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C of § 8.01-413;

3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure is reasonably necessary to establish or collect a fee or to defend a provider or the provider's employees or staff against any accusation of wrongful conduct; also as required in the course of an investigation, audit, review or proceedings regarding a provider's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity;

4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

5. In compliance with the provisions of § 8.01-413;

6. As required or authorized by law relating to public health activities, health oversight activities, serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease, public safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283, 32.1-283.1, 37.1-98.2, 53.1-40.10, 54.1-2403.3, 54.1-2506, 54.1-2906, 54.1-2907, 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 63.2-1606 and 63.2-1509;

7. Where necessary in connection with the care of the patient, including in the implementation of a hospital routine contact process;

8. In the normal course of business in accordance with accepted standards of practice within the health services setting; however, the maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a pharmacy registered or permitted in Virginia shall only be accomplished in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412;

9. When the patient has waived his right to the privacy of the medical records;

10. When examination and evaluation of a patient are undertaken pursuant to judicial or administrative law order, but only to the extent as required by such order;

11. To the guardian ad litem in the course of a guardianship proceeding of an adult patient authorized under Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1;

12. To the attorney appointed by the court to represent a patient in a civil commitment proceeding under § 37.1-67.3;

13. To the attorney and/or guardian ad litem of a minor patient who represents such minor in any judicial or administrative proceeding, provided that the court or administrative hearing officer has entered an order granting the attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the provider of such order;

14. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's records in accord with § 9.1-156;

15. To an agent appointed under a patient's power of attorney or to an agent or decision maker designated in a patient's advance directive for health care or for decisions on anatomical gifts and organ, tissue or eye donation or to any other person consistent with the provisions of the Health Care Decisions Act (§ 54.1-2981 et seq.);

16. To third-party payors and their agents for purposes of reimbursement;

17. As is necessary to support an application for receipt of health care benefits from a governmental agency or as required by an authorized governmental agency reviewing such application or reviewing benefits already provided or as necessary to the coordination of prevention and control of disease, injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

18. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

19. In accord with *subsection B of § 54.1-2400.1 B*, to communicate a patient's specific and immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

20. To the patient, except as provided in subsections E and F of this section and subsection B of § 8.01-413;

21. In the case of substance abuse records, when permitted by and in conformity with requirements of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;

22. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the adequacy or quality of professional services or the competency and qualifications for professional staff privileges;

23. If the records are those of a deceased or mentally incapacitated patient to the personal representative or executor of the deceased patient or the legal guardian or committee of the incompetent or incapacitated patient or if there is no personal representative, executor, legal guardian or committee appointed, to the following persons in the following order of priority: a spouse, an adult son or daughter, either parent, an adult brother or sister, or any other relative of the deceased patient in order of blood relationship;

24. For the purpose of conducting record reviews of inpatient hospital deaths to promote identification of all potential organ, eye, and tissue donors in conformance with the requirements of applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the provider's designated organ procurement organization certified by the United States Health Care Financing Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks;

25. To the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services pursuant to Chapter 16 (§ 37.1-255 et seq.) of Title 37.1;

26. (Expires July 1, 2006) To an entity participating in the activities of a local health partnership authority established pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4 of Title 32.1, pursuant to subdivision D 1 of this section; ~~and~~

27. To law-enforcement officials by each licensed emergency medical services agency, (i) when the patient is the victim of a crime or (ii) when the patient has been arrested and has received emergency medical services or has refused emergency medical services and the records consist of the prehospital patient care report required by § 32.1-116.1; *and*

28. *To the State Health Commissioner pursuant to § 32.1-48.15 when such records are those of a person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title.*

