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SENATE BILL NO. 387

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact §§ 2.2-701, 2.2-705, 2.2-1124, 2.2-1204, 2.2-1207, 2.2-1839, 2.2-2411, 2.2-2525, 2.2-2649, 2.2-3705.3, 2.2-3705.5, 2.2-3711, 2.2-4002, 15.2-964, 15.2-2291, 16.1-241, 16.1-269.1, 16.1-278.11, 16.1-280, 16.1-283, 16.1-336, 16.1-361, 18.2-369, 19.2-123, 19.2-182.2, 19.2-182.3, 19.2-182.8, 19.2-182.9, 19.2-218.1, 19.2-316, 19.2-389, 22.1-3, 22.1-7, 22.1-213, 22.1-214.2, 22.1-214.3, 22.1-215, 22.1-217.1, 22.1-253.13:2, 22.1-319, 23-38.2, 25.1-100, 29.1-313, 32.1-59, 32.1-65, 32.1-102.1, 32.1-127.01, 32.1-283, as it is currently effective and as it shall become effective, 32.1-323.2, 32.1-331.13, 36-96.6, 37.2-100, 37.2-200, 37.2-203, 37.2-204, 37.2-303 through 37.2-306, 37.2-312, 37.2-314, 37.2-315, 37.2-316, 37.2-318, 37.2-319, 37.2-400, 37.2-401, 37.2-403, 37.2-406, 37.2-408, 37.2-408.1, 37.2-409, 37.2-411, 37.2-416, 37.2-419, 37.2-420, 37.2-424, 37.2-427, 37.2-428, 37.2-430, 37.2-500, 37.2-501, 37.2-504, 37.2-505, 37.2-506, 37.2-508, 37.2-509, 37.2-511, 37.2-512, 37.2-600, 37.2-601, 37.2-602, 37.2-605, 37.2-608, 37.2-609, 37.2-612, 37.2-613, 37.2-615, 37.2-700 through 37.2-706, 37.2-709 through 37.2-715, 37.2-717 through 37.2-721, 37.2-802, 37.2-806, 37.2-837 through 37.2-840, 37.2-843, 37.2-1028, 37.2-1101, 38.2-3323, 38.2-3409, 40.1-28.9, 46.2-314, 46.2-400, 46.2-401, 51.1-513.3, 51.5-3, 51.5-30, 51.5-39.7, 51.5-39.8, 51.5-39.12, 53.1-40.3, 53.1-40.5, 53.1-40.7, 53.1-216, 54.1-701, 54.1-2970, 54.1-2982, 58.1-638, 58.1-3211, 58.1-3214, 60.2-213, 63.2-1000, 63.2-1105, 63.2-1602, 63.2-1603, 63.2-1801, 63.2-1805, 63.2-1808.1, 64.1-62.3, 64.1-157.1, 66-18, 66-19, and 66-20 of the Code of Virginia, relating to mental health and developmental services; terminology.

Patrons—Martin and Miller, J.C.

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That reenact §§ 2.2-701, 2.2-705, 2.2-1124, 2.2-1204, 2.2-1207, 2.2-1839, 2.2-2411, 2.2-2525, 2.2-2649, 2.2-3705.3, 2.2-3705.5, 2.2-3711, 2.2-4002, 15.2-964, 15.2-2291, 16.1-241, 16.1-269.1, 16.1-278.11, 16.1-280, 16.1-283, 16.1-336, 16.1-361, 18.2-369, 19.2-123, 19.2-182.2, 19.2-182.3, 19.2-182.8, 19.2-182.9, 19.2-218.1, 19.2-316, 19.2-389, 22.1-3, 22.1-7, 22.1-213, 22.1-214.2, 22.1-214.3, 22.1-215, 22.1-217.1, 22.1-253.13:2, 22.1-319, 23-38.2, 25.1-100, 29.1-313, 32.1-59, 32.1-65, 32.1-102.1, 32.1-127.01, 32.1-283, as it is currently effective and as it shall become effective, 32.1-323.2, 32.1-331.13, 36-96.6, 37.2-100, 37.2-200, 37.2-203, 37.2-204, 37.2-303 through 37.2-306, 37.2-312, 37.2-314, 37.2-315, 37.2-316, 37.2-318, 37.2-319, 37.2-400, 37.2-401, 37.2-403, 37.2-406, 37.2-408, 37.2-408.1, 37.2-409, 37.2-411, 37.2-416, 37.2-419, 37.2-420, 37.2-424, 37.2-427, 37.2-428, 37.2-430, 37.2-500, 37.2-501, 37.2-504, 37.2-505, 37.2-506, 37.2-508, 37.2-509, 37.2-511, 37.2-512, 37.2-600, 37.2-601, 37.2-602, 37.2-605, 37.2-608, 37.2-609, 37.2-612, 37.2-613, 37.2-615, 37.2-700 through 37.2-706, 37.2-709 through 37.2-715, 37.2-717 through 37.2-721, 37.2-802, 37.2-806, 37.2-837 through 37.2-840, 37.2-843, 37.2-1028, 37.2-1101, 38.2-3323, 38.2-3409, 40.1-28.9, 46.2-314, 46.2-400, 46.2-401, 51.1-513.3, 51.5-3, 51.5-30, 51.5-39.7, 51.5-39.8, 51.5-39.12, 53.1-40.3, 53.1-40.5, 53.1-40.7, 53.1-216, 54.1-701, 54.1-2970, 54.1-2982, 58.1-638, 58.1-3211, 58.1-3214, 60.2-213, 63.2-1000, 63.2-1105, 63.2-1602, 63.2-1603, 63.2-1801, 63.2-1805, 63.2-1808.1, 64.1-62.3, 64.1-157.1, 66-18, 66-19, and 66-20 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-701. Nature of long-term care services.

A. The long-term care services shall include, but not be limited to, the following:

1. A balanced range of health, social, and supportive services to deliver long-term care services to persons ~~aged~~ *age* 60 and older with chronic illnesses or functional impairments;

2. Meaningful choice, increased functional ability, and affordability as determining factors in defining long-term care service needs, which needs shall be determined by a uniform system for comprehensively assessing the needs and preferences of individuals requiring such services;

3. Service delivery, consistent with the needs and preferences of individuals requiring such services, that occurs in the most independent, least restrictive, and most appropriate living situation possible; and

4. Opportunities for self-care and independent living, as appropriate, by encouraging all long-term care programs to maximize self-care and independent living within the mainstream of life in the community.

B. Such services shall include, but not be limited to, the following categories: socialization services, health care services, nutrition services, daily living services, educational services, housing services, transportation services, and supportive services.

C. As used in this section:

"Daily living services" includes homemaker, companion, personal care and chore services, home repair, weatherization and adult day care.

"Educational services" includes information on the long-term care services provided by agencies of the Commonwealth, its localities and private sector agencies, and public information as provided in § 2.2-213.1.

"Health care services" includes home health care and community medical care.

"Housing services" includes community-based residential opportunities and retrofitting existing housing as needed.

"Nutrition services" includes home-delivered meals, food stamps, and congregate meals.

"Socialization services" includes telephone reassurance, friendly visiting, and congregate meals.

"Supportive services" includes adult protective services, mental health and ~~mental retardation~~ *developmental* services, counseling services and legal aid.

"Transportation services" includes readily available access to public transportation or area coordinated para-transit systems.

§ 2.2-705. Access to residents, facilities and patients' records by Office of State Long-Term Care Ombudsman.

The entity designated by the Department to operate the programs of the Office of the State Long-Term Care Ombudsman pursuant to the Older Americans Act, Public Law 100-175, shall, in the investigation of complaints referred to the program, have the same access to (i) residents, facilities and patients' records of licensed adult care residences in accordance with § 63.2-1706 and (ii) patients, facilities and patients' records of nursing facilities or nursing homes in accordance with § 32.1-25, and shall have access to the ~~patients, residents and patients'~~ *individuals receiving services and their* records ~~of~~ *in* state hospitals operated by the Department of Behavioral Health and Developmental Services. However, if a patient *or individual receiving services* is unable to consent to the review of his medical and social records and has no legal guardian, such representatives shall have appropriate access to such records in accordance with this section. Notwithstanding the provisions of § 32.1-125.1, the entity designated by the Department to operate the programs of the Office of the State Long-Term Care Ombudsman shall have access to nursing facilities and nursing homes and state hospitals in accordance with this section. Access to *patients,* residents, *individuals receiving services, and their records, and* facilities and ~~patients' records~~ *state hospitals* shall be during normal working hours except in emergency situations.

§ 2.2-1124. Disposition of surplus materials.

A. "Surplus materials" means personal property including, but not limited to, materials, supplies, equipment, and recyclable items, but shall not include property as defined in § 2.2-1147 that is determined to be surplus. Surplus materials shall not include finished products that a ~~mental health~~ *state hospital* or ~~mental retardation facility~~ *training center operated by the Department of Behavioral Health and Developmental Services* sells for the benefit of ~~its patients or residents~~ *individuals receiving services in the state hospital or training center*, provided that (i) most of the supplies, equipment, or products have been donated to the ~~facility~~ *state hospital or training center*; (ii) the ~~patients or residents of the facility~~ *individuals in the state hospital or training center* have substantially altered the supplies, equipment, or products in the course of occupational or other therapy; and (iii) the substantial alterations have resulted in a finished product.

B. The Department shall establish procedures for the disposition of surplus materials from departments, divisions, institutions, and agencies of the Commonwealth. Such procedures shall:

1. Permit surplus materials to be transferred between or sold to departments, divisions, institutions, or agencies of the Commonwealth;

2. Permit surplus materials to be sold to Virginia charitable corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge;

3. Permit public sales or auctions, including online public auctions, provided that the procedures provide for sale to all political subdivisions and any volunteer rescue squad or volunteer fire department established pursuant to § 15.2-955 any surplus materials prior to such public sale or auction;

4. Permit surplus motor vehicles to be sold prior to public sale or auction to local social service departments for the purpose of resale at cost to TANF recipients;

5. Permit surplus materials to be sold to Virginia charitable corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as children's homes;

6. Permit donations to political subdivisions of the Commonwealth under the circumstances specified in this section;

7. Permit other methods of disposal when (a) the cost of the sale will exceed the potential revenue to

be derived therefrom or (b) the surplus material is not suitable for sale;

8. Permit any dog especially trained for police work to be sold at an appropriate price to the handler who last was in control of the dog, which sale shall not be deemed a violation of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.);

9. Permit the transfer of surplus clothing to an appropriate department, division, institution, or agency of the Commonwealth for distribution to needy individuals by and through local social services boards;

10. Encourage the recycling of paper products, beverage containers, electronics, and used motor oil;

11. Require the proceeds from any sale or recycling of surplus materials be promptly deposited into the state treasury in accordance with § 2.2-1802 and report the deposit to the State Comptroller;

12. Permit donations of surplus computers and related equipment to public schools in the Commonwealth and Virginia charitable corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and providing services to persons with disabilities, at-risk youths, or low-income families. For the purposes of this subdivision, "at-risk youths" means school-age children approved eligible to receive free or reduced price meals in the federally funded lunch program;

13. Permit surplus materials to be transferred or sold, prior to public sale or auction, to public television stations located in the state and other nonprofit organizations approved for the distribution of federal surplus materials;

14. Permit a public institution of higher education to dispose of its surplus materials at the location where the surplus materials are held and to retain any proceeds from such disposal, provided that the institution meets the conditions prescribed in subsection B of § 23-38.88 and § 23-38.112 (regardless of whether or not the institution has been granted any authority under Subchapter 3 (§ 23-38.91 et seq.) of Chapter 4.10 of Title 23); and

15. Require, to the extent practicable, the recycling and disposal of computers and other information technology assets. Additionally, for computers or information technology assets that may contain confidential state data or personal identifying information of citizens of the Commonwealth, the Department shall ensure all policies for the transfer or other disposition of computers or information technology assets are consistent with data and information security policies developed by the Virginia Information Technologies Agency.

C. The Department shall dispose of surplus materials pursuant to the procedures established in subsection B or permit any department, division, institution, or agency of the Commonwealth to dispose of its surplus materials consistent with the procedures so established. No surplus materials shall be disposed of without prior consent of the head of the department, division, institution, or agency of the Commonwealth in possession of such surplus materials or the Governor.

D. Departments, divisions, institutions, or agencies of the Commonwealth or the Governor may donate surplus materials only under the following circumstances:

1. Emergencies declared in accordance with § 44-146.18:2 or 44-146.28;

2. As set forth in the budget bill as defined by § 2.2-1509, provided that (a) the budget bill contains a description of the surplus materials, the method by which the surplus materials shall be distributed, and the anticipated recipients, and (b) such information shall be provided by the Department to the Department of Planning and Budget in sufficient time for inclusion in the budget bill;

3. When the market value of the surplus materials, which shall be donated for a public purpose, is less than $500; however, the total market value of all surplus materials so donated by any department, division, institution, or agency shall not exceed 25 percent of the revenue generated by such department's, division's, institution's, or agency's sale of surplus materials in the fiscal year, except these limits shall not apply in the case of surplus computer equipment and related items donated to Virginia public schools; or

4. During a local emergency, upon written request of the head of a local government or a political subdivision in the Commonwealth to the head of a department, division, institution, or agency.

