

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 2.2-3705, 8.01-413, 16.1-266, 16.1-343, 32.1-127.1:03, 37.1-67.3, 37.1-134.9, 37.1-134.12, 37.1-134.21, 37.1-226 through 37.1-230, and 38.2-608 of the Code of Virginia, relating to health records privacy; access to health records; compliance with federal Health Insurance Portability and Accountability Act regulations.

[§ 337]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705, 8.01-413, 16.1-266, 16.1-343, 32.1-127.1:03, 37.1-67.3, 37.1-134.9, 37.1-134.12, 37.1-134.21, 37.1-226 through 37.1-230, and 38.2-608 of the Code of Virginia are amended and reenacted 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 Health~~ records, except that such records may be personally reviewed by the ~~individual who is 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 of such records as provided in subsection F of § 32.1-127.1:03.~~

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

57 such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or
58 denied such access. In instances where the person who is the subject thereof is an emancipated minor or
59 a student in a public institution of higher education, the right of access may be asserted by the subject
60 person.

61 For the purposes of this chapter, statistical summaries of incidents and statistical data concerning
62 patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental
63 Retardation and Substance Abuse Services shall be open to inspection and copying as provided in
64 § 2.2-3704. No such summaries or data shall include any patient-identifying information.

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

71 As used in this subdivision:

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

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

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

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

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

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

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

91 As used in this subdivision, "test or examination" shall include (a) any scoring key for any such test
92 or examination and (b) any other document that would jeopardize the security of the test or examination.
93 Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by
94 law, or limit access to individual records as provided by law. However, the subject of such employment
95 tests shall be entitled to review and inspect all records relative to his performance on such employment
96 tests.

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

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

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

110 14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to
111 § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed
112 exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

113 15. Reports, documentary evidence and other information as specified in §§ 2.2-706 and 63.2-104.

114 16. Proprietary information gathered by or for the Virginia Port Authority as provided in
115 § 62.1-132.4 or § 62.1-134.1.

116 17. Contract cost estimates prepared for the confidential use of the Department of Transportation in
117 awarding contracts for construction or the purchase of goods or services, and records and automated

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

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

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

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

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

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

141 23. Information that was filed as confidential under the Toxic Substances Information Act
142 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

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

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

147 26. Investigator notes, and other correspondence and information, furnished in confidence with
148 respect to an active investigation of individual employment discrimination complaints made to the
149 Department of Human Resource Management or to such personnel of any local public body, including
150 local school boards as are responsible for conducting such investigations in confidence. However,
151 nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form
152 that does not reveal the identity of charging parties, persons supplying the information or other
153 individuals involved in the investigation.

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

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

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

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

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

173 32. Investigative notes; proprietary information not published, copyrighted or patented; information
174 obtained from employee personnel records; personally identifiable information regarding residents,
175 clients or other recipients of services; and other correspondence and information furnished in confidence
176 to the Department of Social Services in connection with an active investigation of an applicant or
177 licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2.
178 However, nothing in this section shall prohibit disclosure of information from the records of completed

179 investigations in a form that does not reveal the identity of complainants, persons supplying information,
180 or other individuals involved in the investigation.

181 33. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development
182 Authority concerning individuals who have applied for or received loans or other housing assistance or
183 who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by
184 the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the
185 waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and
186 housing authority created pursuant to § 36-4 concerning persons participating in or persons on the
187 waiting list for housing assistance programs funded by local governments or by any such authority; or
188 (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other
189 local government agency concerning persons who have applied for occupancy or who have occupied
190 affordable dwelling units established pursuant to § 15.2-2304 or § 15.2-2305. However, access to one's
191 own information shall not be denied.

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

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

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

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

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

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

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

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

238 40. Records concerning reserves established in specific claims administered by the Department of the
239 Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of

240 Chapter 18 of this title, or by any county, city, or town; and investigative notes, correspondence and
 241 information furnished in confidence with respect to an investigation of a claim or a potential claim
 242 against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision
 243 shall prohibit the disclosure of information taken from inactive reports upon expiration of the period of
 244 limitations for the filing of a civil suit.

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

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

249 43. Investigative notes, correspondence and information furnished in confidence, and records
 250 otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i)
 251 Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the
 252 State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste
 253 and Abuse Hotline; or (iv) committee or the auditor with respect to an investigation or audit conducted
 254 pursuant to § 15.2-825. Records of completed investigations shall be disclosed in a form that does not
 255 reveal the identity of the complainants or persons supplying information to investigators. Unless
 256 disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the
 257 agency involved, the identity of the person who is the subject of the complaint, the nature of the
 258 complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective
 259 action, the identity of the person who is the subject of the complaint may be released only with the
 260 consent of the subject person.

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

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

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

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

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

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

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

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

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

305 53. Confidential information designated as provided in subsection D of § 2.2-4342 as trade secrets or
306 proprietary information by any person who has submitted to a public body an application for
307 prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

308 54. All information and records acquired during a review of any child death by the State Child
309 Fatality Review team established pursuant to § 32.1-283.1, during a review of any child death by a local
310 or regional child fatality review team established pursuant to § 32.1-283.2, and all information and
311 records acquired during a review of any death by a family violence fatality review team established
312 pursuant to § 32.1-283.3.

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

316 56. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a
317 proposal filed with a public entity or an affected local jurisdiction under the Public-Private
318 Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private Education Facilities and
319 Infrastructure Act of 2002 (§ 56-575.1 et seq.), pursuant to a promise of confidentiality from the
320 responsible public entity or affected local jurisdiction, used by the responsible public entity or affected
321 local jurisdiction for purposes related to the development of a qualifying transportation facility or
322 qualifying project; and memoranda, working papers or other records related to proposals filed under the
323 Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure
324 Act of 2002, where, if such records were made public, the financial interest of the public or private
325 entity involved with such proposal or the process of competition or bargaining would be adversely
326 affected. In order for confidential proprietary information to be excluded from the provisions of this
327 chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials
328 for which protection from disclosure is sought, (ii) identify the data or other materials for which
329 protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this
330 subdivision, the terms "affected local jurisdiction", "public entity" and "private entity" shall be defined
331 as they are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education
332 Facilities and Infrastructure Act of 2002. However, nothing in this subdivision shall be construed to
333 prohibit the release of procurement records as required by § 56-573.1 or § 56-575.16. Procurement
334 records shall not be interpreted to include proprietary, commercial or financial information, balance
335 sheets, financial statements, or trade secrets that may be provided by the private entity as evidence of its
336 qualifications.

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

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

- 362 competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.
 363 59. Patient level data collected by the Board of Health and not yet processed, verified, and released,
 364 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of
 365 Health has contracted pursuant to § 32.1-276.4.
- 366 60. Records of the Virginia Commonwealth University Health System Authority pertaining to any of
 367 the following: an individual's qualifications for or continued membership on its medical or teaching
 368 staffs; proprietary information gathered by or in the possession of the Authority from third parties
 369 pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in
 370 awarding contracts for construction or the purchase of goods or services; data, records or information of
 371 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching
 372 staffs; financial statements not publicly available that may be filed with the Authority from third parties;
 373 the identity, accounts or account status of any customer of the Authority; consulting or other reports
 374 paid for by the Authority to assist the Authority in connection with its strategic planning and goals; and
 375 the determination of marketing and operational strategies where disclosure of such strategies would be
 376 harmful to the competitive position of the Authority; and data, records or information of a proprietary
 377 nature produced or collected by or for employees of the Authority, other than the Authority's financial
 378 or administrative records, in the conduct of or as a result of study or research on medical, scientific,
 379 technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a
 380 governmental body or a private concern, when such data, records or information have not been publicly
 381 released, published, copyrighted or patented.
- 382 61. Confidential proprietary information or trade secrets, not publicly available, provided by a private
 383 person or entity to the Virginia Resources Authority or to a fund administered in connection with
 384 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such
 385 information were made public, the financial interest of the private person or entity would be adversely
 386 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of
 387 confidentiality.
- 388 62. Confidential proprietary records that are provided by a franchisee under § 15.2-2108 to its
 389 franchising authority pursuant to a promise of confidentiality from the franchising authority that relates
 390 to the franchisee's potential provision of new services, adoption of new technologies or implementation
 391 of improvements, where such new services, technologies or improvements have not been implemented
 392 by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were
 393 made public, the competitive advantage or financial interests of the franchisee would be adversely
 394 affected. In order for confidential proprietary information to be excluded from the provisions of this
 395 chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other materials for
 396 which protection from disclosure is sought, (ii) identify the data or other materials for which protection
 397 is sought, and (iii) state the reason why protection is necessary.
- 398 63. Records of the Intervention Program Committee within the Department of Health Professions, to
 399 the extent such records may identify any practitioner who may be, or who is actually, impaired to the
 400 extent disclosure is prohibited by § 54.1-2517.
- 401 64. Records submitted as a grant application, or accompanying a grant application, to the
 402 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of
 403 Title 51.5, to the extent such records contain (i) medical or mental records, or other data identifying
 404 individual patients or (ii) proprietary business or research-related information produced or collected by
 405 the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,
 406 technical or scholarly issues, when such information has not been publicly released, published,
 407 copyrighted or patented, if the disclosure of such information would be harmful to the competitive
 408 position of the applicant.
- 409 65. Information that would disclose the security aspects of a system safety program plan adopted
 410 pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety
 411 Oversight agency; and information in the possession of such agency, the release of which would
 412 jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway
 413 safety.
- 414 66. Documents and other information of a proprietary nature furnished by a supplier of charitable
 415 gaming supplies to the Department of Charitable Gaming pursuant to subsection E of § 18.2-340.34.
- 416 67. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College
 417 Savings Plan or its employees by or on behalf of individuals who have requested information about,
 418 applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to
 419 Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit
 420 disclosure or publication of information in a statistical or other form that does not identify individuals or
 421 provide personal information. Individuals shall be provided access to their own personal information.
- 422 68. Any record copied, recorded or received by the Commissioner of Health in the course of an

423 examination, investigation or review of a managed care health insurance plan licensee pursuant to
424 §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or
425 all computer or other recordings.

426 69. Engineering and architectural drawings, operational, procedural, tactical planning or training
427 manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance
428 techniques, personnel deployments, alarm or security systems or technologies, or operational and
429 transportation plans or protocols, to the extent such disclosure would jeopardize the security of any
430 governmental facility, building or structure or the safety of persons using such facility, building or
431 structure.

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

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

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

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

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

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

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

470 77. Records, information and statistical registries required to be kept confidential pursuant to
471 §§ 63.2-102 and 63.2-104.