E. Requests for copies of medical records shall (i) be in writing, dated and signed by the requester; (ii) identify the nature of the information requested; and (iii) include evidence of the authority of the requester to receive such copies and identification of the person to whom the information is to be disclosed. The provider shall accept a photocopy, facsimile, or other copy of the original signed by the requestor as if it were an original. Within 15 days of receipt of a request for copies of medical records, the provider shall do one of the following: (i) furnish such copies to any requester authorized to receive them; (ii) inform the requester if the information does not exist or cannot be found; (iii) if the provider does not maintain a record of the information, so inform the requester and provide the name and address, if known, of the provider who maintains the record; or (iv) deny the request (a) under subsection F, (b) on the grounds that the requester has not established his authority to receive such records or proof of his identity, or (c) as otherwise provided by law. Procedures set forth in this section shall apply only to requests for records not specifically governed by other provisions of this Code, federal law or state or federal regulation.

F. Except as provided in subsection B of § 8.01-413, copies of a patient's records shall not be furnished to such patient or anyone authorized to act on the patient's behalf where the patient's attending physician or the patient's clinical psychologist has made a part of the patient's record a written statement that, in his opinion, the furnishing to or review by the patient of such records would be injurious to the patient's health or well-being. If any custodian of medical records denies a request for copies of records based on such statement, the custodian shall permit examination and copying of the medical record by another such physician or clinical psychologist selected by the patient, whose licensure, training and experience relative to the patient's condition are at least equivalent to that of the physician or clinical psychologist upon whose opinion the denial is based. The person or entity denying the request shall inform the patient of the patient's right to select another reviewing physician or clinical psychologist under this subsection who shall make a judgment as to whether to make the record available to the patient. Any record copied for review by the physician or clinical psychologist selected by the patient

shall be accompanied by a statement from the custodian of the record that the patient's attending physician or clinical psychologist determined that the patient's review of his record would be injurious to the patient's health or well-being.

G. A written consent to allow release of patient records may, but need not, be in the following form:

**CONSENT TO RELEASE OF CONFIDENTIAL HEALTH CARE  
INFORMATION**

Patient Name.....

Provider Name.....

Person, agency or provider to whom disclosure is to be made .....

Person, agency or provider to whom disclosure is to be made .....

Information or Records to be disclosed .....

As the person signing this consent, I understand that I am giving my permission to the above-named provider or other named third party for disclosure of confidential health care records. I also understand that I have the right to revoke this consent, but that my revocation is not effective until delivered in writing to the person who is in possession of my records. A copy of this consent and a notation concerning the persons or agencies to whom disclosure was made shall be included with my original records. The person who receives the records to which this consent pertains may not redisclose them to anyone else without my separate written consent unless such recipient is a provider who makes a disclosure permitted by law.

This consent expires on (date) .....

Signature of Patient.....

H. Pursuant to this subsection:

1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or administrative action or proceeding shall request the issuance of a subpoena duces tecum for another party's medical records or cause a subpoena duces tecum to be issued by an attorney unless a copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the other party's counsel or to the other party if pro se, simultaneously with filing the request or issuance of the subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces tecum for the medical records of a nonparty witness unless a copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the request or issuance of the attorney-issued subpoena.

No subpoena duces tecum for medical records shall set a return date earlier than 15 days from the date of the subpoena except by order of a court or administrative agency for good cause shown. When a court or administrative agency directs that medical records be disclosed pursuant to a subpoena duces tecum earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the subpoena.

Any party requesting a subpoena duces tecum for medical records or on whose behalf the subpoena duces tecum is being issued shall have the duty to determine whether the patient whose records are being sought is pro se or a nonparty.

In instances where medical records being subpoenaed are those of a pro se party or nonparty witness, the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness together with the copy of the request for subpoena, or a copy of the subpoena in the case of an attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall include the following language and the heading shall be in boldface capital letters:

**NOTICE TO PATIENT**

The attached document means that (insert name of party requesting or causing issuance of the subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has been issued by the other party's attorney to your doctor or other health care providers (names of health care providers inserted here) requiring them to produce your medical records. Your doctor or other health care provider is required to respond by providing a copy of your medical records. If you believe your records should not be disclosed and object to their disclosure, you have the right to file a motion with the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued subpoena. You may contact the clerk's office or the administrative agency to determine the requirements that must be satisfied when filing a motion to quash and you may elect to contact an attorney to represent your interest. If you elect to file a motion to quash, you must notify your doctor or other health care provider(s) that you are filing the motion so that the provider knows to send the records to the clerk of court or administrative agency in a sealed envelope or package for safekeeping while your motion is decided.