E. On or before October 1 of each year, the Department shall prepare, and file with the Secretary of the Commonwealth, a plan that describes the expected disposition of surplus materials in the upcoming fiscal year pursuant to subdivision B 6.

F. The Department may make available to any local public body of the Commonwealth the services or facilities authorized by this section; however, the furnishing of any such services shall not limit or impair any services normally rendered any department, division, institution or agency of the Commonwealth. All public bodies shall be authorized to use the services of the Department's Surplus Property Program under the guidelines established pursuant to this section and the surplus property policies and procedures of the Department. Proceeds from the sale of the surplus property shall be returned to the local body minus a service fee. The service fee charged by the Department shall be consistent with the fee charged by the Department to state public bodies.

§ 2.2-1204. Health insurance program for employees of local governments, local officers, teachers, etc.; definitions.

A. The Department shall establish a plan or plans, hereinafter "plan" or "plans," subject to the approval of the Governor, for providing health insurance coverage for employees of local governments, local officers, teachers, employees of area agencies on aging, and retirees, and the dependents of such employees, officers, teachers, employees of area agencies on aging, and retirees. The plan or plans shall be rated separately from the plan established pursuant to § 2.2-2818 to provide health and related insurance coverage for state employees. Participation in such insurance plan or plans shall be (i) voluntary, (ii) approved by the participant's respective governing body, by the local school board in the case of teachers, or by the governing body of an area agency on aging in the case of its employees, and (iii) subject to regulations adopted by the Department. In addition, at the option of a governing body, school board, or area agency on aging that has elected to participate in the health insurance plan or plans offered by the Department, the governing body, school board, or area agency on aging may elect to participate in the long-term care or other benefit program that the Department may make available to the governing body, school board, or area agency on aging.

B. The plan established by the Department shall satisfy the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), shall consist of a flexible benefits structure that permits the creation of multiple plans of benefits and may provide for separate rating groups based upon criteria established by the Department. The Department shall adopt regulations regarding the establishment of such a plan or plans, including, but not limited to, requirements for eligibility, participation, access and egress, mandatory employer contributions and financial reserves, and the administration of the plan or plans. The Department may engage the services of other professional advisors and vendors as necessary for the prudent administration of the plan or plans. The assets of the plan or plans, together with all appropriations, premiums and other payments, shall be deposited in the employee health insurance fund, from which payments for claims, premiums, cost containment programs and administrative expenses shall be withdrawn from time to time. The assets of the fund shall be held for the sole benefit of the employee health insurance fund. The fund shall be held in the state treasury. Any interest on unused balances in the fund shall revert back to the credit of the fund. The State Treasurer shall charge reasonable fees to recover the actual costs of investing the assets of the plan or plans.

In establishing the participation requirements, the Department may provide that those employees, officers, and teachers without access to employer-sponsored health care coverage may participate in the plan. It shall collect all premiums directly from the employers of such employees, officers, and teachers.

C. In the event that the financial reserves of the plan fall to an unacceptably low level as determined by the Department, it shall have the authority to secure from the State Treasurer a loan sufficient to raise the reserve level to one that is considered adequate. The State Treasurer may make such a loan, to be repaid on such terms and conditions as established by him.

D. For the purposes of this section:

"Area agency on aging" means any agency designated pursuant to § 2.2-703.

"Employees of local governments" shall include all officers and employees of the governing body of any county, city or town, and the directing or governing body of any political entity, subdivision, branch or unit of the Commonwealth or of any commission or public authority or body corporate created by or under an act of the General Assembly specifying the power or powers, privileges or authority capable of exercise by the commission or public authority or body corporate, as distinguished from § 15.2-1300, 15.2-1303, or similar statutes, provided that the officers and employees of a social services department, welfare board, ~~mental health, mental retardation and substance abuse~~ *community* services board *or behavioral health authority*, center for independent living funded in whole or in part by the Department of Rehabilitative Services pursuant to the provisions of Chapter 6 (§ 51.5-23 et seq.) of Title 51.5, or library board of a county, city, or town shall be deemed to be employees of local government.

"Governing body," with regard to a center for independent living, means the governing board of an applicant established to operate the center for independent living as required by subsection B of § 51.5-23.

"Local officer" means the treasurer, registrar, commissioner of the revenue, attorney for the Commonwealth, clerk of a circuit court, sheriff, or constable of any county or city or deputies or employees of any of the preceding local officers.

"Teacher" means any employee of a county, city, or other local public school board.

E. Any stock and cash distributed to the Commonwealth pursuant to the conversion of Blue Cross and Blue Shield of Virginia, doing business as Trigon Blue Cross Blue Shield, from a mutual insurance company to a stock corporation known as Trigon Healthcare, Inc., that is directly attributable to the health insurance plan or plans established for employees of local governments, local officers, teachers, employees of area agencies on aging, and retirees, and the dependents of such employees, officers, teachers and retirees, pursuant to subsection A (hereinafter referred to as the local choice plan distribution) shall be deposited in the state treasury to the credit of the employee health insurance fund to be used as provided in this subsection. Such distribution shall not include any cash paid by Blue Cross and Blue Shield of Virginia or its successor to the Commonwealth in connection with such

conversion that was assumed as general fund revenue in Chapter 912 of the 1996 Acts of Assembly. All other stock and cash received by the Commonwealth pursuant to such conversion of Blue Cross and Blue Shield of Virginia to a stock corporation shall be allocated as provided in subsection B of § 23-284.

The State Treasurer shall sell any stock received pursuant to the local choice plan distribution as soon as practicable following its receipt, subject to any lockup period or other restriction on its sale, and the proceeds therefrom shall be deposited in the state treasury to the credit of the employee health insurance fund. Notwithstanding any other provision of law to the contrary, the State Treasurer shall not be liable for any losses incurred from the sale or distribution of such stock.

The Department of Human Resource Management shall use any stock, or the proceeds therefrom, and cash received pursuant to the local choice plan distribution to reduce premiums payable by employers participating in a plan or plans established pursuant to subsection A. In setting health insurance premiums for such plan or plans, the Director of the Department of Human Resource Management shall allocate the value of such stock, or proceeds therefrom, and cash among each participating employer. Such allocation shall be based on the proportionate amounts of premiums previously paid by each participating employer. If a participating employer withdraws from such plan or plans before all of the value allocated to it has been used for the benefit of the participating employer, the remaining value shall be transferred to such participating employer upon his withdrawal.

§ 2.2-1207. Long-term care insurance program for employees of local governments, local officers, and teachers.

A. The Department shall establish a plan or plans, hereinafter "plan" or "plans," subject to the approval of the Governor, for providing long-term care insurance coverage for employees of local governments, local officers, and teachers. The plan or plans shall be rated separately from the plan developed pursuant to § 51.1-513.1 to provide long-term care insurance coverage for state employees. Participation in such insurance plan or plans shall be (i) voluntary, (ii) approved by the participant's respective governing body, or by the local school board in the case of teachers, and (iii) subject to regulations adopted by the Department.

B. The Department shall adopt regulations regarding the establishment of such a plan or plans, and the administration of the plan or plans.

C. For the purposes of this section:

"Employees of local governments" shall include all officers and employees of the governing body of any county, city or town, and the directing or governing body of any political entity, subdivision, branch or unit of the Commonwealth or of any commission or public authority or body corporate created by or under an act of the General Assembly specifying the power or powers, privileges or authority capable of exercise by the commission or public authority or body corporate, as distinguished from §§ 15.2-1300, 15.2-1303, or similar statutes, provided that the officers and employees of a social services department, welfare board, ~~mental health,~~ ~~mental retardation~~ ~~and substance abuse~~ *community* services board *or behavioral health authority*, or library board of a county, city, or town shall be deemed to be employees of local government.

"Local officer" means the treasurer, registrar, commissioner of the revenue, attorney for the Commonwealth, clerk of a circuit court, sheriff, or constable of any county or city or deputies or employees of any of the preceding local officers.

"Teacher" means any employee of a county, city, or other local public school board.

D. The Department shall not carry out the provisions of this section if and when the Virginia Retirement System assumes responsibility for the plan or plans pursuant to § 51.1-513.3.

§ 2.2-1839. Risk management plans administered by the Department of the Treasury's Risk Management Division for political subdivisions, constitutional officers, etc.

A. The Division shall establish one or more risk management plans specifying the terms and conditions for coverage, subject to the approval of the Governor, and which plans may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide protection against liability imposed by law for damages and against incidental medical payments resulting from any claim made against any county, city or town; authority, board, or commission; sanitation, soil and water, planning or other district; public service corporation owned, operated or controlled by a locality or local government authority; constitutional officer; state court-appointed attorney; any attorney for any claim arising out of the provision of pro bono legal services for custody and visitation to an eligible indigent person under a program approved by the Supreme Court of Virginia or the Virginia State Bar; any receiver for an attorney's practice appointed under § 54.1-3900.01 or 54.1-3936; affiliate or foundation of a state department, agency or institution; any clinic that is organized in whole or primarily for the delivery of health care services without charge; volunteer drivers for any nonprofit organization providing transportation for persons who are elderly, disabled, or indigent to medical treatment and services, provided the volunteer driver has successfully completed training

approved by the Division; any local chapter or program of the Meals on Wheels Association of America or any area agency on aging, providing meal and nutritional services to persons who are elderly, homebound, or disabled, and volunteer drivers for such entities who have successfully completed training approved by the Division; any individual serving as a guardian or limited guardian as defined in § 37.2-1000 for any ~~consumer of~~ *individual receiving services from* a community services board or behavioral health authority or ~~any patient or resident of~~ *from* a state facility operated by the Department of Behavioral Health and Developmental Services; for nontransportation-related state construction contracts less than $500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317; or the officers, agents or employees of any of the foregoing for acts or omissions of any nature while in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

For the purposes of this section, "delivery of health care services without charge" shall be deemed to include the delivery of dental, medical or other health services when a reasonable minimum fee is charged to cover administrative costs.

For purposes of this section, a sheriff or deputy sheriff shall be considered to be acting in the scope of employment or authorization when performing any law-enforcement-related services authorized by the sheriff, and coverage for such service by the Division shall not be subject to any prior notification to or authorization by the Division.

B. Participation in the risk management plan shall be voluntary and shall be approved by the participant's respective governing body or by the State Compensation Board in the case of constitutional officers, by the office of the Executive Secretary of the Virginia Supreme Court in the case of state court-appointed attorneys, including attorneys appointed to serve as receivers under § 54.1-3900.01 or 54.1-3936, or attorneys under Virginia Supreme Court or Virginia State Bar approved programs, by the Commissioner of the Department of Behavioral Health and Developmental Services for any individual serving as a guardian or limited guardian for any ~~patient or resident of~~ *individual receiving services from* a state facility operated by ~~such~~ *the* Department or by the executive director of a community services board or behavioral health authority for any individual serving as a guardian or limited guardian for ~~a consumer of such~~ *any individual receiving services from the* board or authority, and by the Division. Upon such approval, the Division shall assume sole responsibility for plan management, compliance, or removal. The Virginia Supreme Court shall pay the cost for coverage of eligible persons performing services in approved programs of the Virginia Supreme Court or the Virginia State Bar. The Department of Behavioral Health and Developmental Services shall be responsible for paying the cost of coverage for eligible persons performing services as a guardian or limited guardian for any ~~patient or resident of~~*individual receiving services from* a state facility operated by the Department. The applicable community services board or behavioral health authority shall be responsible for paying the cost of coverage for eligible persons performing services as a guardian or limited guardian for ~~consumers of such~~*individuals receiving services from the* board or authority.

C. The Division shall provide for the legal defense of participating entities and shall reserve the right to settle or defend claims presented under the plan. All prejudgment settlements shall be approved in advance by the Division.

D. The risk management plan established pursuant to this section shall provide for the establishment of a trust fund for the payment of claims covered under such plan. The funds shall be invested in the manner provided in § 2.2-1806 and interest shall be added to the fund as earned.

The trust fund shall also provide for payment of legal defense costs, actuarial costs, administrative costs, contractual costs and all other expenses related to the administration of such plan.

E. The Division shall, in its sole discretion, set the premium and administrative cost to be paid to it for providing a risk management plan established pursuant to this section. The premiums and administrative costs set by the Division shall be payable in the amounts at the time and in the manner that the Division in its sole discretion shall require. The premiums and administrative costs need not be uniform among participants, but shall be set so as to best ensure the financial stability of the plan.

F. Notwithstanding any provision to the contrary, a sheriff's department of any city or county, or a regional jail shall not be precluded from securing excess liability insurance coverage beyond the coverage provided by the Division pursuant to this section.

§ 2.2-2411. Public Guardian and Conservator Advisory Board; purpose; membership; terms.

A. The Public Guardian and Conservator Advisory Board (the Board) is established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Board shall be to report to and advise the Commissioner of the Department for the Aging on the means for effectuating the purposes of this article and shall assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators pursuant to Chapter 10 (§ 37.2-1000 et seq.) of Title 37.2.