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

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

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

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

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

491 83. Records submitted as a grant application, or accompanying a grant application, to the
 492 Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the
 493 extent such records contain proprietary business or research-related information produced or collected by
 494 the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,
 495 technical or scholarly issues, when such information has not been publicly released, published,
 496 copyrighted or patented, if the disclosure of such information would be harmful to the competitive
 497 position of the applicant.

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

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

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

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

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

513 B. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of this
 514 title shall be construed as denying public access to (i) contracts between a public body and its officers
 515 or employees, other than contracts settling public employee employment disputes held confidential as
 516 personnel records under subdivision A 4; (ii) records of the position, job classification, official salary or
 517 rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official
 518 or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized
 519 by the Virginia Retirement System or its officers or employees. The provisions of this subsection,
 520 however, shall not require public access to records of the official salaries or rates of pay of public
 521 employees whose annual rate of pay is \$10,000 or less.

522 C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to
 523 afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or
 524 not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private
 525 Management Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an
 526 incarcerated person from exercising his constitutionally protected rights, including, but not limited to, his
 527 rights to call for evidence in his favor in a criminal prosecution.

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

533 § 8.01-413. Certain copies of health care provider's records or papers of patient admissible; right of
 534 patient, his attorney and authorized insurer to copies of such records or papers; subpoena; damages,
 535 costs and attorney's fees.

536 A. In any case where the hospital, nursing facility, physician's, or other health care provider's original
 537 records or papers of any patient in a hospital or institution for the treatment of physical or mental illness
 538 are admissible or would be admissible as evidence, any typewritten copy, photograph, photostatted copy,
 539 or microphotograph or printout or other hard copy generated from computerized or other electronic
 540 storage, microfilm, or other photographic, mechanical, electronic or chemical storage process thereof
 541 shall be admissible as evidence in any court of this Commonwealth in like manner as the original, if the
 542 printout or hard copy or microphotograph or photograph is properly authenticated by the employees
 543 having authority to release or produce the original records.

544 Any hospital, nursing facility, physician, or other health care provider whose records or papers

545 relating to any such patient are subpoenaed for production as provided by law may comply with the
 546 subpoena by a timely mailing to the clerk issuing the subpoena or in whose court the action is pending
 547 properly authenticated copies, photographs or microphotographs in lieu of the originals. The court whose
 548 clerk issued the subpoena or, in the case of an attorney-issued subpoena, in which the action is pending,
 549 may, after notice to such hospital, nursing facility, physician, or other health care provider, enter an
 550 order requiring production of the originals, if available, of any stored records or papers whose copies,
 551 photographs or microphotographs are not sufficiently legible. The party requesting the subpoena duces
 552 tecum or on whose behalf an attorney-issued subpoena duces tecum was issued shall be liable for the
 553 reasonable charges of the hospital, nursing facility, physician, or other health care provider for the
 554 service of maintaining, retrieving, reviewing, preparing, copying and mailing the items produced. Except
 555 for copies of X-ray photographs, however, such charges shall not exceed ~~fifty cents~~ \$.50 for each page
 556 up to ~~fifty~~ 50 pages and ~~twenty-five cents~~ \$.25 a page thereafter for copies from paper or other hard
 557 copy generated from computerized or other electronic storage, or other photographic, mechanical,
 558 electronic, imaging or chemical storage process and ~~one dollar~~ \$1 per page for copies from microfilm or
 559 other micrographic process, plus all postage and shipping costs and a search and handling fee not to
 560 exceed ~~ten dollars~~ \$10.

561 B. Copies of hospital, nursing facility, physician's, or other health care provider's records or papers
 562 shall be furnished within ~~fifteen~~ 15 days of receipt of such request to the patient, his attorney or an
 563 authorized insurer upon such patient's, attorney's or authorized insurer's written request, which request
 564 shall comply with the requirements of subsection E of § 32.1-127.1:03.

565 However, copies of a patient's records shall not be furnished to such patient ~~where~~ when the patient's
 566 treating physician or clinical psychologist, in the exercise of professional judgment, has made a part of
 567 the patient's records a written statement that in his opinion the furnishing to or review by the patient of
 568 such records would be ~~injurious~~ *reasonably likely to endanger the life or physical safety of the patient's*
 569 ~~health or well-being, but patient or another person, or that such health records make reference to a~~
 570 ~~person, other than a health care provider, and the access requested would be reasonably likely to cause~~
 571 ~~substantial harm to such referenced person.~~ In any such case ~~such records shall be furnished to the~~
 572 ~~patient's, if requested by the patient or his attorney or authorized insurer, such records shall be furnished~~
 573 ~~within fifteen~~ 15 days of the date of such request ~~to the patient's attorney or authorized insurer, rather~~
 574 ~~than to the patient.~~

575 *If the records are not provided to the patient in accordance with this section, then, if requested by*
 576 *the patient, the hospital, nursing facility, physician, or other health care provider denying the request*
 577 *shall comply with the patient's request to either (i) provide a copy of the records to a physician or*
 578 *clinical psychologist of the patient's choice whose licensure, training, and experience, relative to the*
 579 *patient's condition, are at least equivalent to that of the treating physician or clinical psychologist upon*
 580 *whose opinion the denial is based, who shall, at the patient's expense, make a judgment as to whether*
 581 *to make the records available to the patient or (ii) designate a physician or clinical psychologist, whose*
 582 *licensure, training, and experience, relative to the patient's condition, are at least equivalent to that of*
 583 *the treating physician or clinical psychologist upon whose opinion the denial is based and who did not*
 584 *participate in the original decision to deny the patient's request for his records, who shall, at the*
 585 *expense of the provider denying access to the patient, review the records and make a judgment as to*
 586 *whether to make the records available to the patient. In either such event, the hospital, nursing facility,*
 587 *physician, or other health care provider denying the request shall comply with the judgment of the*
 588 *reviewing physician or clinical psychologist.*

589 A reasonable charge may be made for the ~~service of maintaining, retrieving, reviewing and preparing~~
 590 ~~such copies services relating to the maintenance, retrieval, review, and preparation of the copies of the~~
 591 ~~records.~~ Except for copies of X-ray photographs, however, such charges shall not exceed ~~fifty cents~~ \$.50
 592 per page for up to ~~fifty~~ 50 pages and ~~twenty-five cents~~ \$.25 a page thereafter for copies from paper or
 593 other hard copy generated from computerized or other electronic storage, or other photographic,
 594 mechanical, electronic, imaging or chemical storage process and ~~one dollar~~ \$1 per page for copies from
 595 microfilm or other micrographic process, ~~plus all postage and shipping costs and a search and handling~~
 596 ~~fee not to exceed ten dollars a fee for search and handling, not to exceed \$10, and all postage and~~
 597 ~~shipping costs.~~ Any hospital, nursing facility, physician, or other health care provider receiving such a
 598 request from a patient's attorney or authorized insurer shall require a writing signed by the patient
 599 confirming the attorney's or authorized insurer's authority to make the request and shall accept a
 600 photocopy, facsimile, or other copy of the original signed by the patient as if it were an original.

601 C. Upon the failure of any hospital, nursing facility, physician, or other health care provider to
 602 comply with any written request made in accordance with subsection B within the period of time
 603 specified in that subsection and within the manner specified in subsections E and F of § 32.1-127.1:03,
 604 the patient, his attorney or authorized insurer may cause a subpoena duces tecum to be issued. The
 605 subpoena may be issued (i) upon filing a request therefor with the clerk of the circuit court wherein any

606 eventual suit would be required to be filed, and upon payment of the fees required by subdivision A 18
 607 of § 17.1-275, and fees for service or (ii) by the patient's attorney in a pending civil case in accordance
 608 with § 8.01-407 if issued by such attorney at least five business days prior to the date that production of
 609 the record is desired without payment of the fees established in subdivision A 23 of § 17.1-275. The
 610 subpoena shall be returnable within ~~twenty~~ 20 days of proper service, directing the hospital, nursing
 611 facility, physician, or other health care provider to produce and furnish copies of the reports and papers
 612 to the clerk who shall then make the same available to the patient, his attorney or authorized insurer. If
 613 the court finds that a hospital, nursing facility, physician, or other health care provider willfully refused
 614 to comply with a written request made in accordance with subsection B, either by willfully or arbitrarily
 615 refusing or by imposing a charge in excess of the reasonable expense of making the copies and
 616 processing the request for records, the court may award damages for all expenses incurred by the patient
 617 or authorized insurer to obtain such copies, including court costs and reasonable attorney's fees.

618 D. The provisions of subsections A, B, and C hereof shall apply to any health care provider whose
 619 office is located within or without the Commonwealth if the records pertain to any patient who is a
 620 party to a cause of action in any court in the Commonwealth of Virginia, and shall apply only to
 621 requests made by an attorney, his client or any authorized insurer, in anticipation of litigation or in the
 622 course of litigation.

623 E. Health care provider, as used in this section, shall have the same meaning as provided in
 624 § 32.1-127.1:03 and shall also include an independent medical copy retrieval service contracted to
 625 provide the service of retrieving, reviewing, and preparing such copies for distribution.

626 F. Notwithstanding the authorization to admit as evidence patient records in the form of
 627 microphotographs, prescription dispensing records maintained in or on behalf of any pharmacy registered
 628 or permitted in Virginia shall only be stored in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412.

629 § 16.1-266. Appointment of counsel and guardian ad litem.

630 A. Prior to the hearing by the court of any case involving a child who is alleged to be abused or
 631 neglected or who is the subject of an entrustment agreement or a petition seeking termination of residual
 632 parental rights or who is otherwise before the court pursuant to subdivision A 4 of § 16.1-241 or
 633 § 63.2-1230, the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to
 634 represent the child pursuant to § 16.1-266.1.

635 B. Prior to the detention review hearing or the adjudicatory or transfer hearing by the court of any
 636 case involving a child who is alleged to be in need of services, in need of supervision or delinquent,
 637 such child and his parent, guardian, legal custodian or other person standing in loco parentis shall be
 638 informed by a judge, clerk or probation officer of the child's right to counsel and of the liability of the
 639 parent, guardian, legal custodian or other person standing in loco parentis for the costs of such legal
 640 services pursuant to § 16.1-267 and be given an opportunity to:

641 1. Obtain and employ counsel of the child's own choice; or

642 2. If the court determines that the child is indigent within the contemplation of the law pursuant to
 643 the guidelines set forth in § 19.2-159 and his parent, guardian, legal custodian or other person standing
 644 in loco parentis does not retain an attorney for the child, a statement of indigence substantially in the
 645 form provided by § 19.2-159 and a financial statement shall be executed by such child, and the court
 646 shall appoint an attorney-at-law to represent him; or

647 3. Waive the right to representation by an attorney, if the court finds the child and the parent,
 648 guardian, legal custodian or other person standing in loco parentis of the child consent, in writing, to
 649 such waiver and that the interests of the child and the parent, guardian, legal custodian or other person
 650 standing in loco parentis in the proceeding are not adverse. Such written waiver shall be in accordance
 651 with law and shall be filed with the court records of the case.