2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued

for a patient's medical records shall include a Notice to Providers in the same part of the request in which the provider is directed where and when to return the records. Such notice shall be in boldface capital letters and shall include the following language:

**NOTICE TO PROVIDERS**

A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO YOUR PATIENT OR YOUR PATIENT'S COUNSEL. YOU OR YOUR PATIENT HAVE THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.

YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:

NO MOTION TO QUASH WAS FILED; OR

ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH SUCH RESOLUTION.

IF YOU RECEIVE NOTICE THAT YOUR PATIENT HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE RECORDS ONLY TO THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE FOLLOWING PROCEDURE:

PLACE THE RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY WHICH STATES THAT CONFIDENTIAL HEALTH CARE RECORDS ARE ENCLOSED AND ARE TO BE HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA. THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE AGENCY.

3. Upon receiving a valid subpoena duces tecum for medical records, health care providers shall have the duty to respond to the subpoena in accordance with the provisions of subdivisions 4, 5, 6, 7, and 8.

4. Except to deliver to a clerk of the court or administrative agency subpoenaed medical records in a sealed envelope as set forth, health care providers shall not respond to a subpoena duces tecum for such medical records until they have received a certification as set forth in subdivisions 5 or 8 of this subsection from the party on whose behalf the subpoena duces tecum was issued.

If the health care provider has actual receipt of notice that a motion to quash the subpoena has been filed or if the health care provider files a motion to quash the subpoena for medical records, then the health care provider shall produce the records, in a securely sealed envelope, to the clerk of the court or administrative agency issuing the subpoena or in whose court or administrative agency the action is pending. The court or administrative agency shall place the records under seal until a determination is made regarding the motion to quash. The securely sealed envelope shall only be opened on order of the judge or administrative agency. In the event the court or administrative agency grants the motion to quash, the records shall be returned to the health care provider in the same sealed envelope in which they were delivered to the court or administrative agency. In the event that a judge or administrative agency orders the sealed envelope to be opened to review the records in camera, a copy of the order shall accompany any records returned to the provider. The records returned to the provider shall be in a securely sealed envelope.

5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the subpoenaed health care provider that the time for filing a motion to quash has elapsed and that no motion to quash was filed. Any provider receiving such certification shall have the duty to comply with the subpoena duces tecum by returning the specified medical records by either the return date on the subpoena or 5 *five* days after receipt of the certification, whichever is later.

6. In the event that the individual whose records are being sought files a motion to quash the subpoena, the court or administrative agency shall decide whether good cause has been shown by the discovering party to compel disclosure of the patient's private records over the patient's objections. In determining whether good cause has been shown, the court or administrative agency shall consider (i) the particular purpose for which the information was collected; (ii) the degree to which the disclosure of the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or proceeding; and (v) any other relevant factor.

7. Concurrent with the court or administrative agency's resolution of a motion to quash, if subpoenaed medical records have been submitted by a health care provider to the court or administrative agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no submitted medical records should be disclosed, return all submitted medical records to the provider in a



sealed envelope; (ii) upon determining that all submitted medical records should be disclosed, provide all the submitted medical records to the party on whose behalf the subpoena was issued; or (iii) upon determining that only a portion of the submitted medical records should be disclosed, provide such portion to the party on whose behalf the subpoena was issued and return the remaining medical records to the provider in a sealed envelope.