B. The Board shall consist of no more than ~~fifteen~~ *15* members who shall be appointed by the Governor as follows: one representative of the Virginia Guardianship Association, one representative of

the Virginia Area Agencies on Aging, one representative of the Virginia State Bar, one active or retired circuit court judge upon recommendation of the Chief Justice of the Supreme Court, one representative of the ~~Association of Retarded Citizens~~ *Arc of Virginia*, one representative of the ~~Virginia Alliance for the Mentally Ill~~ *National Alliance on Mental Illness of Virginia*, one representative of the Virginia League of Social Service Executives, one representative of the Virginia Association of Community Services Boards, the Commissioner of Social Services or his designee, the Commissioner of Behavioral Health and Developmental Services or his designee, the Director of the Virginia Office for Protection and Advocacy or his designee, and one person who is a member of the Commonwealth Council on Aging and such other individuals who may be qualified to assist in the duties of the Board.

C. The Commissioners of Social Services and Behavioral Health and Developmental Services or their designees, the Director of the Virginia Office for Protection and Advocacy or his designee, and the representative of the Commonwealth Council on Aging, shall serve terms coincident with their terms of office or in the case of designees, the term of the Commissioner or Director. Of the other members of the Board, five of the appointees shall serve for four-year terms and the remainder shall serve for three-year terms. No member shall serve more than two successive terms. A vacancy occurring other than by expiration of term shall be filled for the unexpired term.

D. Each year, the Board shall elect a chairman and a vice-chairman from among its members. Five members of the Board shall constitute a quorum.

E. Members shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2823.

§ 2.2-2525. (Expires July 1, 2014) Membership; terms; quorum; meetings.

The Commission shall have a total membership of 21 nonlegislative citizen members to be appointed as follows: four nonlegislative citizen members, of whom two shall be persons with disabilities, one shall be the relative of a citizen of the Commonwealth with a disability, and one shall be a provider of services to citizens of the Commonwealth with disabilities or an advocate for persons with disabilities or for services to such persons to be appointed by the Senate Committee on Rules; six nonlegislative citizen members, of whom three shall be persons with disabilities, one shall be the relative of a citizen of the Commonwealth with a disability, and two shall be providers of services to citizens of the Commonwealth with disabilities or an advocate for persons with disabilities or for services to such persons to be appointed by the Speaker of the House of Delegates; and 11 nonlegislative citizen members, of whom three shall be persons with disabilities, one shall be ~~a resident of~~ *an individual receiving services in* a state ~~mental health facility~~ *hospital operated by the Department of Behavioral Health and Developmental Services*, one shall be ~~a resident of~~ *an individual receiving services in* a state ~~mental retardation training facility~~ *training center*, one shall be a resident of a nursing facility, two shall be the relatives of citizens of the Commonwealth with disabilities, and three shall be providers of services to citizens of the Commonwealth with disabilities or an advocate for persons with disabilities or for services to such persons to be appointed by the Governor. Nonlegislative citizen members of the Commission shall be citizens of the Commonwealth.

Nonlegislative citizen members shall serve a term of four years; however, no nonlegislative citizen member shall serve more than two consecutive four-year terms. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

The Commission shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum. The Commission shall meet not less than four times each year. The meetings of the Commission shall be held at the call of the chairman or whenever the majority of the members so request.

§ 2.2-2649. Office of Comprehensive Services for At-Risk Youth and Families established; powers and duties.

A. The Office of Comprehensive Services for At-Risk Youth and Families is hereby established to serve as the administrative entity of the Council and to ensure that the decisions of the council are implemented. The director shall be hired by and subject to the direction and supervision of the Council pursuant to § 2.2-2648.

B. The director of the Office of Comprehensive Services for At-Risk Youth and Families shall:

1. Develop and recommend to the state executive council programs and fiscal policies that promote and support cooperation and collaboration in the provision of services to troubled and at-risk youths and their families at the state and local levels;

2. Develop and recommend to the Council state interagency policies governing the use, distribution and monitoring of moneys in the state pool of funds and the state trust fund;

3. Develop and provide for the consistent oversight for program administration and compliance with

state policies and procedures;

4. Provide for training and technical assistance to localities in the provision of efficient and effective services that are responsive to the strengths and needs of troubled and at-risk youths and their families;

5. Serve as liaison to the participating state agencies that administratively support the Office and that provide other necessary services;

6. Provide an informal review and negotiation process pursuant to subdivision D 19 of § 2.2-2648;

7. Implement, in collaboration with participating state agencies, policies, guidelines and procedures adopted by the State Executive Council;

8. Consult regularly with the Virginia Municipal League, the Virginia Coalition of Private Provider Associations, and the Virginia Association of Counties about implementation and operation of the Comprehensive Services Act (§ 2.2-5200 et seq.);

9. Hire appropriate staff as approved by the Council;

10. Identify, disseminate, and provide annual training for CSA staff and other interested parties on best practices and evidence-based practices related to the Comprehensive Services Program;

11. Perform such other duties as may be assigned by the State Executive Council;

12. Develop and implement uniform data collection standards and collect data, utilizing a secure electronic database for CSA-funded services, in accordance with subdivision D 16 of § 2.2-2648;

13. Develop and implement a uniform set of performance measures for the Comprehensive Services Act program in accordance with subdivision D 17 of § 2.2-2648;

14. Develop, implement, and distribute management reports in accordance with subdivision D 18 of § 2.2-2648;

15. Report to the Council all expenditures associated with serving children who receive pool-funded services. The report shall include expenditures for (i) all services purchased with pool funding; (ii) treatment, foster care case management, and residential care funded by Medicaid; and (iii) child-specific payments made through the Title IV-E program;

16. Report to the Council on the nature and cost of all services provided to the population of at-risk and troubled children identified by the State Executive Council as within the scope of the CSA program;

17. Develop and distribute model job descriptions for the position of Comprehensive Services Act Coordinator and provide technical assistance to localities and their coordinators to help them to guide localities in prioritizing coordinator's responsibilities toward activities to maximize program effectiveness and minimize spending; and

18. Develop and distribute guidelines, approved by the State Executive Council, regarding the development and use of multidisciplinary teams, in order to encourage utilization of multidisciplinary teams in service planning and to reduce Family Assessment and Planning Team caseloads to allow Family Assessment and Planning Teams to devote additional time to more complex and potentially costly cases.

C. The director of the Office of Comprehensive Services, in order to provide support and assistance to the Comprehensive Policy and Management Teams (CPMTs) and Family Assessment and Planning Teams (FAPTs) established pursuant to the Comprehensive Services Act for At-Risk Youth and Families (§ 2.2-5200 et seq.), shall:

1. Develop and maintain a web-based statewide automated database, with support from the Department of Information Technology or its successor agency, of the authorized vendors of the Comprehensive Services Act (CSA) services to include verification of a vendor's licensure status, a listing of each discrete CSA service offered by the vendor, and the discrete CSA service's rate determined in accordance with § 2.2-5214; and

2. Develop, in consultation with the Department of General Services, CPMTs, and vendors, a standardized purchase of services contract, which in addition to general contract provisions when utilizing state pool funds will enable localities to specify the discrete service or services they are purchasing for the specified client, the required reporting of the client's service data, including types and numbers of disabilities, mental health and ~~mental~~ ~~retardation~~ *intellectual disability* diagnoses, or delinquent behaviors for which the purchased services are intended to address, the expected outcomes resulting from these services and the performance timeframes mutually agreed to when the services are purchased.

§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.

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 of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

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

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

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

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

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

7. (Effective until July 1, 2012) Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i) Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; (v) committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vi) auditors, appointed by the local governing body of any county, city or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department or program of such body. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

7. (Effective July 1, 2012) Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vi) the auditors, appointed by the local governing body of any county, city or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department or program of such body. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

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

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

10. The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) made to a local governing body.

11. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

12. Records furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

13. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation conducted by or for the Board of Education related to the denial, suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure of records to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Records of completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The records disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information in the records regarding a current or former student shall be released except as permitted by state or federal law.

14. Records, notes and information provided in confidence and related to an investigation by the Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons supplying information, witnesses or other individuals involved in the investigation.

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

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. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health 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 health 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. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health 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 health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning ~~patient~~ abuse ~~as may be~~ *of individuals receiving services* compiled by the Commissioner of Behavioral Health and Developmental Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any ~~patient-identifying~~ information *that identifies specific individuals receiving services*.

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

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

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and records and information furnished to the Office of the Attorney General in connection with an investigation pursuant to Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

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

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.

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

8. Information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1.

9. Information and records acquired (i) during a review of any child death conducted by the State Child Fatality Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to the extent made confidential by § 32.1-283.2; (ii) during a review of any death conducted by a family violence fatality review team to the extent made confidential by § 32.1-283.3; or (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § 32.1-283.5.

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

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

12. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of Title 51.5, to the extent such records contain (i) medical or mental *health* records, or other data identifying individual patients or (ii) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

13. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to

§§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

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

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

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

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

18. Records containing the names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § 63.2-600.

§ 2.2-3711. Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

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

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

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

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

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

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

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

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

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

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

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

11. Discussion or consideration of tests, examinations, or other records excluded from this chapter pursuant to subdivision 4 of § 2.2-3705.1.

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

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

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

15. Discussion or consideration of medical and mental *health* records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.5.

16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of State Lottery Department matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

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

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

19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such activity or a related threat to public safety; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are discussed

by family violence fatality review teams established pursuant to § 32.1-283.3.

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

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

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

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

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

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected local jurisdiction, as those terms are defined in § 56-557, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

31. Discussion or consideration by the Commitment Review Committee of records excluded from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

32. [Expired.]

33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

35. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-625.1.

36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision F 1 of § 2.2-3706.

37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.6.

39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.

40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.6.

41. Discussion or consideration by the Board of Education of records relating to the denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 13 of § 2.2-3705.3.

42. Those portions of meetings of the Virginia Military Advisory Council, the Virginia National Defense Industrial Authority, any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of records excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.2.

43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

44. Discussion or consideration by the Virginia Tobacco Indemnification and Community Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6.

45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

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

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

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

§ 2.2-4002. Exemptions from chapter generally.

A. Although required to comply with § 2.2-4103 of the Virginia Register Act (§ 2.2-4100 et seq.), the following agencies shall be exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 2.2-4024, 2.2-4030 and 2.2-4031:

1. The General Assembly.

2. Courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

3. The Department of Game and Inland Fisheries in promulgating regulations regarding the

management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of Title 29.1.

4. The Virginia Housing Development Authority.

5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities.

6. Educational institutions operated by the Commonwealth, provided that, with respect to § 2.2-4031, such educational institutions shall be exempt from the publication requirements only with respect to regulations that pertain to (i) their academic affairs, (ii) the selection, tenure, promotion and disciplining of faculty and employees, (iii) the selection of students, and (iv) rules of conduct and disciplining of students.

7. The Milk Commission in promulgating regulations regarding (i) producers' licenses and bases, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.

8. The Virginia Resources Authority.

9. Agencies expressly exempted by any other provision of this Code.

10. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.2-1164.

11. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.

12. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.2-6002 and in adopting regulations pursuant to § 3.2-6023.

13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and D of § 3.2-3601, subsection B of § 3.2-3701, § 3.2-4002, subsections B and D of § 3.2-4801, §§ 3.2-5121 and 3.2-5206, and subsection A of § 3.2-5406.

14. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.

15. The Virginia War Memorial Foundation.

16. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-203.2.

17. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards or in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual live horse racing at race meetings licensed by the Commission.

18. The Virginia Small Business Financing Authority.

19. The Virginia Economic Development Partnership Authority.

20. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to subsection A (ii) of § 59.1-156.

21. The Insurance Continuing Education Board pursuant to § 38.2-1867.

22. The Board of Health in promulgating the list of diseases that shall be reported to the Department of Health pursuant to § 32.1-35 and in adopting, amending or repealing regulations pursuant to subsection C of § 35.1-14 that incorporate the Food and Drug Administration's Food Code pertaining to restaurants or food service.

23. (Expires January 1, 2014) The Secretary of Natural Resources in setting a date of closure for the Chesapeake Bay purse seine fishery for Atlantic menhaden for reduction purposes pursuant to § 28.2-1000.2.

24. The Board of Pharmacy when specifying special subject requirements for continuing education for pharmacists pursuant to § 54.1-3314.1.

B. Agency action relating to the following subjects shall be exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.

2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

3. The location, design, specifications or construction of public buildings or other facilities.

4. Grants of state or federal funds or property.

5. The chartering of corporations.

6. Customary military, militia, naval or police functions.

7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.

8. The conduct of elections or eligibility to vote.

9. Inmates of prisons or other such facilities or parolees therefrom.

10. The custody of persons in, or sought to be placed in, mental *health facilities~~,~~ or* penal or other

state institutions as well as the treatment, supervision, or discharge of such persons.

11. Traffic signs, markers or control devices.

12. Instructions for application or renewal of a license, certificate, or registration required by law.

13. Content of, or rules for the conduct of, any examination required by law.

14. The administration of pools authorized by Chapter 47 (§ 2.2-4700 et seq.) ~~of this title~~.

15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the State Lottery Board, and provided that such regulations are published and posted.

16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.

17. Any operating procedures for review of child deaths developed by the State Child Fatality Review Team pursuant to § 32.1-283.1.

18. The regulations for the implementation of the Health Practitioners' Monitoring Program and the activities of the Health Practitioners' Monitoring Program Committee pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

19. The process of reviewing and ranking grant applications submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of Title 51.5.

20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.

21. The Virginia Breeders Fund created pursuant to § 59.1-372.

22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.