652 C. A judge, clerk or probation officer shall inform the parent or guardian of his right to counsel prior
 653 to the adjudicatory hearing of a petition in which a child is alleged to be abused or neglected or at risk
 654 of abuse or neglect as provided in subdivision A 2 a of § 16.1-241 and prior to a hearing at which a
 655 parent could be subjected to the loss of residual parental rights. In addition, prior to the hearing by the
 656 court of any case involving any other adult charged with abuse or neglect of a child, this adult shall be
 657 informed of his right to counsel. This adult and the parent or guardian shall be given an opportunity to:

658 1. Obtain and employ counsel of the parent's, guardian's or other adult's own choice; or

659 2. If the court determines that the parent, guardian or other adult is indigent within the contemplation
 660 of the law pursuant to the guidelines set forth in § 19.2-159, a statement substantially in the form
 661 provided by § 19.2-159 and a financial statement shall be executed by such parent, guardian or other
 662 adult and the court shall appoint an attorney-at-law to represent him; or

663 3. Waive the right to representation by an attorney in accordance with the provisions of § 19.2-160.

664 If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or
 665 guardian fails to appear, the court shall consider appointing an attorney-at-law to represent the interests
 666 of the absent parent or guardian, and the hearing may be held.

667 Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to
 668 § 16.1-281, a foster care review hearing pursuant to § 16.1-282 and a permanency planning hearing
 669 pursuant to § 16.1-282.1, the court shall consider appointing counsel to represent the child's parent or
 670 guardian.

671 D. In those cases described in subsections A, B and C which in the discretion of the court require
 672 counsel or a guardian ad litem to represent the child or children or the parent or guardian or other adult
 673 party in addition to the representation provided in those subsections, a discreet and competent
 674 attorney-at-law may be appointed by the court as counsel or a guardian ad litem.

675 E. In all other cases which in the discretion of the court require counsel or a guardian ad litem, or
 676 both, to represent the child or children or the parent or guardian, discreet and competent attorneys-at-law
 677 may be appointed by the court. However, in cases where the custody of a child or children is the subject
 678 of controversy or requires determination and each of the parents or other persons claiming a right to
 679 custody is represented by counsel, the court shall not appoint counsel or a guardian ad litem to represent
 680 the interests of the child or children unless the court finds, at any stage in the proceedings in a specific
 681 case, that the interests of the child or children are not otherwise adequately represented.

682 F. Any state or local agency, department, authority or institution and any school, hospital, physician
 683 or other health or mental health care provider shall permit a guardian ad litem *or counsel for the child*
 684 appointed pursuant to this section to inspect and copy, without the consent of the child or his parents,
 685 any records relating to the child whom the guardian *or counsel* represents upon presentation by him of a
 686 copy of the court order appointing him or a court order specifically allowing him such access. Upon
 687 request therefor by the guardian ad litem *or counsel for the child* made at least 72 hours in advance, a
 688 mental health care provider shall make himself available to conduct a review and interpretation of the
 689 child's treatment records which are specifically related to the investigation. Such a request may be made
 690 in lieu of or in addition to inspection and copying of the records.

691 § 16.1-343. Involuntary commitment; duties of attorney for the minor.

692 As far as possible in advance of a hearing conducted under § 16.1-344, or an appeal from such a
 693 hearing, the minor's attorney shall interview the minor; the minor's parent, if available; the petitioner;
 694 and the qualified evaluator. He shall interview all other material witnesses, and examine all relevant
 695 diagnostic and other reports.

696 *Any state or local agency, department, authority or institution and any school, hospital, physician or*
 697 *other health or mental health care provider shall permit the attorney appointed pursuant to this article*
 698 *to inspect and copy, without the consent of the minor or his parents, any records relating to the minor*
 699 *whom the attorney represents.*

700 The obligation of the minor's attorney during the hearing or appeal is to interview witnesses, obtain
 701 independent experts when possible, cross-examine adverse witnesses, present witnesses on behalf of the
 702 minor, articulate the wishes of the minor, and otherwise fully represent the minor in the proceeding.
 703 Counsel appointed by the court shall be compensated in an amount not to exceed \$100.

704 § 32.1-127.1:03. Health records privacy.

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

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

715 No person to whom ~~disclosure of patient health records was made by a patient or a provider are~~
 716 ~~disclosed~~ shall redisclose or otherwise reveal the ~~health records of a patient an individual~~, beyond the
 717 purpose for which such disclosure was made, without first obtaining the ~~patient's individual's~~ specific
 718 ~~consent authorization~~ to such redisclosure. This redisclosure prohibition shall not, however, prevent (i)
 719 any ~~provider who~~ *health care entity that receives health records from another provider health care*
 720 *entity* from making subsequent disclosures as permitted under this section and the federal Department of
 721 Health and Human Services regulations relating to the *privacy of electronic transmission of data and*
 722 *patient privacy protected health information promulgated by the United States Department of Health and*
 723 *Human Services* as required by the Health Insurance Portability and Accountability Act of 1996
 724 (HIPAA) (42 U.S.C. § 1320d et seq.) or (ii) any ~~provider health care entity~~ from furnishing ~~health~~
 725 records and aggregate or other data, from which ~~patient-~~ *individually* identifying prescription information
 726 has been removed, encoded or encrypted, to qualified researchers, including, but not limited to,
 727 pharmaceutical manufacturers and their agents or contractors, for purposes of clinical,

728 pharmaco-epidemiological, pharmaco-economic, or other health services research.

729 B. As used in this section:

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

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

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

737 "Health services" includes, but is not limited to, examination, diagnosis, evaluation, treatment,
738 pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind. "Parent"
739 means a biological, adoptive or foster parent.

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

741 "Patient-identifying prescription information" means all prescriptions, drug orders or any other
742 prescription information that specifically identifies an individual patient.

743 "Health care clearinghouse" means, consistent with the definition set out in 45 C.F. R. § 160.103, a
744 public or private entity, such as a billing service, repricing company, community health management
745 information system or community health information system, and "value-added" networks and switches,
746 that performs either of the following functions: (i) processes or facilitates the processing of health
747 information received from another entity in a nonstandard format or containing nonstandard data
748 content into standard data elements or a standard transaction; or (ii) receives a standard transaction
749 from another entity and processes or facilitates the processing of health information into nonstandard
750 format or nonstandard data content for the receiving entity.

751 "Health care entity" means any health care provider, health plan or health care clearinghouse.

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

758 "Health plan" means an individual or group plan that provides, or pays the cost of, medical care.

759 "Health plan" shall include any entity included in such definition as set out in 45 C.F. R. § 160.103.

760 "Health record" means any written, printed or electronically recorded material maintained by a
761 ~~provider~~ *health care entity* in the course of providing health services to a ~~patient~~ *an individual*
762 concerning the ~~patient~~ *individual* and the services provided. "Health record" also includes the substance
763 of any communication made by a ~~patient~~ *an individual* to a ~~provider~~ *health care entity* in confidence
764 during or in connection with the provision of health services to a ~~patient~~ or information otherwise
765 acquired by the ~~provider~~ *health care entity* about a ~~patient~~ *an individual* in confidence and in connection
766 with the provision of health services to the ~~patient~~ *individual*.

767 "Health services" means, but shall not be limited to, examination, diagnosis, evaluation, treatment,
768 pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind, as well
769 as payment or reimbursement for any such services.

770 "Individual" means a patient who is receiving or has received health services from a health care
771 entity.

772 "Individually identifying prescription information" means all prescriptions, drug orders or any other
773 prescription information that specifically identifies an individual.

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

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

776 1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia
777 Workers' Compensation Act;

778 2. Except where specifically provided herein, the *health* records of ~~minor patients~~ *minors*; or

779 3. The release of juvenile *health* records to a secure facility or a shelter care facility pursuant to
780 § 16.1-248.3.

781 D. ~~Providers~~ *Health care entities* may disclose ~~the~~ *health* records of a ~~patient~~:

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

788 2. In compliance with a subpoena issued in accord with subsection H of this section, pursuant to

789 court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C
790 of § 8.01-413;

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

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

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

799 6. As required or authorized by law relating to public health activities, health oversight activities,
800 serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,
801 public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,
802 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,
803 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,
804 54.1-2966.1, 54.1-2967, 54.1-2968, 63.2-1606 and 63.2-1509;

805 7. Where necessary in connection with the care of the ~~patient~~ *individual*, including in the
806 implementation of a ~~hospital~~ *health care provider's* routine contact process;

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

811 9. When the ~~patient~~ *individual* has waived his right to the privacy of the ~~medical~~ *health* records;

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

814 11. To the guardian ad litem *and any attorney representing the respondent* in the course of a
815 guardianship proceeding of an adult patient ~~authorized~~ *who is the respondent in a proceeding* under
816 Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1;

817 12. To the attorney appointed by the court to represent a ~~patient~~ *in an individual or a patient who is*
818 *the subject of a civil commitment proceeding under § 37.1-67.3 or a judicial authorization for treatment*
819 *proceeding pursuant to § 37.1-134.21;*

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

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

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

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

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

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

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

839 20. To the ~~patient~~ *individual who is the subject of the health record*, except as provided in
840 subsections E and F of this section and subsection B of § 8.01-413;

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

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

846 23. If the *health* records are those of a deceased or mentally incapacitated ~~patient~~ *individual* to the
847 personal representative or executor of the deceased ~~patient~~ *individual* or the legal guardian or committee
848 of the incompetent or incapacitated ~~patient~~ *individual* or if there is no personal representative, executor,
849 legal guardian or committee appointed, to the following persons in the following order of priority: a

850 spouse, an adult son or daughter, either parent, an adult brother or sister, or any other relative of the
851 deceased *patient individual* in order of blood relationship;

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

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

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

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

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

881 F. Except as provided in subsection B of § 8.01-413, copies of a ~~patient's~~ *an individual's health*
882 records shall not be furnished to such ~~patient individual~~ or anyone authorized to act on the ~~patient's~~
883 *individual's* behalf ~~where when~~ the ~~patient's attending individual's treating~~ physician or the ~~patient's~~
884 *individual's treating* clinical psychologist has made a part of the ~~patient's individual's~~ record a written
885 statement that, in ~~his opinion~~ *the exercise of his professional judgment*, the furnishing to or review by
886 the ~~patient individual~~ of such *health* records would be ~~injurious~~ *reasonably likely to endanger* the
887 ~~patient's health or well-being~~ *life or physical safety of the individual or another person, or that such*
888 *health record makes reference to a person other than a health care provider and the access requested*
889 *would be reasonably likely to cause substantial harm to such referenced person.* If any ~~eustodian of~~
890 ~~medical records~~ *health care entity* denies a request for copies of *health* records based on such statement,
891 the ~~eustodian~~ shall ~~permit examination and copying of the medical record by another such physician or~~
892 ~~clinical psychologist selected by the patient health care entity~~ shall ~~inform the individual of the~~
893 *individual's right to designate, in writing, at his own expense, another reviewing physician or clinical*
894 *psychologist*, whose licensure, training and experience relative to the ~~patient's individual's~~ condition are
895 at least equivalent to that of the physician or clinical psychologist upon whose opinion the denial is
896 based. The ~~person or entity denying the request~~ shall ~~inform the patient of the patient's right to select~~
897 ~~another reviewing physician or clinical psychologist under this subsection~~ who ~~designated reviewing~~
898 *physician or clinical psychologist* shall make a judgment as to whether to make the *health* record
899 available to the ~~patient individual~~.