8. Following the court or administrative agency's resolution of a motion to quash, the party on whose behalf the subpoena duces tecum was issued shall have the duty to certify in writing to the subpoenaed health care provider a statement of one of the following:

a. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the medical records previously delivered in a sealed envelope to the clerk of the court or administrative agency will not be returned to the provider;

b. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are consistent with such resolution and that, since no medical records have previously been delivered to the court or administrative agency by the provider, the provider shall comply with the subpoena duces tecum by returning the medical records designated in the subpoena by the return date on the subpoena or five days after receipt of certification, whichever is later;

c. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no medical records shall be disclosed and all medical records previously delivered in a sealed envelope to the clerk of the court or administrative agency will be returned to the provider;

d. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only limited disclosure has been authorized. The certification shall state that only the portion of the records as set forth in the certification, consistent with the court or administrative agency's ruling, shall be disclosed. The certification shall also state that medical records that were previously delivered to the court or administrative agency for which disclosure has been authorized will not be returned to the provider; however, all medical records for which disclosure has not been authorized will be returned to the provider; or

e. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no medical records have previously been delivered to the court or administrative agency by the provider, the provider shall return only those records specified in the certification, consistent with the court or administrative agency's ruling, by the return date on the subpoena or five days after receipt of the certification, whichever is later.

A copy of the court or administrative agency's ruling shall accompany any certification made pursuant to this subdivision.

9. The provisions of this subsection have no application to subpoenas for medical records requested under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation, audit, review or proceedings regarding a provider's conduct.

The provisions of this subsection apply to the medical records of both minors and adults.

Nothing in this subsection shall have any effect on the existing authority of a court or administrative agency to issue a protective order regarding medical records, including, but not limited to, ordering the return of medical records to a health care provider, after the period for filing a motion to quash has passed.

A subpoena for substance abuse records must conform to the requirements of federal law found in 42 C.F.R. Part 2, Subpart E.

I. Providers may testify about the medical records of a patient in compliance with §§ 8.01-399 and 8.01-400.2.

§ 44-146.16. Definitions.

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

(1) "Natural disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire or other natural catastrophe resulting in damage, hardship, suffering or possible loss of life;

(2) "Man-made disaster" means any condition following an attack by any enemy or foreign nation upon the United States resulting in substantial damage of property or injury to persons in the United States and may be by use of bombs, missiles, shell fire, nuclear, radiological, chemical or biological means or other weapons or by overt paramilitary actions; terrorism; foreign and domestic; also any industrial, nuclear or transportation accident, explosion, conflagration, power failure, resources shortage or other condition such as sabotage, oil spills and other injurious environmental contaminations, which threaten or cause damage to property, human suffering, hardship or loss of life;

"Communicable disease of public health threat" means an illness of public health significance, as determined by the State Commissioner of Health in accordance with regulations of the Board of Health,

*caused by a specific or suspected infectious agent that may be reasonably expected or is known to be readily transmitted directly or indirectly from one individual to another and has been found to create a risk of death or significant injury or impairment; this definition shall not, however, be construed to include human immunodeficiency viruses or tuberculosis, unless used as a bioterrorism weapon. "Individual" shall include any companion animal. Further, whenever "person or persons" is used in Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1, it shall be deemed, when the context requires it, to include any individual;*

*"Discharge" means spillage, leakage, pumping, pouring, seepage, emitting, dumping, emptying, injecting, escaping, leaching, fire, explosion, or other releases;*

*(2a) "Emergency" means any occurrence, or threat thereof, whether natural or man-made, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property or natural resources and may involve governmental action beyond that authorized or contemplated by existing law because governmental inaction for the period required to amend the law to meet the exigency would work immediate and irrevocable harm upon the citizens or the environment of the Commonwealth or some clearly defined portion or portions thereof;*