23. The administration of medication or other substances foreign to the natural horse.

C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act~~, Chapter 41~~ (§ 2.2-4100 et seq.) ~~of this title~~, made by the Virginia Code Commission pursuant to § 30-150, shall be exempt from the provisions of this chapter.

§ 15.2-964. Organization of local human services activities; authorization of reorganization by Governor.

A. Any city or county may prepare and submit to the Governor a plan to reorganize the governmental structures or administrative procedures and systems of human resources agencies should provisions of law or the rules, regulations and standards of any state agency prohibit or restrict the implementation of such a reorganization. The plan shall set forth the proposed reorganization and the provisions of law or the rules, regulations or standards that prohibit or restrict the implementation of such proposed reorganization.

B. The Governor shall prepare, and provide to those counties and cities which request them, guidelines for the preparation and submission to him of reorganization plans by a city or county. The Governor may consider only those reorganization plans adopted by resolution of the governing body of the city or county applying for approval to reorganize its human services agencies.

C. The several state boards and commissions which are empowered to promulgate rules, regulations and guidelines affecting the organization or administration of local human service agencies are hereby authorized to modify their respective rules, regulations and guidelines at the direction of the Governor in furtherance of any reorganization plan approved by him.

D. If a provision or provisions of law prohibit or restrict the implementation of all or part of such reorganization plan the Governor shall transmit such plan or such parts of such plan affected by such laws to each House of the General Assembly at least ~~forty-five~~ *45* days prior to the commencement of a regular or special session of the General Assembly. Such plan or portions of such plan so transmitted by the Governor under this section shall not become effective unless it is introduced by bill and enacted into law.

E. The plan or such portions of the plan transmitted by the Governor to the General Assembly shall set forth: (i) the provision or provisions of law that prohibit or restrict the implementation of such plan or parts of such plan; (ii) the changes in governmental structure or administrative procedure system of the human resources agencies affected; and (iii) the anticipated effects of such changes upon the efficiency and effectiveness of the agencies affected.

F. Any reorganization authorized under the provision of this section shall be implemented within appropriations or other funds which may be made available to the city or county requesting such reorganization approval.

G. Nothing in this section shall be interpreted to permit a city or county to eliminate the provision of any service required by law or to reduce the level of service below any level required by law.

H. The localities shall be required to maintain financial and statistical records in accordance with the guidelines issued by the Governor so as to allow responsible state agencies to review records and determine costs for programs for which the agency is responsible.

I. For the purposes of this section the term "human resource agencies" means agencies ~~which~~ *that*

deliver social, employment, health, mental health and ~~mental retardation~~ *developmental*, rehabilitation, nursing, *or* information and referral ~~service,~~ *services* and such other related services.

§ 15.2-2291. Assisted living facilities and group homes of eight or fewer single-family residence.

A. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight individuals with mental illness, ~~mental retardation, or~~ *intellectual disability, or* developmental disabilities reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. For the purposes of this subsection, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in § 54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or other residential facility for which the Department of Behavioral Health and Developmental Services is the licensing authority pursuant to this Code.

B. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any assisted living facility or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

§ 16.1-241. Jurisdiction; consent for abortion.

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § 16.1-244;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244; and

6. Who is charged with a traffic infraction as defined in § 46.2-100.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a

violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from or through a person whose parental rights have been terminated by court order, either voluntarily or involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted, except where a final order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was conceived as a result of such violation. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) ~~of this chapter~~ and the involuntary admission of a person with mental illness or judicial certification of eligibility for admission to a training center for persons with ~~mental retardation~~ *intellectual disability* in accordance with the provisions of ~~Chapters 1 (§ 37.2-100 et seq.) and~~ *Chapter* 8 (§ 37.2-800 et seq.) of Title 37.2. Jurisdiction of the involuntary admission and certification of adults shall be concurrent with the general district court.

C. Except as provided in subsections D and H ~~hereof~~, judicial consent to such activities as may require parental consent may be given for a child who has been separated from his parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person standing in loco parentis (i) is not a resident of the Commonwealth, (ii) has his whereabouts unknown, (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law.

F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

1. Who has been abused or neglected;

2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or is otherwise before the court pursuant to subdivision A 4 ~~of this section~~; or

3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court finds that such person has by overt act or omission induced, caused, encouraged or contributed to the conduct of the child complained of in the petition.

G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services that are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

H. Judicial consent to apply for a work permit for a child when such child is separated from his parents, legal guardian or other person standing in loco parentis.

I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or neglect of children or with any violation of law that causes or tends to cause a child to come within the purview of this law, or with any other offense against the person of a child. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause.

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim and all offenses under § 18.2-49.1.

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial,

before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision under this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or 16.1-279.1.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) ~~of this chapter~~.

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20. A circuit court shall have concurrent original jurisdiction to the extent provided for in § 20-49.2.

R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.2-1526.

U. Petitions filed in connection with parental placement adoption consent hearings pursuant to § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within 10 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to seek consent of an authorized person.

After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independent of the wishes of any authorized person, or (ii) the minor is not mature enough or well enough informed to make such decision, but the desired abortion would be in her best interest.

If the judge authorizes an abortion based on the best interests of the minor, such order shall expressly state that such authorization is subject to the physician or his agent giving notice of intent to perform the abortion; however, no such notice shall be required if the judge finds that such notice would not be in the best interest of the minor. In determining whether notice is in the best interest of the minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not in the best interest of the minor if he finds that (i) one or more authorized persons with whom the minor regularly and customarily resides is abusive or neglectful, and (ii) every other authorized person, if any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian, custodian or person standing in loco parentis.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Notwithstanding any other provision of law, the provisions of this subsection shall govern proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and records of such proceedings shall be confidential. Such proceedings shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon as practicable but in no event later than four days after the petition is filed.

An expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without consent or without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. The time periods required by this subsection shall be subject to subsection B of § 1-210. An order authorizing an abortion without consent or without notice shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

If either the original court or the circuit court fails to act within the time periods required by this subsection, the court before which the proceeding is pending shall immediately authorize a physician to perform the abortion without consent of or notice to an authorized person.

Nothing contained in this subsection shall be construed to authorize a physician to perform an abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult woman.

A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent has been obtained or the minor delivers to the physician a court order entered pursuant to this section and the physician or his agent provides such notice as such order may require. However, neither consent nor judicial authorization nor notice shall be required if the minor declares that she is abused or neglected and the attending physician has reason to suspect that the minor may be an abused or neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the facts justifying the exception in the minor's medical record.

For purposes of this subsection:

"Authorization" means the minor has delivered to the physician a notarized, written statement signed by an authorized person that the authorized person knows of the minor's intent to have an abortion and consents to such abortion being performed on the minor.

"Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with whom the minor regularly and customarily resides and who has care and control of the minor. Any person who knows he is not an authorized person and who knowingly and willfully signs an authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

"Consent" means that (i) the physician has given notice of intent to perform the abortion and has received authorization from an authorized person, or (ii) at least one authorized person is present with the minor seeking the abortion and provides written authorization to the physician, which shall be witnessed by the physician or an agent thereof. In either case, the written authorization shall be incorporated into the minor's medical record and maintained as a part thereof.

"Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.

"Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by telephone, at least 24 hours previous to the performance of the abortion; or (ii) the physician or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at least 72 hours prior to the performance of the abortion.

"Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage as provided in § 18.2-72, 18.2-73, or 18.2-74.

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.) ~~of this chapter~~.

W. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) of this chapter relating to standby guardians for minor children.

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision *A* 3 ~~of subsection A~~, except as provided in subdivision A 6 of § 17.1-272, or subsection B, D, M or R ~~of this section~~.

Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of subsection V shall be guilty of a Class 3 misdemeanor.

§ 16.1-269.1. Trial in circuit court; preliminary hearing; direct indictment; remand.

A. Except as provided in subsections B and C, if a juvenile ~~fourteen~~ *14* years of age or older at the time of an alleged offense is charged with an offense which would be a felony if committed by an adult, the court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and may retain jurisdiction or transfer such juvenile for proper criminal proceedings to the appropriate circuit court having criminal jurisdiction of such offenses if committed by an adult. Any transfer to the appropriate circuit court shall be subject to the following conditions:

1. Notice as prescribed in §§ 16.1-263 and 16.1-264 shall be given to the juvenile and his parent, guardian, legal custodian or other person standing in loco parentis; or attorney;

2. The juvenile court finds that probable cause exists to believe that the juvenile committed the delinquent act as alleged or a lesser included delinquent act which would be a felony if committed by an adult;

3. The juvenile is competent to stand trial. The juvenile is presumed to be competent and the burden is on the party alleging the juvenile is not competent to rebut the presumption by a preponderance of the evidence; and

4. The court finds by a preponderance of the evidence that the juvenile is not a proper person to remain within the jurisdiction of the juvenile court. In determining whether a juvenile is a proper person to remain within the jurisdiction of the juvenile court, the court shall consider, but not be limited to, the following factors:

a. The juvenile's age;

b. The seriousness and number of alleged offenses, including (i) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the alleged offense was against persons or property, with greater weight being given to offenses against persons, especially if death or bodily injury resulted; (iii) whether the maximum punishment for such an offense is greater than ~~twenty~~ *20* years confinement if committed by an adult; (iv) whether the alleged offense involved the use of a firearm or other dangerous weapon by brandishing, threatening, displaying or otherwise employing such weapon; and (v) the nature of the juvenile's participation in the alleged offense;

c. Whether the juvenile can be retained in the juvenile justice system long enough for effective treatment and rehabilitation;

d. The appropriateness and availability of the services and dispositional alternatives in both the criminal justice and juvenile justice systems for dealing with the juvenile's problems;

e. The record and previous history of the juvenile in this or other jurisdictions, including (i) the number and nature of previous contacts with juvenile or circuit courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;

f. Whether the juvenile has previously absconded from the legal custody of a juvenile correctional entity in this or any other jurisdiction;

g. The extent, if any, of the juvenile's degree of ~~mental retardation~~ *intellectual disability* or mental illness;

h. The juvenile's school record and education;

i. The juvenile's mental and emotional maturity; and

j. The juvenile's physical condition and physical maturity.

No transfer decision shall be precluded or reversed on the grounds that the court failed to consider any of the factors specified in subdivision A 4 ~~of this section~~.

B. The juvenile court shall conduct a preliminary hearing whenever a juvenile ~~fourteen~~ *14* years of age or older is charged with murder in violation of §~~§~~ 18.2-31, 18.2-32, or ~~§~~ 18.2-40, or aggravated malicious wounding in violation of § 18.2-51.2.

C. The juvenile court shall conduct a preliminary hearing whenever a juvenile ~~fourteen~~ *14* years of age or older is charged with murder in violation of § 18.2-33, felonious injury by mob in violation of § 18.2-41, abduction in violation of § 18.2-48, malicious wounding in violation of § 18.2-51, malicious wounding of a law-enforcement officer in violation of § 18.2-51.1, felonious poisoning in violation of § 18.2-54.1, adulteration of products in violation of § 18.2-54.2, robbery in violation of § 18.2-58 or carjacking in violation of § 18.2-58.1, rape in violation of § 18.2-61, forcible sodomy in violation of § 18.2-67.1 or object sexual penetration in violation of § 18.2-67.2, provided the attorney for the Commonwealth gives written notice of his intent to proceed pursuant to this subsection. The notice shall be filed with the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then represented by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis with respect to the juvenile at least seven days prior to the preliminary hearing. If the attorney for the Commonwealth elects not to give such notice, or if he elects to withdraw the notice prior to certification of the charge to the grand jury, he may proceed as provided in subsection A.

D. Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the juvenile court shall certify the charge, and all ancillary charges, to the grand jury. Such certification shall divest the juvenile court of jurisdiction as to the charge and any ancillary charges. Nothing in this subsection shall divest the juvenile court of jurisdiction over any matters unrelated to such charge and ancillary charges which may otherwise be properly within the jurisdiction of the juvenile court.

If the court does not find probable cause to believe that the juvenile has committed the violent

juvenile felony as charged in the petition or warrant or if the petition or warrant is terminated by dismissal in the juvenile court, the attorney for the Commonwealth may seek a direct indictment in the circuit court. If the petition or warrant is terminated by nolle prosequi in the juvenile court, the attorney for the Commonwealth may seek an indictment only after a preliminary hearing in juvenile court.

If the court finds that the juvenile was not ~~fourteen~~ *14* years of age or older at the time of the alleged commission of the offense or that the conditions specified in subdivision *A* 1, 2, or 3 ~~of subsection A~~ have not been met, the case shall proceed as otherwise provided for by law.

E. An indictment in the circuit court cures any error or defect in any proceeding held in the juvenile court except with respect to the juvenile's age. If an indictment is terminated by nolle prosequi, the Commonwealth may reinstate the proceeding by seeking a subsequent indictment.

§ 16.1-278.11. Mental illness and intellectual disability.

In cases involving a person who is involuntarily admitted because of a mental illness or is judicially certified as eligible for admission to a training center for persons with ~~mental retardation~~ *intellectual disability*, disposition shall be in accordance with the provisions of ~~Chapters 1 (§ 37.2-100 et seq.) and~~ *Chapter* 8 (§ 37.2-800 et seq.) of Title 37.2. A child shall not be committed pursuant to §§ 16.1-278.2 through 16.1-278.8 or the provisions of Title 37.2 to a maximum security unit within any state hospital where adults determined to be criminally insane reside.