900 *The health care entity denying the request shall also inform the individual of the individual's right to*
901 *request in writing that such health care entity designate, at its own expense, a physician or clinical*
902 *psychologist, whose licensure, training, and experience relative to the individual's condition are at least*
903 *equivalent to that of the physician or clinical psychologist upon whose professional judgment the denial*
904 *is based and who did not participate in the original decision to deny the health records, who shall make*
905 *a judgment as to whether to make the health record available to the individual. The health care entity*
906 *shall comply with the judgment of the reviewing physician or clinical psychologist. The health care*
907 *entity shall permit copying and examination of the health record by such other physician or clinical*
908 *psychologist designated by either the individual at his own expense or by the health care entity at its*
909 *expense.*

910 Any *health* record copied for review by ~~the~~ *any such designated* physician or clinical psychologist

911 selected by the patient shall be accompanied by a statement from the custodian of the health record that
912 the patient's attending individual's treating physician or clinical psychologist determined that the patient's
913 individual's review of his health record would be injurious to the patient's health or well-being
914 reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely
915 to cause substantial harm to a person referenced in the health record.

916 G. A written consent authorization to allow release of patient an individual's health records may, but
917 need not, be in shall substantially include the following form information:

918 CONSENT AUTHORIZATION TO RELEASE OF CONFIDENTIAL HEALTH CARE
919 INFORMATION RECORDS

920 Patient Individual's Name

921
922
923

924 Provider Health Care Entity's Name

925
926
927

928 Person, Agency or provider Health Care Entity to whom disclosure is to be made

929
930
931

932 ~~Person, agency or provider to whom disclosure is to be made~~

933 Information or Health Records to be disclosed

934
935
936

937 Purpose of Disclosure or at the Request of the Individual

938
939
940

941
942 As the person signing this consent authorization, I understand that I am giving my permission to the
943 above-named provider or other named third party health care entity for disclosure of confidential health
944 care records. I understand that the health care entity may not condition treatment or payment on my
945 willingness to sign this authorization unless the specific circumstances under which such conditioning is
946 permitted by law are applicable and are set forth in this authorization. I also understand that I have the
947 right to revoke this consent authorization at any time, but that my revocation is not effective until
948 delivered in writing to the person who is in possession of my health records and is not effective as to
949 health records already disclosed under this authorization. A copy of this consent authorization and a
950 notation concerning the persons or agencies to whom disclosure was made shall be included with my
951 original health records. The person who receives the records to which this consent pertains may not
952 redisclose them to anyone else without my separate written consent unless such I understand that health
953 information disclosed under this authorization might be redisclosed by a recipient is a provider who
954 makes a disclosure permitted by law and may, as a result of such disclosure, no longer be protected to
955 the same extent as such health information was protected by law while solely in the possession of the
956 health care entity.

957 This consent authorization expires on (date) or (event)

958
959 Signature of Patient Individual or Individual's Legal Representative if Individual is Unable to Sign

960
961 Relationship or Authority of Legal Representative

962
963 Date of Signature

964
965 H. Pursuant to this subsection:

966 1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or
967 administrative action or proceeding shall request the issuance of a subpoena duces tecum for another
968 party's medical health records or cause a subpoena duces tecum to be issued by an attorney unless a
969 copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the other

970 party's counsel or to the other party if pro se, simultaneously with filing the request or issuance of the
 971 subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces
 972 tecum for the ~~medical~~ *health* records of a nonparty witness unless a copy of the request for the
 973 subpoena or a copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously
 974 with filing the request or issuance of the attorney-issued subpoena.

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

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

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

988 **NOTICE TO PATIENT INDIVIDUAL**

989 The attached document means that (insert name of party requesting or causing issuance of the
 990 subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has
 991 been issued by the other party's attorney to your doctor ~~or~~, other health care providers (names of health
 992 care providers inserted here) *or other health care entity (name of health care entity to be inserted here)*
 993 requiring them to produce your ~~medical~~ *health* records. Your doctor ~~or~~, other health care provider *or*
 994 *other health care entity* is required to respond by providing a copy of your ~~medical~~ *health* records. If
 995 you believe your *health* records should not be disclosed and object to their disclosure, you have the
 996 right to file a motion with the clerk of the court or the administrative agency to quash the subpoena. If
 997 you elect to file a motion to quash, such motion must be filed within 15 days of the date of the request
 998 or of the attorney-issued subpoena. You may contact the clerk's office or the administrative agency to
 999 determine the requirements that must be satisfied when filing a motion to quash and you may elect to
 1000 contact an attorney to represent your interest. If you elect to file a motion to quash, you must notify
 1001 your doctor ~~or~~, other health care provider(s), *or other health care entity*, that you are filing the motion
 1002 so that the *health care* provider *or health care entity* knows to send the *health* records to the clerk of
 1003 court or administrative agency in a sealed envelope or package for safekeeping while your motion is
 1004 decided.

1005 2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued
 1006 for a ~~patient's~~ ~~medical~~ *an individual's health* records shall include a Notice to ~~Providers~~ in the same part
 1007 of the request in which the ~~provider~~ *recipient of the subpoena duces tecum* is directed where and when
 1008 to return the *health* records. Such notice shall be in boldface capital letters and shall include the
 1009 following language:

1010 **NOTICE TO PROVIDERS HEALTH CARE ENTITIES**

1011 A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO ~~YOUR PATIENT~~
 1012 ~~OR YOUR PATIENT'S~~ *THE INDIVIDUAL WHOSE HEALTH RECORDS ARE BEING REQUESTED*
 1013 *OR HIS* COUNSEL. YOU ~~OR YOUR PATIENT~~ *HAVE THAT INDIVIDUAL HAS* THE RIGHT TO
 1014 FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED SUBPOENA. IF YOU ELECT TO
 1015 FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION WITHIN 15 DAYS OF THE DATE
 1016 OF THIS SUBPOENA.

1017 YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN
 1018 CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED
 1019 THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:

1020 NO MOTION TO QUASH WAS FILED; OR

1021 ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE
 1022 ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH
 1023 SUCH RESOLUTION.

1024 IF YOU RECEIVE NOTICE THAT ~~YOUR PATIENT~~ *THE INDIVIDUAL WHOSE HEALTH*
 1025 *RECORDS ARE BEING REQUESTED* HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR
 1026 IF YOU FILE A MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE *HEALTH*
 1027 *RECORDS* ONLY TO THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT
 1028 ISSUED THE SUBPOENA OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE
 1029 SUBPOENA USING THE FOLLOWING PROCEDURE:

1030 PLACE THE *HEALTH* RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED

1031 ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY
1032 WHICH STATES THAT CONFIDENTIAL HEALTH CARE RECORDS ARE ENCLOSED AND ARE
1033 TO BE HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE
1034 SUBPOENA. THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN
1035 OUTER ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR
1036 ADMINISTRATIVE AGENCY.

1037 3. Upon receiving a valid subpoena duces tecum for ~~medical health~~ records, health care ~~providers~~
1038 *entities* shall have the duty to respond to the subpoena in accordance with the provisions of subdivisions
1039 4, 5, 6, 7, and 8.

1040 4. Except to deliver to a clerk of the court or administrative agency subpoenaed ~~medical health~~
1041 records in a sealed envelope as set forth, health care ~~providers~~ *entities* shall not respond to a subpoena
1042 duces tecum for such ~~medical health~~ records until they have received a certification as set forth in
1043 subdivisions 5 or 8 of this subsection from the party on whose behalf the subpoena duces tecum was
1044 issued.

1045 If the health care ~~provider~~ *entity* has actual receipt of notice that a motion to quash the subpoena has
1046 been filed or if the health care ~~provider~~ *entity* files a motion to quash the subpoena for ~~medical health~~
1047 records, then the health care ~~provider~~ *entity* shall produce the *health* records, in a securely sealed
1048 envelope, to the clerk of the court or administrative agency issuing the subpoena or in whose court or
1049 administrative agency the action is pending. The court or administrative agency shall place the *health*
1050 records under seal until a determination is made regarding the motion to quash. The securely sealed
1051 envelope shall only be opened on order of the judge or administrative agency. In the event the court or
1052 administrative agency grants the motion to quash, the *health* records shall be returned to the health care
1053 ~~provider~~ *entity* in the same sealed envelope in which they were delivered to the court or administrative
1054 agency. In the event that a judge or administrative agency orders the sealed envelope to be opened to
1055 review the *health* records in camera, a copy of the order shall accompany any *health* records returned to
1056 the ~~provider~~ *health care entity*. The *health* records returned to the ~~provider~~ *health care entity* shall be in
1057 a securely sealed envelope.

1058 5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued
1059 subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the
1060 subpoenaed health care ~~provider~~ *entity* that the time for filing a motion to quash has elapsed and that no
1061 motion to quash was filed. Any ~~provider~~ *health care entity* receiving such certification shall have the
1062 duty to comply with the subpoena duces tecum by returning the specified ~~medical health~~ records by
1063 either the return date on the subpoena or ~~5~~ *five* days after receipt of the certification, whichever is later.