*(3) "Emergency services" means the preparation for and the carrying out of functions, other than functions for which military forces are primarily responsible, to prevent, minimize and repair injury and damage resulting from natural or man-made disasters, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions. These functions include, without limitation, fire-fighting services, police services, medical and health services, rescue, engineering, warning services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, emergency resource management, existing or properly assigned functions of plant protection, temporary restoration of public utility services, and other functions related to civilian protection. These functions also include the administration of approved state and federal disaster recovery and assistance programs;*

*"Hazard mitigation" means any action taken to reduce or eliminate the long-term risk to human life and property from natural hazards;*

*"Hazardous substances" means all materials or substances which now or hereafter are designated, defined, or characterized as hazardous by law or regulation of the Commonwealth or regulation of the United States government;*

*"Interjurisdictional agency for emergency management" is any organization established between contiguous political subdivisions to facilitate the cooperation and protection of the subdivisions in the work of disaster prevention, preparedness, response, and recovery;*

*"Local emergency" means the condition declared by the local governing body when in its judgment the threat or actual occurrence of an emergency or disaster is or threatens to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby; provided, however, that a local emergency arising wholly or substantially out of a resource shortage may be declared only by the Governor, upon petition of the local governing body, when he deems the threat or actual occurrence of such an emergency or disaster to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby; provided, however, nothing in this chapter shall be construed as prohibiting a local governing body from the prudent management of its water supply to prevent or manage a water shortage;*

*"Local emergency management organization" means an organization created in accordance with the provisions of this chapter by local authority to perform local emergency service functions;*

*(4) "Major disaster" means any natural catastrophe, including any: hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm or drought, or regardless of cause, any fire, flood, or explosion, in any part of the United States, which, in the determination of the President of the United States is, or thereafter determined to be, of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act (P.L. 43-288 as amended) to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby and is so declared by him;*

*"Man-made disaster" means any condition following an attack by any enemy or foreign nation upon the United States resulting in substantial damage of property or injury to persons in the United States and may be by use of bombs, missiles, shell fire, nuclear, radiological, chemical or biological means or other weapons or by overt paramilitary actions; terrorism, foreign and domestic; also any industrial, nuclear or transportation accident, explosion, conflagration, power failure, resources shortage or other condition such as sabotage, oil spills and other injurious environmental contaminations that threaten or cause damage to property, human suffering, hardship or loss of life;*

*"Natural disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire or other natural catastrophe resulting in damage, hardship, suffering or possible loss of life;*

*"Political subdivision" means any city or county in the Commonwealth and for the purposes of this chapter, the Town of Chincoteague and any town of more than 5,000 population that chooses to have an emergency management program separate from that of the county in which such town is located;*

*"Resource shortage" means the absence, unavailability or reduced supply of any raw or processed natural resource, or any commodities, goods or services of any kind that bear a substantial relationship to the health, safety, welfare and economic well-being of the citizens of the Commonwealth;*

(5) "State of emergency" means the condition declared by the Governor when in his judgment, the threat or actual occurrence of an emergency or a disaster in any part of the Commonwealth is of sufficient severity and magnitude to warrant disaster assistance by the Commonwealth to supplement the efforts and available resources of the several localities, and relief organizations in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby and is so declared by him;

(6) "Local emergency" means the condition declared by the local governing body when in its judgment the threat or actual occurrence of an emergency or disaster is or threatens to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby; provided, however, that a local emergency arising wholly or substantially out of a resource shortage may be declared only by the Governor, upon petition of the local governing body, when he deems the threat or actual occurrence of such an emergency or disaster to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby; provided, however, nothing in this chapter shall be construed as prohibiting a local governing body from the prudent management of its water supply to prevent or manage a water shortage;

(7) "Local emergency management organization" means an organization created in accordance with the provisions of this chapter by local authority to perform local emergency service functions;

(8) "Political subdivision" means any city or county in the Commonwealth and for the purposes of this chapter, the Town of Chincoteague and any town of more than 5,000 population which chooses to have an emergency management program separate from that of the county in which such town is located;