§ 16.1-280. Commitment of juveniles with mental illness or intellectual disability.

When any juvenile court has found a juvenile to be in need of services or delinquent pursuant to the provisions of this law and reasonably believes such juvenile has mental illness or ~~mental retardation~~ *intellectual disability*, the court may commit him to an appropriate hospital or order mandatory outpatient treatment in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) ~~of this chapter~~ or admit him to a training center in accordance with the provisions of § 37.2-806 for observation as to his mental condition. No juvenile shall be committed pursuant to this section or Article 16 (§ 16.1-335 et seq.) ~~of this chapter~~ to a maximum security unit within any state hospital where adults determined to be criminally insane reside. However, the Commissioner of Behavioral Health and Developmental Services may place a juvenile who has been certified to the circuit court for trial as an adult pursuant to § 16.1-269.6 or 16.1-270 or who has been convicted as an adult of a felony in the circuit court in a unit appropriate for the care and treatment of persons under a criminal charge when, in his discretion, such placement is necessary to protect the security or safety of other patients, staff, or *the* public. The Commissioner shall notify the committing court of any placement in such unit. The committing court shall review the placement at ~~thirty-day~~ *30-day* intervals.

§ 16.1-283. Termination of residual parental rights.

A. The residual parental rights of a parent or parents may be terminated by the court as hereinafter provided in a separate proceeding if the petition specifically requests such relief. No petition seeking termination of residual parental rights shall be accepted by the court prior to the filing of a foster care plan, pursuant to § 16.1-281, which documents termination of residual parental rights as being in the best interests of the child. The court may hear and adjudicate a petition for termination of parental rights in the same proceeding in which the court has approved a foster care plan which documents that termination is in the best interests of the child. The court may terminate the residual parental rights of one parent without affecting the rights of the other parent. The local board of social services or a licensed child-placing agency need not have identified an available and eligible family to adopt a child for whom termination of parental rights is being sought prior to the entry of an order terminating parental rights.

Any order terminating residual parental rights shall be accompanied by an order continuing or granting custody to a local board of social services, to a licensed child-placing agency or the granting of custody or guardianship to a relative or other interested individual, subject to the provisions of subsection A1 ~~of this section~~. However, in such cases the court shall give a consideration to granting custody to relatives of the child, including grandparents. An order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto.

The summons shall be served upon the parent or parents and the other parties specified in § 16.1-263. Written notice of the hearing shall also be provided to the foster parents of the child, a relative providing care for the child, and any preadoptive parents for the child informing them that they may appear as witnesses at the hearing to give testimony and otherwise participate in the proceeding. The persons entitled to notice and an opportunity to be heard need not be made parties to the proceedings. The summons or notice of hearing shall clearly state the consequences of a termination of residual parental rights. Service shall be made pursuant to § 16.1-264.

A1. Any order transferring custody of the child to a relative or other interested individual pursuant to subsection A ~~of this section~~ shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative or other interested individual is one who, after an investigation as directed by

the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative or other interested individual should further provide, as appropriate, for any terms and conditions which would promote the child's interest and welfare.

B. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused and placed in foster care as a result of (i) court commitment; (ii) an entrustment agreement entered into by the parent or parents; or (iii) other voluntary relinquishment by the parent or parents may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The neglect or abuse suffered by such child presented a serious and substantial threat to his life, health or development; and

2. It is not reasonably likely that the conditions which resulted in such neglect or abuse can be substantially corrected or eliminated so as to allow the child's safe return to his parent or parents within a reasonable period of time. In making this determination, the court shall take into consideration the efforts made to rehabilitate the parent or parents by any public or private social, medical, mental health or other rehabilitative agencies prior to the child's initial placement in foster care.

Proof of any of the following shall constitute prima facie evidence of the conditions set forth in subdivision B 2 ~~hereof~~:

a. The parent or parents ~~are suffering from~~ *have* a mental or emotional illness or ~~mental deficiency~~ *intellectual disability* of such severity that there is no reasonable expectation that such parent will be able to undertake responsibility for the care needed by the child in accordance with his age and stage of development;

b. The parent or parents have habitually abused or are addicted to intoxicating liquors, narcotics or other dangerous drugs to the extent that proper parental ability has been seriously impaired and the parent, without good cause, has not responded to or followed through with recommended and available treatment which could have improved the capacity for adequate parental functioning; or

c. The parent or parents, without good cause, have not responded to or followed through with appropriate, available and reasonable rehabilitative efforts on the part of social, medical, mental health or other rehabilitative agencies designed to reduce, eliminate or prevent the neglect or abuse of the child.

C. The residual parental rights of a parent or parents of a child placed in foster care as a result of court commitment, an entrustment agreement entered into by the parent or parents or other voluntary relinquishment by the parent or parents may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The parent or parents have, without good cause, failed to maintain continuing contact with and to provide or substantially plan for the future of the child for a period of six months after the child's placement in foster care notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to communicate with the parent or parents and to strengthen the parent-child relationship. Proof that the parent or parents have failed without good cause to communicate on a continuing and planned basis with the child for a period of six months shall constitute prima facie evidence of this condition; or

2. The parent or parents, without good cause, have been unwilling or unable within a reasonable period of time not to exceed ~~twelve~~ *12* months from the date the child was placed in foster care to remedy substantially the conditions which led to or required continuation of the child's foster care placement, notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to such end. Proof that the parent or parents, without good cause, have failed or been unable to make substantial progress towards elimination of the conditions which led to or required continuation of the child's foster care placement in accordance with their obligations under and within the time limits or goals set forth in a foster care plan filed with the court or any other plan jointly designed and agreed to by the parent or parents and a public or private social, medical, mental health or other rehabilitative agency shall constitute prima facie evidence of this condition. The court shall take into consideration the prior efforts of such agencies to rehabilitate the parent or parents prior to the placement of the child in foster care.

D. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused upon the ground of abandonment may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The child was abandoned under such circumstances that either the identity or the whereabouts of the parent or parents cannot be determined; and

2. The child's parent or parents, guardian or relatives have not come forward to identify such child and claim a relationship to the child within three months following the issuance of an order by the court placing the child in foster care; and

3. Diligent efforts have been made to locate the child's parent or parents without avail.

E. The residual parental rights of a parent or parents of a child who is in the custody of a local board or licensed child-placing agency may be terminated by the court if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of ~~this~~ *the* Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of ~~this~~ *the* Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) the parent has subjected any child to aggravated circumstances.

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or a child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse which place the child's health, safety and well-being at risk.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once, but otherwise meets the definition of "aggravated circumstances."

The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent who has been convicted of one of the felonies specified in this subsection or who has been found by the court to have subjected any child to aggravated circumstances.

F. The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first written Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party.

G. Notwithstanding any other provisions of this section, residual parental rights shall not be terminated if it is established that the child, if he is ~~fourteen~~ *14* years of age or older or otherwise of an age of discretion as determined by the court, objects to such termination. However, residual parental rights of a child ~~fourteen~~ *14* years of age or older may be terminated over the objection of the child, if the court finds that any disability of the child reduces the child's developmental age and that the child is not otherwise of an age of discretion.

§ 16.1-336. Definitions.

When used in this article, unless the context otherwise requires:

"Community services board" has the same meaning as provided in § 37.2-100. Whenever the term community services board appears, it shall include behavioral health authority, as that term is defined in § 37.2-100.

"Consent" means the voluntary, express, and informed agreement to treatment in a mental health facility by a minor 14 years of age or older and by a parent or a legally authorized custodian.

"Designee of the local community services board" means an examiner designated by the local community services board who (i) is skilled in the assessment and treatment of mental illness, (ii) has completed a certification program approved by the Department of Behavioral Health and Developmental Services, (iii) is able to provide an independent examination of the minor, (iv) is not related by blood, marriage, or adoption to, or is not the legal guardian of, the minor being evaluated, (v) has no financial

interest in the admission or treatment of the minor being evaluated, (vi) has no investment interest in the facility detaining or admitting the minor under this article, and (vii) except for employees of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

"Employee" means an employee of the local community services board who is skilled in the assessment and treatment of mental illness and has completed a certification program approved by the Department of Behavioral Health and Developmental Services.

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

"Inpatient treatment" means placement for observation, diagnosis, or treatment of mental illness in a psychiatric hospital or in any other type of mental health facility determined by the Department of Behavioral Health and Developmental Services to be substantially similar to a psychiatric hospital with respect to restrictions on freedom and therapeutic intrusiveness.

"Investment interest" means the ownership or holding of an equity or debt security, including shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.

"Judge" means a juvenile and domestic relations district judge. In addition, "judge" includes a retired judge sitting by designation pursuant to § 16.1-69.35, substitute judge, or special justice authorized by § 37.2-803 who has completed a training program regarding the provisions of this article, prescribed by the Executive Secretary of the Supreme Court.

"Least restrictive alternative" means the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit or to protect the minor or others from physical injury.

"Mental health facility" means a public or private facility for the treatment of mental illness operated or licensed by the Department of Behavioral Health and Developmental Services.

"Mental illness" means a substantial disorder of the minor's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior. "Mental illness" may include substance abuse, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior. ~~Mental retardation~~ *Intellectual disability*, head injury, a learning disability, or a seizure disorder is not sufficient, in itself, to justify a finding of mental illness within the meaning of this article.

"Minor" means a person less than 18 years of age.

"Parent" means (i) a biological or adoptive parent who has legal custody of the minor, including either parent if custody is shared under a joint decree or agreement, (ii) a biological or adoptive parent with whom the minor regularly resides, (iii) a person judicially appointed as a legal guardian of the minor, or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption or otherwise by operation of law. The director of the local department of social services, or his designee, may stand as the minor's parent when the minor is in the legal custody of the local department of social services.

"Qualified evaluator" means a psychiatrist or a psychologist licensed in Virginia by either the Board of Medicine or the Board of Psychology, or if such psychiatrist or psychologist is unavailable, (i) any mental health professional licensed in Virginia through the Department of Health Professions as a clinical social worker, professional counselor, marriage and family therapist, psychiatric nurse practitioner, or clinical nurse specialist, or (ii) any mental health professional employed by a community services board. All qualified evaluators shall (a) be skilled in the diagnosis and treatment of mental illness in minors, (b) be familiar with the provisions of this article, and (c) have completed a certification program approved by the Department of Behavioral Health and Developmental Services. The qualified evaluator shall (1) not be related by blood, marriage, or adoption to, or is not the legal guardian of, the minor being evaluated, (2) not be responsible for treating the minor, (3) have no financial interest in the admission or treatment of the minor, (4) have no investment interest in the facility detaining or admitting the minor under this article, and (5) except for employees of state hospitals, the U.S. Department of Veterans Affairs, and community services boards, not be employed by the facility.

"Treatment" means any planned intervention intended to improve a minor's functioning in those areas which show impairment as a result of mental illness.

§ 16.1-361. Compensation of experts.

Each psychiatrist, clinical psychologist, licensed clinical social worker, licensed professional counselor, licensed marriage and family therapist, or other expert appointed by the court to render

professional service pursuant to § 16.1-356, shall receive a reasonable fee for such service. With the exception of services provided by state ~~mental health or mental retardation facilities~~ *hospitals or training centers*, the fee shall be determined in each instance by the court that appointed the expert, in accordance with guidelines established by the Supreme Court after consultation with the Department of Behavioral Health and Developmental Services. If any such expert is required to appear as a witness in any hearing held pursuant to § 16.1-356, he shall receive mileage and a fee of $100 for each day during which he is required to serve. An itemized account of expenses, duly sworn to, must be presented to the court, and when allowed shall be certified to the Supreme Court for payment out of the state treasury, and be charged against the appropriations made to pay criminal charges. Allowance for the fee and for the per diem authorized shall also be made by order of the court, duly certified to the Supreme Court for payment out of the appropriation to pay criminal charges.

§ 18.2-369. Abuse and neglect of incapacitated adults; penalty.

A. It shall be unlawful for any responsible person to abuse or neglect any incapacitated adult as defined in this section. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect does not result in serious bodily injury or disease to the incapacitated adult is guilty of a Class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this subsection is guilty of a Class 6 felony.

B. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in serious bodily injury or disease to the incapacitated adult is guilty of a Class 4 felony. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in the death of the incapacitated adult is guilty of a Class 3 felony.

C. For purposes of this section:

"Abuse" means (i) knowing and willful conduct that causes physical injury or pain or (ii) knowing and willful use of physical restraint, including confinement, as punishment, for convenience or as a substitute for treatment, except where such conduct or physical restraint, including confinement, is a part of care or treatment and is in furtherance of the health and safety of the incapacitated person.

"Incapacitated adult" means any person 18 years *of age* or older who is impaired by reason of mental illness, ~~mental retardation~~ *intellectual disability*, physical illness or disability, advanced age or other causes to the extent the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his well-being.

"Neglect" means the knowing and willful failure by a responsible person to provide treatment, care, goods or services which results in injury to the health or endangers the safety of an incapacitated adult.

"Responsible person" means a person who has responsibility for the care, custody or control of an incapacitated person by operation of law or who has assumed such responsibility voluntarily, by contract or in fact.