1064 6. In the event that the individual whose *health* records are being sought files a motion to quash the
1065 subpoena, the court or administrative agency shall decide whether good cause has been shown by the
1066 discovering party to compel disclosure of the ~~patient's private individual's~~ *health* records over the
1067 ~~patient's individual's~~ objections. In determining whether good cause has been shown, the court or
1068 administrative agency shall consider (i) the particular purpose for which the information was collected;
1069 (ii) the degree to which the disclosure of the records would embarrass, injure, or invade the privacy of
1070 the individual; (iii) the effect of the disclosure on the individual's future health care; (iv) the importance
1071 of the information to the lawsuit or proceeding; and (v) any other relevant factor.

1072 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if
1073 subpoenaed ~~medical health~~ records have been submitted by a health care ~~provider~~ *entity* to the court or
1074 administrative agency in a sealed envelope, the court or administrative agency shall: (i) upon
1075 determining that no submitted ~~medical health~~ records should be disclosed, return all submitted ~~medical~~
1076 *health* records to the ~~provider~~ *health care entity* in a sealed envelope; (ii) upon determining that all
1077 submitted ~~medical health~~ records should be disclosed, provide all the submitted ~~medical health~~ records
1078 to the party on whose behalf the subpoena was issued; or (iii) upon determining that only a portion of
1079 the submitted ~~medical health~~ records should be disclosed, provide such portion to the party on whose
1080 behalf the subpoena was issued and return the remaining ~~medical health~~ records to the ~~provider~~ *health*
1081 *care entity* in a sealed envelope.

1082 8. Following the court or administrative agency's resolution of a motion to quash, the party on whose
1083 behalf the subpoena duces tecum was issued shall have the duty to certify in writing to the subpoenaed
1084 health care ~~provider~~ *entity* a statement of one of the following:

1085 a. All filed motions to quash have been resolved by the court or administrative agency and the
1086 disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the
1087 ~~medical health~~ records previously delivered in a sealed envelope to the clerk of the court or
1088 administrative agency will not be returned to the ~~provider~~ *health care entity*;

1089 b. All filed motions to quash have been resolved by the court or administrative agency and the
1090 disclosures sought in the subpoena duces tecum are consistent with such resolution and that, since no
1091 ~~medical health~~ records have previously been delivered to the court or administrative agency by the

1092 ~~provider health care entity~~, the ~~provider health care entity~~ shall comply with the subpoena duces tecum
1093 by returning the ~~medical health~~ records designated in the subpoena by the return date on the subpoena
1094 or five days after receipt of certification, whichever is later;

1095 c. All filed motions to quash have been resolved by the court or administrative agency and the
1096 disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no
1097 ~~medical health~~ records shall be disclosed and all ~~medical health~~ records previously delivered in a sealed
1098 envelope to the clerk of the court or administrative agency will be returned to the ~~provider health care~~
1099 ~~entity~~;

1100 d. All filed motions to quash have been resolved by the court or administrative agency and the
1101 disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only
1102 limited disclosure has been authorized. The certification shall state that only the portion of the *health*
1103 records as set forth in the certification, consistent with the court or administrative agency's ruling, shall
1104 be disclosed. The certification shall also state that ~~medical health~~ records that were previously delivered
1105 to the court or administrative agency for which disclosure has been authorized will not be returned to
1106 the ~~provider health care entity~~; however, all ~~medical health~~ records for which disclosure has not been
1107 authorized will be returned to the ~~provider health care entity~~; or

1108 e. All filed motions to quash have been resolved by the court or administrative agency and the
1109 disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no
1110 ~~medical health~~ records have previously been delivered to the court or administrative agency by the
1111 ~~provider health care entity~~, the ~~provider health care entity~~ shall return only those *health* records
1112 specified in the certification, consistent with the court or administrative agency's ruling, by the return
1113 date on the subpoena or five days after receipt of the certification, whichever is later.

1114 A copy of the court or administrative agency's ruling shall accompany any certification made
1115 pursuant to this subdivision.

1116 9. The provisions of this subsection have no application to subpoenas for ~~medical health~~ records
1117 requested under § 8.01-413, or issued by a duly authorized administrative agency conducting an
1118 investigation, audit, review or proceedings regarding a ~~provider's health care entity's~~ conduct.

1119 The provisions of this subsection *shall* apply to *subpoenas for* the ~~medical health~~ records of both
1120 minors and adults.

1121 Nothing in this subsection shall have any effect on the existing authority of a court or administrative
1122 agency to issue a protective order regarding ~~medical health~~ records, including, but not limited to,
1123 ordering the return of ~~medical health~~ records to a health care ~~provider entity~~, after the period for filing a
1124 motion to quash has passed.

1125 A subpoena for substance abuse records must conform to the requirements of federal law found in 42
1126 C.F.R. Part 2, Subpart E.

1127 I. ~~Providers Health care entities~~ may testify about the ~~medical health~~ records of a ~~patient an~~
1128 ~~individual~~ in compliance with §§ 8.01-399 and 8.01-400.2.

1129 § 37.1-67.3. Same; involuntary admission and treatment.

1130 A. The commitment hearing shall be held within ~~forty-eight~~ 48 hours of the execution of the
1131 temporary detention order as provided for in § 37.1-67.1; however, if the ~~forty-eight~~ 48-hour period
1132 herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully
1133 closed, such person may be detained, as herein provided, until the next day that is not a Saturday,
1134 Sunday, legal holiday or day on which the court is lawfully closed.

1135 B. The judge, in commencing the commitment hearing, shall inform the person whose involuntary
1136 admission is being sought of his right to apply for voluntary admission and treatment as provided for in
1137 § 37.1-65 and shall afford such person an opportunity for voluntary admission. The judge shall ascertain
1138 if such person is then willing and capable of seeking voluntary admission and treatment. If the person is
1139 capable and willingly accepts voluntary admission and treatment, the judge shall require him to accept
1140 voluntary admission for a minimum period of treatment and after such minimum period, not to exceed
1141 ~~seventy-two~~ 72 hours, to give the hospital ~~forty-eight~~ 48 hours' notice prior to leaving the hospital,
1142 during which notice period he shall not be discharged, unless sooner discharged pursuant to § 37.1-98 or
1143 § 37.1-99. Such person shall be subject to the transportation provisions as provided in § 37.1-71 and the
1144 requirement for prescreening by a community services board or community mental health clinic as
1145 provided in § 37.1-65.

1146 C. If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the
1147 judge shall inform such person of his right to a commitment hearing and right to counsel. The judge
1148 shall ascertain if a person whose admission is sought is represented by counsel, and if he is not
1149 represented by counsel, the judge shall appoint an attorney-at-law to represent him. However, if such
1150 person requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to
1151 employ counsel at his own expense.

1152 D. A written explanation of the involuntary commitment process and the statutory protections

1153 associated with the process shall be given to the person and its contents explained by an attorney prior
 1154 to the commitment hearing. The written explanation shall include, at a minimum, an explanation of the
 1155 person's right to retain private counsel or be represented by a court-appointed attorney, to present any
 1156 defenses including independent evaluation and expert testimony or the testimony of other witnesses, to
 1157 be present during the hearing and testify, to appeal any certification for involuntary admission to the
 1158 circuit court, and to have a jury trial on appeal. The judge shall ascertain whether the person whose
 1159 admission is sought has been given the written explanation required herein.

1160 *E.* To the extent possible, during or before the commitment hearing, the attorney for the person
 1161 whose admission is sought shall interview his client, the petitioner, the examiner described below, the
 1162 community services board staff, and any other material witnesses. He shall also examine all relevant
 1163 diagnostic and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise
 1164 actively represent his client in the proceedings. *A health care provider shall disclose or make available*
 1165 *all such reports, treatment information and records concerning his client to the attorney, upon request.*
 1166 The role of the attorney shall be to represent the wishes of his client, to the extent possible.

1167 *F.* The petitioner shall be given adequate notice of the place, date, and time of the commitment
 1168 hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the
 1169 hearing, and to testify and present evidence. The petitioner shall be encouraged but shall not be required
 1170 to testify at the hearing and the person whose admission is sought shall not be released solely on the
 1171 basis of the petitioner's failure to attend or testify during the hearing.

1172 *G.* Notwithstanding the above, the judge shall require an examination of such person by a
 1173 psychiatrist or a psychologist who is licensed in Virginia by either the Board of Medicine or the Board
 1174 of Psychology who is qualified in the diagnosis of mental illness or, if such a psychiatrist or
 1175 psychologist is not available, any mental health professional who is (i) licensed in Virginia through the
 1176 Department of Health Professions and (ii) qualified in the diagnosis of mental illness. The examiner
 1177 chosen shall be able to provide an independent examination of the person. The examiner shall not be
 1178 related by blood or marriage to the person, shall not be responsible for treating the person, shall have no
 1179 financial interest in the admission or treatment of the person, shall have no investment interest in the
 1180 hospital detaining or admitting the person under this article, and, except for employees of state hospitals
 1181 and of the U.S. Department of Veterans Affairs, shall not be employed by such hospital. For purposes of
 1182 this section, investment interest means the ownership or holding of an equity or debt security, including,
 1183 but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures,
 1184 notes, or other equity or debt instruments.

1185 All such examinations shall be conducted in private. The judge shall summons the examiner who
 1186 shall certify that he has personally examined the individual and has probable cause to believe that the
 1187 individual (i) is or is not so seriously mentally ill as to be substantially unable to care for himself, or
 1188 (ii) does or does not present an imminent danger to himself or others as a result of mental illness, and
 1189 (iii) requires or does not require involuntary hospitalization or treatment. Alternatively, the judge, in his
 1190 discretion, may accept written certification of the examiner's findings if the examination has been
 1191 personally made within the preceding five days and if there is no objection sustained to the acceptance
 1192 of such written certification by the person or his attorney. The judge shall not render any decision on
 1193 the petition until such examiner has presented his report either orally or in writing.

1194 *H.* Except as otherwise provided in this section, prior to making any adjudication that such person is
 1195 mentally ill and shall be confined to an institution pursuant to this section, the judge shall require from
 1196 the community services board which serves the political subdivision where the person resides a
 1197 prescreening report, and the board or clinic shall provide such a report within ~~forty-eight~~ 48 hours or if
 1198 the ~~forty-eight~~ 48-hour period terminates on a Saturday, Sunday, legal holiday or day on which the court
 1199 is lawfully closed, the next day that is not a Saturday, Sunday, legal holiday or day on which the court
 1200 is lawfully closed. If it is impossible or impractical to obtain a prescreening report from the community
 1201 services board which serves the political subdivision where the person resides, the judge may obtain
 1202 such report from the community services board of the political subdivision where the person is located.
 1203 The report shall be admissible as evidence of the facts stated therein and shall state whether the person
 1204 is deemed to be so seriously mentally ill that he is substantially unable to care for himself, an imminent
 1205 danger to himself or others as a result of mental illness and in need of involuntary hospitalization or
 1206 treatment, whether there is no less restrictive alternative to institutional confinement and what the
 1207 recommendations are for that person's care and treatment. In the case of a person sentenced and
 1208 committed to the Department of Corrections and who has been examined by a psychiatrist or clinical
 1209 psychologist, the judge may proceed to adjudicate whether the person is mentally ill and should be
 1210 confined pursuant to this section without requesting a prescreening report from the community services
 1211 board.