(9) "Interjurisdictional agency for emergency management" is any organization established between contiguous political subdivisions to facilitate the cooperation and protection of the subdivisions in the work of disaster prevention, preparedness, response, and recovery;

(10) "Resource shortage" means the absence, unavailability or reduced supply of any raw or processed natural resource, or any commodities, goods or services of any kind which bear a substantial relationship to the health, safety, welfare and economic well-being of the citizens of the Commonwealth;

(11) "Discharge" means spillage, leakage, pumping, pouring, seepage, emitting, dumping, emptying, injecting, escaping, leaching, fire, explosion, or other releases;

(12) "Hazardous substances" means all materials or substances which now or hereafter are designated, defined, or characterized as hazardous by law or regulation of the Commonwealth or regulation of the United States government;

(13) "Hazard mitigation" means any action taken to reduce or eliminate the long-term risk to human life and property from natural hazards.

§ 44-146.17. Powers and duties of Governor.

The Governor shall be Director of Emergency Management. He shall take such action from time to time as is necessary for the adequate promotion and coordination of state and local emergency services activities relating to the safety and welfare of the Commonwealth in time of natural or man-made disasters.

The Governor shall have, in addition to his powers hereinafter or elsewhere prescribed by law, the following powers and duties:

(1) To proclaim and publish such rules and regulations and to issue such orders as may, in his judgment, be necessary to accomplish the purposes of this chapter including, but not limited to such measures as are in his judgment required to control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resources under any state or federal emergency services programs.

He may adopt and implement the Commonwealth of Virginia Emergency Operations Plan, which provides for state-level emergency operations in response to any type of disaster or large-scale emergency affecting Virginia and that provides the needed framework within which more detailed emergency plans and procedures can be developed and maintained by state agencies, local governments and other organizations.

He may direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is deemed necessary for the preservation of life, implement emergency mitigation, preparedness, response or recovery actions; prescribe routes, modes of transportation and destination in connection with evacuation; and control ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein.

Executive orders, to include those declaring a state of emergency and directing evacuation, shall have

the force and effect of law and the violation thereof shall be punishable as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect.

*Such executive orders declaring a state of emergency may address exceptional circumstances that exist relating to an order of quarantine or an order of isolation concerning a communicable disease of public health threat that is issued by the State Health Commissioner for an affected area of the Commonwealth pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1.*

Except as to emergency plans issued to prescribe actions to be taken in the event of disasters and emergencies, no rule, regulation, or order issued under this section shall have any effect beyond June 30 next following the next adjournment of the regular session of the General Assembly but the same or a similar rule, regulation, or order may thereafter be issued again if not contrary to law;

(2) To appoint a State Coordinator of Emergency Management and authorize the appointment or employment of other personnel as is necessary to carry out the provisions of this chapter, and to remove, in his discretion, any and all persons serving hereunder;

(3) To procure supplies and equipment, to institute training and public information programs relative to emergency management and to take other preparatory steps including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces in time of need;

(4) To make such studies and surveys of industries, resources, and facilities in the Commonwealth as may be necessary to ascertain the capabilities of the Commonwealth and to plan for the most efficient emergency use thereof;

(5) On behalf of the Commonwealth enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of the Commonwealth;

(6) To delegate any administrative authority vested in him under this chapter, and to provide for the further delegation of any such authority, as needed;

(7) Whenever, in the opinion of the Governor, the safety and welfare of the people of the Commonwealth require the exercise of emergency measures due to a threatened or actual disaster, he may declare a state of emergency to exist;

(8) To request a major disaster declaration from the President, thereby certifying the need for federal disaster assistance and ensuring the expenditure of a reasonable amount of funds of the Commonwealth, its local governments, or other agencies for alleviating the damage, loss, hardship, or suffering resulting from the disaster; and

(9) To provide incident command system guidelines for state agencies and local emergency response organizations.

**2. That the Board of Health shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.**

**3. That an emergency exists and this act is in force from its passage.**