"Serious bodily injury or disease" shall include but not be limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, or (vi) life-threatening internal injuries or conditions, whether or not caused by trauma.

D. No responsible person shall be in violation of this section whose conduct was (i) in accordance with the informed consent of the incapacitated person or a person authorized to consent on his behalf; (ii) in accordance with a declaration by the incapacitated person under the Natural Death Act of Virginia (§ 54.1-2981 et seq.) or with the provisions of a valid medical power of attorney; (iii) in accordance with the wishes of the incapacitated person or a person authorized to consent on behalf of the incapacitated person and in accord with the tenets and practices of a church or religious denomination; (iv) incident to necessary movement of, placement of or protection from harm to the incapacitated person; or (v) a bona fide, recognized or approved practice to provide medical care.

§ 19.2-123. Release of accused on secured or unsecured bond or promise to appear; conditions of release.

A. Any person arrested for a felony who has previously been convicted of a felony, or who is presently on bond for an unrelated arrest in any jurisdiction, or who is on probation or parole, may be released only upon a secure bond. This provision may be waived with the approval of the judicial officer and with the concurrence of the attorney for the Commonwealth or the attorney for the county, city or town. Subject to the foregoing, when a person is arrested for either a felony or a misdemeanor, any judicial officer may impose any one or any combination of the following conditions of release:

1. Place the person in the custody and supervision of a designated person, organization or pretrial services agency which, for the purposes of this section, shall not include a court services unit established pursuant to § 16.1-233;

2. Place restrictions on the travel, association or place of abode of the person during the period of release and restrict contacts with household members for a period not to exceed 72 hours;

2a. Require the execution of an unsecured bond;

3. Require the execution of a secure bond which at the option of the accused shall be satisfied with sufficient solvent sureties, or the deposit of cash in lieu thereof. Only the actual value of any interest in real estate or personal property owned by the proposed surety shall be considered in determining solvency and solvency shall be found if the value of the proposed surety's equity in the real estate or personal property equals or exceeds the amount of the bond;

3a. Require that the person do any or all of the following: (i) maintain employment or, if unemployed, actively seek employment; (ii) maintain or commence an educational program; (iii) avoid all contact with an alleged victim of the crime and with any potential witness who may testify concerning the offense; (iv) comply with a specified curfew; (v) refrain from possessing a firearm, destructive device, or other dangerous weapon; (vi) refrain from excessive use of alcohol, or use of any illegal drug or any controlled substance not prescribed by a health care provider; and (vii) submit to testing for drugs and alcohol until the final disposition of his case;

3b. Place a prohibition on a person who holds an elected constitutional office and who is accused of a felony arising from the performance of his duties from physically returning to his constitutional office; or

4. Impose any other condition deemed reasonably necessary to assure appearance as required, and to assure his good behavior pending trial, including a condition requiring that the person return to custody after specified hours or be placed on home electronic incarceration pursuant to § 53.1-131.2 or, when the person is required to execute a secured bond, be subject to monitoring by a GPS (Global Positioning System) tracking device, or other similar device. The defendant may be ordered by the court to pay the cost of the device.

Upon satisfaction of the terms of recognizance, the accused shall be released forthwith.

In addition, where the accused is ~~a~~ ~~resident~~ ~~of~~ *an individual receiving services in* a state training center for ~~the~~ ~~mentally~~ ~~retarded~~ *individuals with intellectual disability*, the judicial officer may place the ~~person~~ *individual* in the custody of the director of the ~~state~~ ~~facility~~ *training center,* if the director agrees to accept custody. ~~Such~~ *The* director is hereby authorized to take custody of ~~such~~ ~~person~~ *the individual* and to maintain him at the training center prior to a trial or hearing under such circumstances as will reasonably assure the appearance of the accused for the trial or hearing.

B. In any jurisdiction served by a pretrial services agency which offers a drug or alcohol screening or testing program approved for the purposes of this subsection by the chief general district court judge, any such person charged with a crime may be requested by such agency to give voluntarily a urine sample, submit to a drug or alcohol screening, or take a breath test for presence of alcohol. A sample may be analyzed for the presence of phencyclidine (PCP), barbiturates, cocaine, opiates or such other drugs as the agency may deem appropriate prior to any hearing to establish bail. The judicial officer and agency shall inform the accused or juvenile being screened or tested that test results shall be used by a judicial officer only at a bail hearing and only to determine appropriate conditions of release or to reconsider the conditions of bail at a subsequent hearing. All screening or test results, and any pretrial investigation report containing the screening or test results, shall be confidential with access thereto limited to judicial officers, the attorney for the Commonwealth, defense counsel, other pretrial service agencies, any criminal justice agency as defined in § 9.1-101 and, in cases where a juvenile is screened or tested, the parents or legal guardian or custodian of such juvenile. However, in no event shall the judicial officer have access to any screening or test result prior to making a bail release determination or to determining the amount of bond, if any. Following this determination, the judicial officer shall consider the screening or test results and the screening or testing agency's report and accompanying recommendations, if any, in setting appropriate conditions of release. In no event shall a decision regarding a release determination be subject to reversal on the sole basis of such screening or test results. Any accused or juvenile whose urine sample has tested positive for such drugs and who is admitted to bail may, as a condition of release, be ordered to refrain from use of alcohol or illegal drugs and may be required to be tested on a periodic basis until final disposition of his case to ensure his compliance with the order. Sanctions for a violation of any condition of release, which violations shall include subsequent positive drug or alcohol test results or failure to report as ordered for testing, may be imposed in the discretion of the judicial officer and may include imposition of more stringent conditions of release, contempt of court proceedings or revocation of release. Any test given under the provisions of this subsection which yields a positive drug or alcohol test result shall be reconfirmed by a second test if the person tested denies or contests the initial drug or alcohol test positive result. The results of any drug or alcohol test conducted pursuant to this subsection shall not be admissible in any judicial proceeding other than for the imposition of sanctions for a violation of a condition of release.

C. [Repealed.]

D. Nothing in this section shall be construed to prevent an officer taking a juvenile into custody from releasing that juvenile pursuant to § 16.1-247. If any condition of release imposed under the provisions of this section is violated, a judicial officer may issue a capias or order to show cause why the recognizance should not be revoked.

E. Nothing in this section shall be construed to prevent a court from imposing a recognizance or bond designed to secure a spousal or child support obligation pursuant to § 16.1-278.16, Chapter 5 (§ 20-61 et seq.) of Title 20, or § 20-114 in addition to any recognizance or bond imposed pursuant to this chapter.

§ 19.2-182.2. Verdict of acquittal by reason of insanity to state the fact; temporary custody and evaluation.

When the defense is insanity of the defendant at the time the offense was committed, the jurors shall be instructed, if they acquit him on that ground, to state the fact with their verdict. The court shall place the person so acquitted (the acquittee) in temporary custody of the Commissioner of Behavioral Health and Developmental Services (hereinafter referred to in this chapter as the Commissioner) for evaluation as to whether the acquittee may be released with or without conditions or requires commitment. The evaluation shall be conducted by (i) one psychiatrist and (ii) one clinical psychologist. The psychiatrist or clinical psychologist shall be skilled in the diagnosis of mental illness and ~~mental retardation~~ *intellectual disability* and qualified by training and experience to perform such evaluations. The Commissioner shall appoint both evaluators, at least one of whom shall not be employed by the hospital in which the acquittee is primarily confined. The evaluators shall determine whether the acquittee currently has mental illness or ~~mental retardation~~ *intellectual disability* and shall assess the acquittee and report on his condition and need for hospitalization with respect to the factors set forth in § 19.2-182.3. The evaluators shall conduct their examinations and report their findings separately within ~~forty-five~~ *45* days of the Commissioner's assumption of custody. Copies of the report shall be sent to the acquittee's attorney, the attorney for the Commonwealth for the jurisdiction where the person was acquitted and the community services board or behavioral health authority as designated by the Commissioner. If either evaluator recommends conditional release or release without conditions of the acquittee, the court shall extend the evaluation period to permit the hospital in which the acquittee is confined and the appropriate community services board or behavioral health authority to jointly prepare a conditional release or discharge plan, as applicable, prior to the hearing.

§ 19.2-182.3. Commitment; civil proceedings.

Upon receipt of the evaluation report and, if applicable, a conditional release or discharge plan, the court shall schedule the matter for hearing on an expedited basis, giving the matter priority over other civil matters before the court, to determine the appropriate disposition of the acquittee. Except as otherwise ordered by the court, the attorney who represented the defendant at the criminal proceedings shall represent the acquittee through the proceedings pursuant to this section. The matter may be continued on motion of either party for good cause shown. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. The hearing is a civil proceeding.

At the conclusion of the hearing, the court shall commit the acquittee if it finds that he has mental illness or ~~mental retardation~~ *intellectual disability* and is in need of inpatient hospitalization. For the purposes of this chapter, mental illness includes any mental illness, as defined in § 37.2-100, in a state of remission when the illness may, with reasonable probability, become active. The decision of the court shall be based upon consideration of the following factors:

1. To what extent the acquittee has mental illness or ~~mental retardation~~ *intellectual disability*, as those terms are defined in § 37.2-100;

2. The likelihood that the acquittee will engage in conduct presenting a substantial risk of bodily harm to other persons or to himself in the foreseeable future;

3. The likelihood that the acquittee can be adequately controlled with supervision and treatment on an outpatient basis; and

4. Such other factors as the court deems relevant.

If the court determines that an acquittee does not need inpatient hospitalization solely because of treatment or habilitation he is currently receiving, but the court is not persuaded that the acquittee will continue to receive such treatment or habilitation, it may commit him for inpatient hospitalization. The court shall order the acquittee released with conditions pursuant to §§ 19.2-182.7 through 19.2-182.9 if it finds that he is not in need of inpatient hospitalization but that he meets the criteria for conditional release set forth in § 19.2-182.7. If the court finds that the acquittee does not need inpatient hospitalization nor does he meet the criteria for conditional release, it shall release him without conditions, provided the court has approved a discharge plan prepared by the appropriate community services board or behavioral health authority in consultation with the appropriate hospital staff.

§ 19.2-182.8. Revocation of conditional release.

If at any time the court that released an acquittee pursuant to § 19.2-182.7 finds reasonable ground to believe that an acquittee on conditional release (i) has violated the conditions of his release or is no longer a proper subject for conditional release based on application of the criteria for conditional release

and (ii) requires inpatient hospitalization, it may order an evaluation of the acquittee by a psychiatrist or clinical psychologist, provided the psychiatrist or clinical psychologist is qualified by training and experience to perform forensic evaluations. If the court, based on the evaluation and after hearing evidence on the issue, finds by a preponderance of the evidence that an acquittee on conditional release ~~(i)~~*(a)* has violated the conditions of his release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and ~~(ii)~~ ~~is~~ ~~mentally~~ ~~ill~~ ~~or~~ ~~mentally~~ ~~retarded~~*(b) has mental illness or intellectual disability* and requires inpatient hospitalization, the court may revoke the acquittee's conditional release and order him returned to the custody of the Commissioner.

At any hearing pursuant to this section, the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. The hearing shall be scheduled on an expedited basis and shall be given priority over other civil matters before the court. Written notice of the hearing shall be provided to the attorney for the Commonwealth for the committing jurisdiction. The hearing is a civil proceeding.

§ 19.2-182.9. Emergency custody of conditionally released acquittee.

When exigent circumstances do not permit compliance with revocation procedures set forth in § 19.2-182.8, any district court judge or a special justice, as defined in § 37.2-100, or a magistrate may issue an emergency custody order, upon the sworn petition of any responsible person or upon his own motion based upon probable cause to believe that an acquittee on conditional release (i) has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) requires inpatient hospitalization. The emergency custody order shall require the acquittee within his judicial district to be taken into custody and transported to a convenient location where a person designated by the community services board or behavioral health authority who is skilled in the diagnosis and treatment of mental illness shall evaluate such acquittee and assess his need for inpatient hospitalization. A law-enforcement officer who, based on his observation or the reliable reports of others, has probable cause to believe that any acquittee on conditional release has violated the conditions of his release and is no longer a proper subject for conditional release and requires emergency evaluation to assess the need for inpatient hospitalization, may take the acquittee into custody and transport him to an appropriate location to assess the need for hospitalization without prior judicial authorization. The evaluation shall be conducted immediately. The acquittee shall remain in custody until a temporary detention order is issued or until he is released, but in no event shall the period of custody exceed four hours. However, upon a finding by a district court judge, special justice as defined in § 37.2-100, or magistrate that good cause exists to grant an extension, the district court judge, special justice, or magistrate shall extend the emergency custody order, or shall issue an order extending the period of emergency custody, one time for an additional period not to exceed two hours. Good cause for an extension includes the need for additional time to allow (a) the community services board to identify a suitable facility in which the person can be temporarily detained pursuant to this section or (b) a medical evaluation of the person to be completed if necessary. If it appears from all evidence readily available (i) that the acquittee has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) that he requires emergency evaluation to assess the need for inpatient hospitalization, the district court judge or a special justice, as defined in § 37.2-100, or magistrate, upon the advice of such person skilled in the diagnosis and treatment of mental illness, may issue a temporary detention order authorizing the executing officer to place the acquittee in an appropriate institution for a period not to exceed 48 hours prior to a hearing. If the 48-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the acquittee may be detained until the next day which is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

The committing court or any district court judge or a special justice, as defined in § 37.2-100, shall have jurisdiction to hear the matter. Prior to the hearing, the acquittee shall be examined by a psychiatrist or licensed clinical psychologist, provided the psychiatrist or clinical psychologist is skilled in the diagnosis of mental illness, who shall certify whether the person is in need of hospitalization. At the hearing the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. Following the hearing, if the court determines, based on a preponderance of the evidence presented at the hearing, that the acquittee (i) has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) has mental illness or ~~mental~~ ~~retardation~~ *intellectual disability* and is in need of inpatient hospitalization, the court shall revoke the acquittee's conditional release and place him in the custody of the Commissioner.