1212 *I.* After observing the person and obtaining the necessary positive certification and any other relevant
 1213 evidence which may have been offered, if the judge finds specifically (i) that the person presents an

1214 imminent danger to himself or others as a result of mental illness or has been proven to be so seriously
 1215 mentally ill as to be substantially unable to care for himself, and (ii) that alternatives to involuntary
 1216 confinement and treatment have been investigated and deemed unsuitable and there is no less restrictive
 1217 alternative to institutional confinement and treatment, the judge shall by written order and specific
 1218 findings so certify and order that the person be placed in a hospital or other facility for a period of
 1219 treatment not to exceed 180 days from the date of the court order. Such placement shall be in a hospital
 1220 or other facility designated by the community services board which serves the political subdivision in
 1221 which the person was examined as provided in this section. If the community services board does not
 1222 provide a placement recommendation at the commitment hearing, the person shall be placed in a
 1223 hospital or other facility designated by the Commissioner.

1224 *J.* After observing the person and obtaining the necessary positive certification and any other relevant
 1225 evidence which may have been offered, if the judge finds specifically (i) that the person presents an
 1226 imminent danger to himself or others as a result of mental illness or has been proven to be so seriously
 1227 mentally ill as to be substantially unable to care for himself, and (ii) that less restrictive alternatives to
 1228 institutional confinement and treatment have been investigated and are deemed suitable, and if,
 1229 moreover, the judge finds specifically that (i) the patient has the degree of competency necessary to
 1230 understand the stipulations of his treatment, (ii) the patient expresses an interest in living in the
 1231 community and agrees to abide by his treatment plan, (iii) the patient is deemed to have the capacity to
 1232 comply with the treatment plan, (iv) the ordered treatment can be delivered on an outpatient basis, and
 1233 (v) the ordered treatment can be monitored by the community services board or designated providers,
 1234 the judge shall order outpatient treatment, day treatment in a hospital, night treatment in a hospital,
 1235 outpatient involuntary treatment with anti-psychotic medication pursuant to § 37.1-134.21, or such other
 1236 appropriate course of treatment as may be necessary to meet the needs of the individual. Upon failure of
 1237 the patient to adhere to the terms of the outpatient treatment, the judge may revoke the same and, upon
 1238 notice to the patient and after a commitment hearing, order involuntary commitment for treatment at a
 1239 hospital. The community services board which serves the political subdivision in which the person
 1240 resides shall recommend a specific course of treatment and programs for provision of such treatment.
 1241 The community services board shall monitor the person's compliance with such treatment as may be
 1242 ordered by the court under this section, and the person's failure to comply with involuntary outpatient
 1243 treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to
 1244 the provisions of this section.

1245 *K.* The judge shall make or cause to be made a tape or other audio recording of the hearing and
 1246 shall submit such recording to the appropriate district court clerk to be retained in a confidential file.
 1247 Such recordings shall only be used to document and to answer questions concerning the judge's conduct
 1248 of the hearing. These recordings shall be retained for at least three years from the date of the relevant
 1249 commitment hearing. The judge shall also order that copies of the relevant medical records of such
 1250 person be released to the facility or program in which he is placed upon request of the treating
 1251 physician or director of the facility or program. Except as provided in this section, the court shall keep
 1252 its copies of relevant medical records, reports, and court documents pertaining to the hearings provided
 1253 for in this section confidential if so requested by such person, or his counsel, with access provided only
 1254 upon court order for good cause shown. Such records, reports, and documents shall not be subject to the
 1255 Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Such person shall be released at the
 1256 expiration of 180 days unless involuntarily committed by further petition and order of a court as
 1257 provided herein or such person makes application for treatment on a voluntary basis as provided for in
 1258 § 37.1-65.

1259 *L.* The procedures required by this section shall be followed at such commitment hearing. The judge
 1260 shall render a decision on such petition after the appointed examiner has presented his report, either
 1261 orally or in writing, and after the community services board that serves the political subdivision where
 1262 the person resides has presented a prescreening report, either orally or in writing, with recommendations
 1263 for that person's placement, care and treatment. These reports, if not contested, may constitute sufficient
 1264 evidence upon which the court may base its decision.

1265 *M.* The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a
 1266 form provided by the Exchange, a copy of any order for involuntary commitment to a hospital. The
 1267 copy of the form and the order shall be kept confidential in a separate file and used only to determine a
 1268 person's eligibility to possess, purchase or transfer a firearm.

1269 § 37.1-134.9. Appointment of guardian ad litem.

1270 *A.* On the filing of every petition for guardianship or conservatorship, the court shall appoint a
 1271 guardian ad litem to represent the interests of the respondent. The guardian ad litem shall be paid such
 1272 fee as is fixed by the court to be paid by the petitioner or taxed as costs, as the court directs.

1273 *B.* Duties of the guardian ad litem include: (i) personally visiting the respondent; (ii) advising the
 1274 respondent of rights pursuant to §§ 37.1-134.12 and 37.1-134.13, and certifying to the court that the

1275 respondent has been so advised; (iii) recommending that legal counsel should be appointed for the
 1276 respondent, pursuant to § 37.1-134.12, if the guardian ad litem believes that counsel for the respondent
 1277 is necessary; (iv) investigating the petition and evidence, requesting additional evaluation if necessary,
 1278 and filing a report pursuant to subsection C; and (v) personally appearing at all court proceedings and
 1279 conferences.

1280 C. In the report required by subsection B (iv), the guardian ad litem shall address the following
 1281 major areas of concern: (i) whether the court has jurisdiction; (ii) whether or not a guardian or
 1282 conservator is needed; (iii) the extent of the duties and powers of the guardian or conservator, e.g.,
 1283 personal supervision, financial management, medical consent only; (iv) the propriety and suitability of
 1284 the person selected as guardian or conservator, after consideration of geographic location, familial or
 1285 other relationship with the respondent, ability to carry out the powers and duties of the office,
 1286 commitment to promoting the respondent's welfare, any potential conflicts of interests, wishes of the
 1287 respondent, and recommendations of relatives; (v) a recommendation as to the amount of surety on the
 1288 conservator's bond; if any; and (vi) consideration of proper residential placement of the respondent.

1289 *D. A health care provider shall disclose or make available to the guardian ad litem, upon request,*
 1290 *any information, records, and reports concerning the respondent that he determines necessary to*
 1291 *perform his duties under this section.*

1292 § 37.1-134.12. Counsel for respondent.

1293 The respondent has the right to be represented by counsel of the respondent's choice. If the
 1294 respondent is not represented by counsel, the court may appoint legal counsel, upon the filing of the
 1295 petition or at any time prior to the entry of the order upon request of the respondent or the guardian ad
 1296 litem if the court determines that counsel is needed to protect the respondent's interest. Counsel
 1297 appointed by the court shall be paid such fee as is fixed by the court to be taxed as part of the costs of
 1298 the proceeding.

1299 *A health care provider shall disclose or make available to the attorney upon request any*
 1300 *information, records, and reports concerning the respondent that he determines necessary to perform his*
 1301 *duties under this section, including a copy of the evaluation report required under § 37.1-134.11.*

1302 § 37.1-134.21. Judicial authorization of treatment and detention of certain persons.

1303 A. An appropriate circuit court, or judge as defined in § 37.1-1, may authorize on behalf of an adult
 1304 person, in accordance with this section, the provision, withholding or withdrawal of a specific treatment
 1305 or course of treatment for a mental or physical disorder, if it finds upon clear and convincing evidence
 1306 that (i) the person is either incapable of making an informed decision on his own behalf or is incapable
 1307 of communicating such a decision due to a physical or mental disorder and (ii) the proposed action is in
 1308 the best interest of the person.

1309 B. For purposes of this section:

1310 "Disorder" includes any physical or mental disorder or impairment, whether caused by injury,
 1311 disease, genetics, or other cause.

1312 "Incapable of making an informed decision" means unable to understand the nature, extent or
 1313 probable consequences of a proposed treatment, or unable to make a rational evaluation of the risks and
 1314 benefits of the proposed treatment as compared with the risks and benefits of alternatives to that
 1315 treatment. Persons with dysphasia or other communication disorders who are mentally competent and
 1316 able to communicate shall not be considered incapable of giving informed consent.

1317 C. Any person may request authorization of the provision, withholding or withdrawal of a specific
 1318 treatment, or course of treatment, for an adult person by filing a petition in the circuit court, or with a
 1319 judge as defined in § 37.1-1, of the county or city in which the allegedly incapable person resides or is
 1320 located, or in the county or city in which the proposed place of treatment is located. Upon filing such a
 1321 petition, the petitioner or the court shall deliver or send a certified copy of the petition to the person
 1322 who is the subject of such petition and, if the identity and whereabouts of the person's next of kin are
 1323 known, to the next of kin.

1324 D. As soon as reasonably possible after the filing of the petition, the court shall appoint an attorney
 1325 to represent the interests of the allegedly incapable person at the hearing. However, such appointment
 1326 shall not be required in the event that the person, or another interested person on behalf of the person,
 1327 elects to retain private counsel at his own expense to represent the interests of the person at the hearing.
 1328 If the allegedly incapable person is indigent, his counsel shall be paid by the Commonwealth as
 1329 provided in § 37.1-89 from funds appropriated to reimburse expenses incurred in the involuntary mental
 1330 commitment process. However, this provision shall not be construed to prohibit the direct payment of an
 1331 attorney's fee either by the patient or by an interested person on his behalf, which fee shall be subject to
 1332 the review and approval of the court.

1333 E. Following the appointment of an attorney pursuant to subsection D above, the court shall schedule
 1334 an expedited hearing of the matter. The court shall notify the person who is the subject of the petition,
 1335 his next of kin, if known, the petitioner, and their respective counsel of the date and time for the

1336 hearing. In scheduling such a hearing, the court shall take into account the type and severity of the
 1337 alleged physical or mental disorder, as well as the need to provide the person's attorney with sufficient
 1338 time to adequately prepare his client's case.

1339 F. Notwithstanding the provisions of subsections C and E above regarding delivery or service of the
 1340 petition and notice of the hearing to the next of kin of any person who is the subject of such petition, if
 1341 such person is a patient in any hospital at the time the petition is filed, the court, in its discretion, may
 1342 dispense with the requirement of any notice to the next of kin. This subsection shall not, however, be
 1343 construed to interfere with any decision made pursuant to the Health Care Decisions Act (§ 54.1-2981 et
 1344 seq.).

1345 G. Evidence presented at the hearing may be submitted by affidavit in the absence of objection by
 1346 the person who is the subject of the petition, the petitioner, either of their respective counsel, or by any
 1347 other interested party. Prior to the hearing, the attorney shall investigate the risks and benefits of the
 1348 treatment decision for which authorization is sought and of alternatives to the proposed decision. The
 1349 attorney shall make a reasonable effort to inform the person of this information and to ascertain the
 1350 person's religious beliefs and basic values and the views and preferences of the person's next of kin. *A*
 1351 *health care provider shall disclose or make available to the attorney, upon request, any information,*
 1352 *records, and reports concerning the person that the attorney determines necessary to perform his duties*
 1353 *under this section.*

1354 H. Prior to authorizing the provision, withholding or withdrawal of treatment pursuant to this section,
 1355 the court shall find:

1356 1. That there is no legally authorized person available to give consent;

1357 2. That the person who is the subject of the petition is incapable either of making an informed
 1358 decision regarding a specific treatment or course of treatment or is physically or mentally incapable of
 1359 communicating such a decision;

1360 3. That the person who is the subject of the petition is unlikely to become capable of making an
 1361 informed decision or of communicating an informed decision within the time required for decision; and

1362 4. That the proposed course of treatment is in the best interest of the patient. However, the court
 1363 shall not authorize a proposed course of treatment which is proven by a preponderance of the evidence
 1364 to be contrary to the person's religious beliefs or basic values unless such treatment is necessary to
 1365 prevent death or a serious irreversible condition. The court shall take into consideration the right of the
 1366 person to rely on nonmedical, remedial treatment in the practice of religion in lieu of medical treatment.

1367 I. The court may not authorize the following under this section:

1368 1. Nontherapeutic sterilization, abortion, or psychosurgery.

1369 2. Admission to a mental retardation facility or a psychiatric hospital, as defined in § 37.1-1.
 1370 However, the court may issue an order under this section authorizing the provision, withholding or
 1371 withdrawal of a specific treatment or course of treatment of a person whose admission to such facility
 1372 has been or is simultaneously being authorized under §§ 37.1-65, 37.1-65.1, 37.1-65.2, 37.1-65.3, or
 1373 § 37.1-67.1, or of a person who is subject to an order of involuntary commitment previously or
 1374 simultaneously issued under § 37.1-67.3 or Article 1.1 (§ 37.1-70.1 et seq.) of Chapter 2 of this title.

1375 3. Administration of antipsychotic medication for a period to exceed 180 days or electroconvulsive
 1376 therapy for a period to exceed 60 days pursuant to any petition filed under this section. The court may
 1377 authorize electroconvulsive therapy only if it is demonstrated by clear and convincing evidence, which
 1378 shall include the testimony of a licensed psychiatrist, that all other reasonable forms of treatment have
 1379 been considered and that electroconvulsive therapy is the most effective treatment for the person. Even
 1380 if the court has authorized administration of antipsychotic medication or electroconvulsive therapy
 1381 hereunder, these treatments may be administered over the person's objection only if he is subject to an
 1382 order of involuntary commitment, including outpatient involuntary commitment, previously or
 1383 simultaneously issued under § 37.1-67.3 or Article 1.1 (§ 37.1-70.1 et seq.) of Chapter 2 of this title, or
 1384 the provisions of Chapter 11 (§ 19.2-167 et seq.) or Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2.

1385 4. Restraint or transportation of the person, unless it finds upon clear and convincing evidence that
 1386 restraint or transportation is necessary to the provision of an authorized treatment for a physical disorder.

1387 J. Any order authorizing the provision, withholding or withdrawal of treatment pursuant to subsection
 1388 A shall describe any treatment or course of treatment authorized and may authorize generally such
 1389 related examinations, tests, or services as the court may determine to be reasonably related to the
 1390 treatment authorized. The order shall require the treating physician to review and document the
 1391 appropriateness of the continued administration of antipsychotic medications not less frequently than
 1392 every 30 days. Such order shall require the treating physician or other service provider to report to the
 1393 court and the person's attorney any change in the person's condition resulting in probable restoration or
 1394 development of the person's capacity to make and to communicate an informed decision prior to
 1395 completion of any authorized course of treatment and related services. The order may further require the
 1396 treating physician or other service provider to report to the court and the person's attorney any change in

1397 circumstances regarding any authorized course of treatment or related services or the withholding or
1398 withdrawal of treatment or services which may indicate that such authorization is no longer in the
1399 person's best interests. Upon receipt of such report, or upon the petition of any interested party, the court
1400 may enter such order withdrawing or modifying its prior authorization as it deems appropriate. Any
1401 petition or order under this section may be orally presented or entered, provided a written order shall be
1402 subsequently executed.

1403 K. Any order hereunder of a judge, or of a judge or magistrate under subsection M, may be appealed
1404 de novo within 10 days to the circuit court for the jurisdiction where the order was entered, and any
1405 such order of a circuit court hereunder, either originally or on appeal, may be appealed within 10 days
1406 to the Court of Appeals.

1407 L. Any licensed health professional or licensed hospital providing, withholding or withdrawing
1408 treatment, testing or detention pursuant to the court's or magistrate's authorization as provided in this
1409 section shall have no liability arising out of a claim to the extent such claim is based on lack of consent
1410 to such course of treatment, testing or detention or the withholding or withdrawal of such treatment,
1411 testing or detention. Any such professional or hospital providing, withholding or withdrawing treatment
1412 with the consent of the person receiving or being offered treatment shall have no liability arising out of
1413 a claim to the extent it is based on lack of capacity to consent if a court or a magistrate has denied a
1414 petition hereunder to authorize such treatment, and such denial was based on an affirmative finding that
1415 the person was capable of making and communicating an informed decision regarding the proposed
1416 provision, withholding or withdrawal of treatment.

1417 M. Based upon the opinion of a licensed physician that an adult person is incapable of making an
1418 informed decision as a result of a physical injury or illness and that the medical standard of care
1419 indicates that testing, observation and treatment are necessary to prevent imminent and irreversible harm,
1420 a magistrate may issue, for good cause shown, an emergency custody order for such adult person to be
1421 taken into custody and transported to a hospital emergency room for such testing, observation or
1422 treatment.

1423 Prior to issuance of an emergency custody order pursuant to this subsection, the magistrate shall
1424 ascertain that there is no legally authorized person available to give consent to necessary treatment for
1425 the adult person and that the adult person (i) is incapable of making an informed decision regarding
1426 obtaining necessary treatment, (ii) has refused transport to obtain such necessary treatment, (iii) has
1427 indicated an intention to resist such transport, and (iv) is unlikely to become capable of making an
1428 informed decision regarding obtaining necessary treatment within the time required for such decision.

1429 An opinion by the licensed physician that an adult person is incapable of making an informed
1430 decision as a result of physical injury or illness shall only be rendered after such licensed physician has
1431 communicated electronically or personally with the emergency medical services personnel on the scene
1432 and has attempted to communicate electronically or personally with the adult person to obtain
1433 information and medical data concerning the cause of the adult person's incapacity, has attempted to
1434 obtain consent from the adult person and has failed to obtain such consent.

1435 If there is a change in the person's condition, the emergency medical services personnel shall contact
1436 the licensed physician. If at any time the licensed physician determines that a person subject to an order
1437 under this subsection has become capable of making and communicating an informed decision, such
1438 physician shall rely on the person's decision on whether to consent to further observation, testing or
1439 treatment.

1440 Upon reaching the emergency room, the person shall be evaluated by a licensed physician. If the
1441 physician determines that the person meets the requirements of subsection N, the physician may apply
1442 for a temporary detention order pursuant to that subsection. If the physician determines that the person
1443 does not meet the requirements of subsection N, the person shall be released from custody immediately.
1444 The person shall remain in custody until this evaluation is performed, but in no event shall the period of
1445 custody under this subsection exceed four hours.

1446 The law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county,
1447 city or town in which he serves to any point in the Commonwealth for the purpose of executing an
1448 order for emergency custody pursuant to this subsection. Nothing herein shall preclude a
1449 law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at
1450 any time for a person in his custody as provided in this subsection.

1451 If an order of emergency custody is not executed within four hours of its issuance, the order shall be
1452 void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is
1453 not open, to any judge or magistrate thereof.

1454 N. Upon the advice of a licensed physician who has attempted to obtain consent and upon a finding
1455 of probable cause to believe that an adult person within the court's or a magistrate's jurisdiction is
1456 incapable of making an informed decision regarding treatment of a physical or mental disorder, or is
1457 incapable of communicating such a decision due to a physical or mental disorder, and that the medical

1458 standard of care calls for testing, observation or treatment of the disorder within the next 24 hours to
 1459 prevent death, disability, or a serious irreversible condition, the court or, if the court is unavailable, a
 1460 magistrate may issue an order authorizing temporary detention of the person by a hospital emergency
 1461 room or other appropriate facility and authorizing such testing, observation or treatment. The detention
 1462 may not be for a period exceeding 24 hours unless extended by the court as part of an order authorizing
 1463 treatment under subsection A. If before completion of authorized testing, observation or treatment, the
 1464 physician determines that a person subject to an order under this subsection has become capable of
 1465 making and communicating an informed decision, the physician shall rely on the person's decision on
 1466 whether to consent to further observation, testing or treatment. If before issuance of an order under this
 1467 subsection or during its period of effectiveness, the physician learns of an objection by a member of the
 1468 person's immediate family to the testing, observation or treatment, he shall so notify the court or
 1469 magistrate, who shall consider the objection in determining whether to issue, modify or terminate the
 1470 order.

1471 O. The provisions of § 37.1-89 relating to payment by the Commonwealth shall not apply to the cost
 1472 of detention, testing or treatment under this section.

1473 P. Nothing in this section shall be deemed to affect the right to use, and the authority conferred by,
 1474 any other applicable statutory or regulatory procedure relating to consent, or to diminish any common
 1475 law authority of a physician or other treatment provider to provide, withhold or withdraw services to a
 1476 person unable to give or to communicate informed consent to those actions, with or without the consent
 1477 of the person's relative, including but not limited to common law or other authority to provide treatment
 1478 in an emergency situation; nor shall anything in this section be construed to affect the law defining the
 1479 conditions under which consent shall be obtained for medical treatment, or the nature of the consent
 1480 required.