When an acquittee on conditional release pursuant to this chapter is taken into emergency custody, detained, or hospitalized, such action shall be considered to have been taken pursuant to this section, notwithstanding the fact that his status as an insanity acquittee was not known at the time of custody, detention, or hospitalization. Detention or hospitalization of an acquittee pursuant to provisions of law

other than those applicable to insanity acquittees pursuant to this chapter shall not render the detention or hospitalization invalid. If a person's status as an insanity acquittee on conditional release is not recognized at the time of emergency custody or detention, at the time his status as such is verified, the provisions applicable to such persons shall be applied and the court hearing the matter shall notify the committing court of the proceedings.

§ 19.2-218.1. Preliminary hearings involving certain sexual crimes against spouses.

A. In any preliminary hearing of a charge for a violation under § 18.2-61, 18.2-67.1, or 18.2-67.2 where the complaining witness is the spouse of the accused, upon a finding of probable cause the court may request that its court services unit, in consultation with any appropriate social services organization, local ~~board of mental health and mental retardation~~ *community services board*, or other community mental health services organization, prepare a report analyzing the feasibility of providing counseling or other forms of therapy for the accused and the probability such treatment will be successful. Based upon this report and any other relevant evidence, the court may, with the consent of the accused, the complaining witness and the attorney for the Commonwealth in any case involving a violation of § 18.2-61, 18.2-67.1 or 18.2-67.2, authorize the accused to submit to and complete a designated course of counseling or therapy. In such case, the hearing shall be adjourned until such time as counseling or therapy is completed or terminated. Upon the completion of counseling or therapy by the accused and after consideration of a final evaluation to be furnished to the court by the person responsible for conducting such counseling or therapy and such further report of the court services unit as the court may require, and after consideration of the views of the complaining witness, the court, in its discretion, may discharge the accused if the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

B. No statement or disclosure by the accused concerning the alleged offense made during counseling or any other form of therapy ordered pursuant to this section or § 18.2-61, 18.2-67.1, 18.2-67.2, or 19.2-218.2 may be used against the accused in any trial as evidence, nor shall any evidence against the accused be admitted which was discovered through such statement or disclosure.

§ 19.2-316. Evaluation and report prior to determining punishment.

Following conviction and prior to sentencing, the court shall order such defendant committed to the Department of Corrections for a period not to exceed ~~sixty~~ *60* days from the date of referral for evaluation and diagnosis by the Department to determine the person's potential for rehabilitation through confinement and treatment in the facilities and programs established pursuant to § 53.1-63. The evaluation and diagnosis shall include a complete physical and mental examination of the defendant and may be conducted by the Department of Corrections at any state or local facility, probation and parole office, or other location deemed appropriate by the Department. The Department of Corrections shall conduct the evaluation and diagnosis and shall review all aspects of the case within ~~sixty~~ *60* days from the date of conviction or revocation of ordinary probation and shall recommend that the defendant be committed to the facility established pursuant to § 53.1-63 upon finding that (i) such defendant is physically and emotionally suitable for the program, (ii) such commitment is in the best interest of the Commonwealth and the defendant, and (iii) facilities are available for confinement of the defendant.

If the Director of the Department of Corrections determines such person should be confined in a facility other than one established pursuant to § 53.1-63, a written report giving the reasons for such decision shall be submitted to the sentencing court. The court shall not be bound by such written report in the matter of determining punishment. Additionally, the person may be committed or transferred to a ~~mental~~ *state* hospital *operated by the Department of Behavioral Health and Developmental Services* or ~~like institution~~ *other mental health hospital*, as provided by law, during such ~~sixty-day~~ *60-day* period.

§ 19.2-389. Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 15.2-4500 et seq.) and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes approved by family day-care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719 through 63.2-1721, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery Law (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to

the limitations set out in subsection E;

16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults pursuant to § 63.2-1720, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed adult day-care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof in the course of conducting necessary investigations with respect to registered voters, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

28. The Commissioner of the Department of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct ~~consumer~~ care position has been convicted of a crime that affects ~~their~~ *his* fitness to have responsibility for the safety and well-being of ~~persons~~ *individuals* with mental illness, ~~mental retardation and~~ *intellectual disability, or* substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under

subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are members, senior officers, directors, and principals of an applicant for licensure as a mortgage lender or mortgage broker, or a licensed mortgage lender or mortgage broker for the purpose of investigating individuals applying for a position of employment in which the individual may have access to or process personal identifying or financial information from a member of the public, pursuant to Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application for a mortgage lender or mortgage broker license is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to § 6.2-1605, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department of Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Chapter 5 (§ 51.5-15 et seq.) of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120; and

42. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities, licensed district homes for adults, and licensed adult day-care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request; provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

§ 22.1-3. Persons to whom public schools shall be free.

A. The public schools in each school division shall be free to each person of school age who resides within the school division. Every person of school age shall be deemed to reside in a school division:

1. When the person is living with a natural parent, or a parent by legal adoption;

2. When the person is living with an individual who is defined as a parent in § 22.1-1, not solely for school purposes, pursuant to a Special Power of Attorney executed under Title 10, United States Code, § 1044b, by the custodial parent while such custodial parent is deployed outside the United States as a member of the Virginia National Guard or as a member of the United States Armed Forces;

3. When the parents of such person are dead and the person is living with a person in loco parentis who actually resides within the school division;

4. When the parents of such person are unable to care for the person and the person is living, not solely for school purposes, with another person who resides in the school division and is either (i) the court-appointed guardian, or has legal custody, of the person or (ii) acting in loco parentis pursuant to placement of the person for adoption by a person or entity authorized to do so under § 63.2-1200;

5. When the person is living in the school division not solely for school purposes, as an emancipated minor; or

6. When the person living in the school division is a homeless child or youth, as set forth in this subdivision, who lacks a fixed, regular, and adequate nighttime residence. Such persons shall include (i) children and youths, including unaccompanied youths who are not in the physical custody of their parents, who (a) are sharing the housing of other persons due to loss of housing, economic hardship, or other causes; are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations or in emergency, congregate, temporary, or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement; (b) are living in an institution that provides a temporary residence for ~~the~~ ~~mentally~~ ~~ill~~ *individuals with mental illness* or individuals intended to be institutionalized; (c) have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or (d) are living in parked cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and (ii) migratory children, as defined in the Elementary and Secondary Education Act of 1965, as amended, who are deemed homeless as they are living in circumstances set forth in clause (i) ~~of this subdivision~~.

For purposes of clause (i) of subdivision 6, "temporary shelter" means (i) any home, single or multi-unit dwelling or housing unit in which persons who are without housing or a fixed address receive temporary housing or shelter or (ii) any facility specifically designed or approved for the purpose of providing temporary housing or shelter to persons who are without permanent housing or a fixed address.

If a person resides within housing, temporary shelter, or primary nighttime residence as described in subdivision 6 that is situated in more than one school division, the person shall be deemed to reside in and shall be entitled to attend a public school within either school division. However, if a person resides in housing, temporary shelter, or primary nighttime residence as described in subdivision 6 that is located in one school division, but the property on which such housing, temporary shelter, or primary nighttime residence is located lies within more than one school division, such person shall be deemed to reside only in the single school division in which the housing, temporary shelter, or primary nighttime residence is located. Notwithstanding any such residency determination, any person residing in housing, a temporary shelter, or primary nighttime residence as described in subdivision 6 that is located in one

school division, but the property on which such housing, temporary shelter, or primary nighttime residence is located lies within more than one school division, shall be deemed to reside in either school division, if such person or any sibling of such person residing in the same housing or temporary shelter attends, prior to July 1, 1999, or, in the case of a primary nighttime residence as described in subdivision 6, prior to July 1, 2000, a school within either school division in which the property on which the housing, temporary shelter, or primary nighttime residence is located.

School divisions shall comply with the requirements of the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001, as amended (42 U.S.C. § 11431 et seq.), to ensure that homeless children and youths shall receive the educational services comparable to those offered to other public school students.

School divisions serving the students identified in subdivision 6 shall coordinate the identification and provision of services to such students with relevant local social services agencies and other agencies and programs providing services to such students, and with other school divisions as may be necessary to resolve interdivisional issues.

B. In the interest of providing educational continuity to the children of military personnel, no child of a person on active military duty attending a school free of charge in accordance with this section shall be charged tuition by that school division upon such child's relocation to military housing located in another school division in the Commonwealth, pursuant to orders received by such child's parent to relocate to base housing and forfeit his military housing allowance. Such children shall be allowed to continue attending school in the school division they attended immediately prior to the relocation and shall not be charged tuition for attending such school. Such children shall be counted in the average daily membership of the school division in which they are enrolled. Further, the school division in which such children are enrolled subsequent to their relocation to base housing shall not be responsible for providing for their transportation to and from school.

§ 22.1-7. Responsibility of each state board, agency and institution having children in residence or in custody.

Each state board, state agency and state institution having children in residence or in custody shall have responsibility for providing for the education and training to such children which is at least comparable to that which would be provided to such children in the public school system. Such board, agency or institution may provide such education and training either directly with its own facilities and personnel in cooperation with the Board of Education or under contract with a school division or any other public or private nonreligious school, agency or institution. The Board of Education shall supervise the education and training provided to school-age ~~residents~~ *individuals* in state ~~mental retardation facilities~~ *training centers,* and *shall* provide for and direct the education for school-age ~~residents~~ *individuals* in state ~~mental health facilities~~ *hospitals operated by the Department of Behavioral Health and Developmental Services* in cooperation with the Department of Behavioral Health and Developmental Services. The Board shall prescribe standards and regulations for all such education and training provided directly by a state board, state agency or state institution. Each state board, state agency or state institution providing such education and training shall submit annually its program therefor to the Board of Education for approval in accordance with regulations of the Board. If any child in the custody of any state board, state agency or state institution is a child with disabilities as defined in § 22.1-213 and such board, agency or institution must contract with a private nonreligious school to provide special education as defined in § 22.1-213 for such child, the state board, state agency or state institution may proceed as a guardian pursuant to the provisions of subsection A of § 22.1-218.

§ 22.1-213. Definitions.

As used in this article:

"Children with disabilities" means those persons (i) who are ~~aged~~ *age* two to ~~twenty-one~~ *21*, inclusive, having reached the age of two by the date specified in § 22.1-254, (ii) who ~~are mentally retarded,~~ *have intellectual disability or serious emotional disturbance, or are* physically disabled~~, seriously emotionally disturbed~~, speech impaired, hearing impaired, visually impaired, *or* multiple disabled, ~~other~~ *or are otherwise* health impaired including ~~autistic or~~ *those* who have *autism spectrum disorder or* a specific learning disability or ~~who~~ are otherwise disabled as defined by the Board of Education and (iii) who because of such impairments need special education.

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a disabled child to benefit from special education, including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

"Special education" means specially designed instruction at no cost to the parent, to meet the unique needs of a disabled child, including classroom instruction, home instruction, instruction provided in hospitals and institutions, instruction in physical education and instruction in career and technical

education.

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. The term does not include children who have learning problems that are primarily the result of visual, hearing or motor handicaps, of ~~mental retardation~~ *intellectual disability*, or of environmental, cultural or economic disadvantage.

§ 22.1-214.2. Definition of "supervise" as related to educational programs provided for or by Department of Behavioral Health and Developmental Services.

For the purposes of subsection F of § 22.1-214 as related to the educational programs provided for or by the Department of Behavioral Health and Developmental Services, "supervise" shall mean providing active support in (i) designing mechanisms for maintaining constant direct contact and the sharing of ideas, approaches and innovations between the Department of Behavioral Health and Developmental Services and the facility staff responsible for providing educational services; (ii) providing consistent oversight, with particular attention to the mental health programs, to ensure that the availability of educational resources and the distribution of funds clearly reflect the needs of the different student populations residing in the various facilities; (iii) developing guidelines, in cooperation with the Department of Behavioral Health and Developmental Services for the evaluation of the performance of the education directors or other education supervisors employed by the Department of Behavioral Health and Developmental Services; (iv) developing and implementing, in cooperation with the Department of Behavioral Health and Developmental Services, programs to ensure that the educational and treatment needs of dually diagnosed children in state ~~institutions~~ *facilities* are met; and (v) ensuring that the expertise of the Department of Education is utilized by providing technical assistance to the education programs provided for or by the Department of Behavioral Health and Developmental Services in the areas of selection and acquisition of educational materials, curriculum development including career and technical education, when appropriate, and applications for federal grants.

§ 22.1-214.3. Department to develop certain curriculum guidelines; Board to approve.