1481 Q. Judicial authorization pursuant to this section for providing, withholding or withdrawing treatment
 1482 need not be obtained for a person for whom consent or authorization has been granted or issued or may
 1483 be obtained in accordance with the provisions of Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title
 1484 54.1 or other applicable statutes or common law of this Commonwealth.

1485 § 37.1-226. Patient deemed to authorize disclosure of certain information.

1486 A patient who has requested a professional *or treatment facility* to submit a bill to a third party
 1487 payor for payment under a contract or policy of insurance covering such patient shall be deemed to have
 1488 ~~consented to~~ *authorized* the disclosure of the following information to such third party payor:

- 1489 1. The patient's name, *address, date of birth*, and the contract or policy number;
- 1490 2. The date the patient was admitted to a treatment facility or the date the patient began receiving
 1491 mental health, mental retardation or substance abuse services;
- 1492 3. The date of onset of the patient's illness;
- 1493 4. The date the patient was discharged from the treatment facility or the date the services terminated,
 1494 if known;
- 1495 5. The diagnosis, with brief information substantiating the diagnosis;
- 1496 6. A brief description of the services provided such patient, including type of therapy, medications
 1497 ordered and administered, and number of hours spent in individual, group, or family treatment,
 1498 recreational therapy, or rehabilitative activities;
- 1499 7. Status of the patient, whether in-patient or out-patient; and
- 1500 8. The patient's relationship to the contract subscriber or policyholder.

1501 § 37.1-227. Disclosure of additional information.

1502 If the third party payor is unable to settle the claim on the basis of the information provided pursuant
 1503 to § 37.1-226, a physician *or other authorized professional* employed by the third party payor may
 1504 request additional information stating the reasons therefor. Either the professional or the treatment
 1505 facility, or both, may submit to the physician *or other authorized professional* the requested additional
 1506 information which shall be treated as confidential by the third party payor, its agents, consultants and
 1507 employees.

1508 § 37.1-228. Disclosure of information by third party payor prohibited; exceptions.

1509 A. No third party payor shall disclose any information received from either a professional or a
 1510 treatment facility, or both, about a patient without the patient's consent *or authorization*, except as
 1511 hereafter provided in this section.

1512 B. Such information may be disclosed by the third party payor without the patient's consent *or*
 1513 *authorization* for the purposes of rate review, auditing or evaluation to the extent that such information
 1514 is necessary to accomplish such purposes. Where a disclosure made to any person pursuant to this
 1515 subsection includes patient identifying information, the records containing such information may not be
 1516 removed from the premises of the third party payor and the information may not be used in connection
 1517 with any legal, administrative, supervisory or other action whatsoever with respect to the patient.

1518 C. Any third party payor participating in a coordination of benefit program with other third party

1519 payors may release such information to another third party payor without the patient's consent *or*
 1520 *authorization*. Information released under this subsection shall be limited to:

- 1521 1. The name of the patient;
 1522 2. The name of the professional;
 1523 2a. The name of the treatment facility;
 1524 3. The date of onset of the patient's illness and the period of treatment covered by the third party
 1525 payor; and
 1526 4. The amount already paid.

1527 D. No person receiving any information about a patient from a third party payor may disclose such
 1528 information.

1529 § 37.1-229. Form of consent or authorization.

1530 No consent *or authorization* required by § 37.1-228 of this chapter shall be valid unless such consent
 1531 *or authorization* is in writing and states:

- 1532 1. The person to whom disclosure is to be made;
 1533 2. The nature of the information to be disclosed;
 1534 3. The purpose for which disclosure is to be made; and
 1535 4. The inclusive dates of the records to be disclosed.

1536 No consent *or authorization* shall be valid unless it is dated and signed by the person consenting *or*
 1537 *authorizing*. Any consent *or authorization* may be revoked except to the extent that action has already
 1538 been taken in reliance on the consent *or authorization*.

1539 *Any consent or authorization pursuant to this section shall also comply with the relevant*
 1540 *requirements of subsection G of § 32.1-127.1:03.*

1541 § 37.1-230. Disclosure to patient of information released.

1542 Any patient who is the subject of information received by a third party payor pursuant to the
 1543 provisions of this chapter may request and shall be entitled to receive from such third party payor a
 1544 statement as to the substance of such information. ~~Provided,~~

1545 However, if either the professional *treating the patient* or the treatment facility, or both, have advised
 1546 the third party payor that *the patient's treating physician or treating clinical psychologist has determined*
 1547 *that such information, if given to the patient might adversely affect the patient's health, would be*
 1548 *reasonably likely to endanger the life or physical safety of the patient or another person, or that such*
 1549 *record makes reference to a person other than a health care provider, and the access requested would*
 1550 *be reasonably likely to cause substantial harm to such referenced person, the third party payor shall, if*
 1551 *requested by the patient (i) provide such information to an attorney designated by the patient rather than*
 1552 *to the patient or (ii) to a physician or clinical psychologist designated by the patient, whose licensure,*
 1553 *training, and experience, relative to the patient's condition, are at least equivalent to that of the treating*
 1554 *physician or treating clinical psychologist upon whose opinion the denial is based, who, at the patient's*
 1555 *expense, shall make a judgment as to whether to make the information available to the patient.*

1556 *Alternatively, upon the patient's request, the third party payor shall instead provide such information*
 1557 *to a physician or clinical psychologist selected by the third party payor, whose licensure, training, and*
 1558 *experience relative to the patient's condition are at least equivalent to that of the physician or clinical*
 1559 *psychologist who advised the third party payor to deny the patient access to his records and who did*
 1560 *not participate in the original decision to make, at the third party payor's expense, a judgment as to*
 1561 *whether to make the information available to the patient. The third party payor shall comply with the*
 1562 *judgment of the reviewing physician or clinical psychologist.*

1563 § 38.2-608. Access to recorded personal information.

1564 A. If any individual, after proper identification, submits a written request to an insurance institution,
 1565 agent, or insurance-support organization for access to recorded personal information about the individual
 1566 that is reasonably described by the individual and reasonably able to be located and retrieved by the
 1567 insurance institution, agent, or insurance-support organization, the insurance institution, agent, or
 1568 insurance-support organization shall within ~~thirty~~ 30 business days from the date the request is received:

1569 1. Inform the individual of the nature and substance of the recorded personal information in writing,
 1570 by telephone, or by other oral communication, whichever the insurance institution, agent, or
 1571 insurance-support organization prefers;

1572 2. Permit the individual to see and copy, in person, the recorded personal information pertaining to
 1573 him or to obtain a copy of the recorded personal information by mail, whichever the individual prefers,
 1574 unless the recorded personal information is in coded form, in which case an accurate translation in plain
 1575 language shall be provided in writing;

1576 3. Disclose to the individual the identity, if recorded, of those persons to whom the insurance
 1577 institution, agent, or insurance-support organization has disclosed the personal information within two
 1578 years prior to such request, and if the identity is not recorded, the names of those insurance institutions,
 1579 agents, insurance-support organizations or other persons to whom such information is normally

1580 disclosed; and

1581 4. Provide the individual with a summary of the procedures by which he may request correction,
1582 amendment, or deletion of recorded personal information.

1583 B. Any personal information provided pursuant to subsection A of this section shall identify the
1584 source of the information if it is an institutional source.

1585 C. Medical-record information supplied by a medical-care institution or medical professional and
1586 requested under subsection A of this section, together with the identity of the medical professional or
1587 medical care institution that provided the information, shall be supplied either directly to the individual
1588 or to a medical professional designated by the individual and licensed to provide medical care with
1589 respect to the condition to which the information relates, whichever the ~~insurance institution, agent or~~
1590 ~~insurance-support organization~~ individual prefers. If ~~it~~ *the individual* elects to ~~disclose~~ *disclose* the
1591 information *disclosed* to a medical professional designated by ~~the individual~~ *him*, the insurance
1592 institution, agent or insurance-support organization shall notify the individual, at the time of the
1593 disclosure, that it has provided the information to the medical professional.

1594 *However, disclosure directly to the individual may be denied if a treating physician or treating*
1595 *clinical psychologist has determined, in the exercise of professional judgment, that the disclosure*
1596 *requested would be reasonably likely to endanger the life or physical safety of the individual or another*
1597 *person or that the information requested makes reference to a person other than a health care provider*
1598 *and disclosure of such information would be reasonably likely to cause substantial harm to the*
1599 *referenced person.*

1600 *If disclosure to the individual is denied, upon the individual's request, the insurance institution, agent*
1601 *or insurance support organization shall either (i) designate a physician or clinical psychologist*
1602 *acceptable to the insurance institution, agent or insurance support organization, who was not directly*
1603 *involved in the denial, and whose licensure, training, and experience relative to the individual's*
1604 *condition are at least equivalent to that of the physician or clinical psychologist who made the original*
1605 *determination, who shall, at the expense of the insurance institution, agent or insurance support*
1606 *organization, make a judgment as to whether to make the information available to the individual; or (ii)*
1607 *if the individual so requests, make the information available, at the individual's expense to a physician*
1608 *or clinical psychologist selected by the individual, whose licensure, training and experience relative to*
1609 *the individual's condition are at least equivalent to that of the physician or clinical psychologist who*
1610 *made the original determination, who shall make a judgment as to whether to make the information*
1611 *available to the individual. The insurance institution, agent, or insurance support organization shall*
1612 *comply with the judgment of the reviewing physician or clinical psychologist made in accordance with*
1613 *the foregoing procedures.*

1614 D. Except for personal information provided under § 38.2-610, an insurance institution, agent, or
1615 insurance-support organization may charge a reasonable fee to cover the costs incurred in providing a
1616 copy of recorded personal information to individuals.

1617 E. The obligations imposed by this section upon an insurance institution or agent may be satisfied by
1618 another insurance institution or agent authorized to act on its behalf. With respect to the copying and
1619 disclosure of recorded personal information pursuant to a request under subsection A of this section, an
1620 insurance institution, agent, or insurance-support organization may make arrangements with an
1621 insurance-support organization or a consumer reporting agency to copy and disclose recorded personal
1622 information on its behalf.

1623 F. The rights granted to individuals in this section shall extend to all natural persons to the extent
1624 information about them is collected and maintained by an insurance institution, agent or
1625 insurance-support organization in connection with an insurance transaction. The rights granted to all
1626 natural persons by this subsection shall not extend to information about them that relates to and is
1627 collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding
1628 involving them.

1629 G. For purposes of this section, the term "insurance-support organization" does not include
1630 "consumer reporting agency."