The Department of Education shall develop curricula for the school-age ~~residents of the~~ *individuals in* state training centers ~~for individuals with mental retardation~~ and curriculum guidelines for the school-age ~~residents of the~~ *individuals in* state ~~mental health facilities~~ *hospitals operated by the Department of Behavioral Health and Developmental Services* in cooperation with the Department of Behavioral Health and Developmental Services and representatives of the teachers employed to provide instruction to the children. Prior to implementation, the Board of Education shall approve these curricula and curriculum guidelines.

These curricula and curriculum guidelines shall be designed to provide a range of programs and suggested program sequences for different functioning levels and handicaps and shall be reviewed and revised at least every three years. In addition to academic programming, the curriculum guidelines for the school-age ~~residents of the~~ *individuals in* state ~~mental health facilities~~ *hospitals operated by the Department of Behavioral Health and Developmental Services* shall include affective education and physical education as well as independent living and career and technical education, with particular emphasis on the needs of older adolescents and young adults.

§ 22.1-215. School divisions to provide special education; plan to be submitted to Board.

Each school division shall provide free and appropriate education, including special education, for the children with disabilities residing within its jurisdiction in accordance with regulations of the Board of Education.

For the purposes of this section, "children with disabilities, residing within its jurisdiction" shall include: (i) those individuals of school age identified as appropriate to be placed in public school programs~~,~~ who are residing in a state ~~institution~~ *facility* operated by the Department of Behavioral Health and Developmental Services located within the school division, or (ii) those individuals of school age who are Virginia residents and are placed and living in a foster care home or child-caring institution or group home located within the school division and licensed under the provisions of Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 as a result of being in the custody of a local department of social services or welfare or being privately placed, not solely for school purposes.

The Board of Education shall promulgate regulations to identify those children placed within facilities operated by the Department of Behavioral Health and Developmental Services who are eligible to be appropriately placed in public school programs.

The cost of the education provided to children residing in ~~the~~ state ~~institutions,~~ *facilities* who are appropriate to place within the public schools~~,~~ shall remain the responsibility of the Department of Behavioral Health and Developmental Services. The cost of the education provided to children who are not residents of the Commonwealth and are placed and living in a foster care home or child-caring institution or group home located within the school division and licensed under the provisions of

Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 shall be billed to the sending agency or person by the school division as provided in subsection C of § 22.1-5. No school division shall refuse to educate any such child or charge tuition to any such child.

Each school division shall submit to the Board of Education in accordance with the schedule and by the date specified by the Board, a plan acceptable to the Board for such education for the period following and a report indicating the extent to which the plan required by law for the preceding period has been implemented. However, the schedule specified by the Board shall not require plans to be submitted more often than annually unless changes to the plan are required by federal or state law or regulation.

§ 22.1-217.1. Programs for the research and development of innovative methods of teaching children with mental illness, intellectual disability, or serious emotional disturbance.

For the purpose of improving the quality of the education and training provided to the school-age ~~residents of the~~ *children in* state ~~mental health and mental retardation facilities~~ *hospitals and training centers operated by the Department of Behavioral Health and Developmental Services*, there is hereby established a program of grants~~,~~ from such funds as are appropriated by the General Assembly~~,~~ to promote the research and development of innovative methods of teaching children with mental illness, ~~mental retardation~~ *intellectual disability*, or serious emotional disturbance in residential settings. This program shall be available to the education directors and instructional staffs of the ~~institutions administered~~ *state hospitals and training centers operated* by the Department of Behavioral Health and Developmental Services. The Board of Education shall award these grants on the basis of the recommendations of an advisory committee composed of the Director of the Virginia Treatment Center for Children, two representatives of the Department of Education and two representatives of the Department of Behavioral Health and Developmental Services. The advisory committee shall establish objectives for these grants, develop requests for proposals and set criteria for evaluating the applications for funds.

§ 22.1-253.13:2. Standard 2. Instructional, administrative, and support personnel.

A. The Board shall establish requirements for the licensing of teachers, principals, superintendents, and other professional personnel.

B. School boards shall employ licensed instructional personnel qualified in the relevant subject areas.

C. Each school board shall assign licensed instructional personnel in a manner that produces divisionwide ratios of students in average daily membership to full-time equivalent teaching positions, excluding special education teachers, principals, assistant principals, counselors, and librarians, that are not greater than the following ratios: (i) 24 to one in kindergarten with no class being larger than 29 students; if the average daily membership in any kindergarten class exceeds 24 pupils, a full-time teacher's aide shall be assigned to the class; (ii) 24 to one in grades one, two, and three with no class being larger than 30 students; (iii) 25 to one in grades four through six with no class being larger than 35 students; and (iv) 24 to one in English classes in grades six through 12.

Within its regulations governing special education programs, the Board shall seek to set pupil/teacher ratios for pupils with ~~mental retardation~~ *intellectual disability* that do not exceed the pupil/teacher ratios for self-contained classes for pupils with specific learning disabilities.

Further, school boards shall assign instructional personnel in a manner that produces schoolwide ratios of students in average daily memberships to full-time equivalent teaching positions of 21 to one in middle schools and high schools. School divisions shall provide all middle and high school teachers with one planning period per day or the equivalent, unencumbered of any teaching or supervisory duties.

D. Each local school board shall employ with state and local basic, special education, gifted, and career and technical education funds a minimum number of licensed, full-time equivalent instructional personnel for each 1,000 students in average daily membership (ADM) as set forth in the appropriation act. Calculations of kindergarten positions shall be based on full-day kindergarten programs. Beginning with the March 31 report of average daily membership, those school divisions offering half-day kindergarten with pupil/teacher ratios that exceed 30 to one shall adjust their average daily membership for kindergarten to reflect 85 percent of the total kindergarten average daily memberships, as provided in the appropriation act.

E. In addition to the positions supported by basic aid and in support of regular school year programs of prevention, intervention, and remediation, state funding, pursuant to the appropriation act, shall be provided to fund certain full-time equivalent instructional positions for each 1,000 students in grades K through 12 who are identified as needing prevention, intervention, and remediation services. State funding for prevention, intervention, and remediation programs provided pursuant to this subsection and the appropriation act may be used to support programs for educationally at-risk students as identified by the local school boards.

To provide flexibility in the provision of mathematics intervention services, school divisions may use the Standards of Learning Algebra Readiness Initiative funding and the required local matching funds to employ mathematics teacher specialists to provide the required mathematics intervention services. School

divisions using the Standards of Learning Algebra Readiness Initiative funding in this manner shall only employ instructional personnel licensed by the Board of Education.

F. In addition to the positions supported by basic aid and those in support of regular school year programs of prevention, intervention, and remediation, state funding, pursuant to the appropriation act, shall be provided to support 17 full-time equivalent instructional positions for each 1,000 students identified as having limited English proficiency.

To provide flexibility in the instruction of English language learners who have limited English proficiency and who are at risk of not meeting state accountability standards, school divisions may use state and local funds from the Standards of Quality Prevention, Intervention, and Remediation account to employ additional English language learner teachers to provide instruction to identified limited English proficiency students. Using these funds in this manner is intended to supplement the instructional services provided in this section. School divisions using the SOQ Prevention, Intervention, and Remediation funds in this manner shall employ only instructional personnel licensed by the Board of Education.

G. In addition to the full-time equivalent positions required elsewhere in this section, each local school board shall employ the following reading specialists in elementary schools, one full-time in each elementary school at the discretion of the local school board.

To provide flexibility in the provision of reading intervention services, school divisions may use the state Early Reading Intervention Initiative funding and the required local matching funds to employ reading specialists to provide the required reading intervention services. School divisions using the Early Reading Intervention Initiative funds in this manner shall employ only instructional personnel licensed by the Board of Education.

H. Each local school board shall employ, at a minimum, the following full-time equivalent positions for any school that reports fall membership, according to the type of school and student enrollment:

1. Principals in elementary schools, one half-time to 299 students, one full-time at 300 students; principals in middle schools, one full-time, to be employed on a 12-month basis; principals in high schools, one full-time, to be employed on a 12-month basis;

2. Assistant principals in elementary schools, one half-time at 600 students, one full-time at 900 students; assistant principals in middle schools, one full-time for each 600 students; assistant principals in high schools, one full-time for each 600 students; and school divisions that employ a sufficient number of assistant principals to meet this staffing requirement may assign assistant principals to schools within the division according to the area of greatest need, regardless of whether such schools are elementary, middle, or secondary;

3. Librarians in elementary schools, one part-time to 299 students, one full-time at 300 students; librarians in middle schools, one-half time to 299 students, one full-time at 300 students, two full-time at 1,000 students; librarians in high schools, one half-time to 299 students, one full-time at 300 students, two full-time at 1,000 students; and

4. Guidance counselors in elementary schools, one hour per day per 100 students, one full-time at 500 students, one hour per day additional time per 100 students or major fraction thereof; guidance counselors in middle schools, one period per 80 students, one full-time at 400 students, one additional period per 80 students or major fraction thereof; guidance counselors in high schools, one period per 70 students, one full-time at 350 students, one additional period per 70 students or major fraction thereof.

I. Local school boards shall employ five full-time equivalent positions per 1,000 students in grades kindergarten through five to serve as elementary resource teachers in art, music, and physical education.

J. Local school boards shall employ two full-time equivalent positions per 1,000 students in grades kindergarten through 12, one to provide technology support and one to serve as an instructional technology resource teacher.

To provide flexibility, school divisions may use the state and local funds for instructional technology resource teachers to employ a data coordinator position, an instructional technology resource teacher position, or a data coordinator/instructional resource teacher blended position. The data coordinator position is intended to serve as a resource to principals and classroom teachers in the area of data analysis and interpretation for instructional and school improvement purposes, as well as for overall data management and administration of state assessments. School divisions using these funds in this manner shall employ only instructional personnel licensed by the Board of Education.

K. Local school boards may employ additional positions that exceed these minimal staffing requirements. These additional positions may include, but are not limited to, those funded through the state's incentive and categorical programs as set forth in the appropriation act.

L. A combined school, such as kindergarten through 12, shall meet at all grade levels the staffing requirements for the highest grade level in that school; this requirement shall apply to all staff, except for guidance counselors, and shall be based on the school's total enrollment; guidance counselor staff requirements shall, however, be based on the enrollment at the various school organization levels, i.e.,

elementary, middle, or high school. The Board of Education may grant waivers from these staffing levels upon request from local school boards seeking to implement experimental or innovative programs that are not consistent with these staffing levels.

M. School boards shall, however, annually, on or before January 1, report to the public the actual pupil/teacher ratios in elementary school classrooms by school for the current school year. Such actual ratios shall include only the teachers who teach the grade and class on a full-time basis and shall exclude resource personnel. School boards shall report pupil/teacher ratios that include resource teachers in the same annual report. Any classes funded through the voluntary kindergarten through third grade class size reduction program shall be identified as such classes. Any classes having waivers to exceed the requirements of this subsection shall also be identified. Schools shall be identified; however, the data shall be compiled in a manner to ensure the confidentiality of all teacher and pupil identities.

N. Students enrolled in a public school on a less than full-time basis shall be counted in ADM in the relevant school division. Students who are either (i) enrolled in a nonpublic school or (ii) receiving home instruction pursuant to § 22.1-254.1, and who are enrolled in public school on a less than full-time basis in any mathematics, science, English, history, social science, career and technical education, fine arts, foreign language, or health education or physical education course shall be counted in the ADM in the relevant school division on a pro rata basis as provided in the appropriation act. Each such course enrollment by such students shall be counted as 0.25 in the ADM; however, no such nonpublic or home school student shall be counted as more than one-half a student for purposes of such pro rata calculation. Such calculation shall not include enrollments of such students in any other public school courses.

O. Each local school board shall provide those support services that are necessary for the efficient and cost-effective operation and maintenance of its public schools.

For the purposes of this title, unless the context otherwise requires, "support services positions" shall include the following:

1. Executive policy and leadership positions, including school board members, superintendents and assistant superintendents;

2. Fiscal and human resources positions, including fiscal and audit operations;

3. Student support positions, including (i) social workers and social work administrative positions; (ii) guidance administrative positions not included in subdivision H 4; (iii) homebound administrative positions supporting instruction; (iv) attendance support positions related to truancy and dropout prevention; and (v) health and behavioral positions, including school nurses and school psychologists;

4. Instructional personnel support, including professional development positions and library and media positions not included in subdivision H 3;

5. Technology professional positions not included in subsection J;

6. Operation and maintenance positions, including facilities; pupil transportation positions; operation and maintenance professional and service positions; and security service, trade, and laborer positions;

7. Technical and clerical positions for fiscal and human resources, student support, instructional personnel support, operation and maintenance, administration, and technology; and

8. School-based clerical personnel in elementary schools; part-time to 299 students, one full-time at 300 students; clerical personnel in middle schools; one full-time and one additional full-time for each 600 students beyond 200 students and one full-time for the library at 750 students; clerical personnel in high schools; one full-time and one additional full-time for each 600 students beyond 200 students and one full-time for the library at 750 students.

Pursuant to the appropriation act, support services shall be funded from basic school aid.

School divisions may use the state and local funds for support services to provide additional instructional services.

P. Notwithstanding the provisions of this section, when determining the assignment of instructional and other licensed personnel in subsections C through J, a local school board shall not be required to include full-time students of approved virtual school programs.

§ 22.1-319. Definitions.

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

"Board" means the Virginia Board of Education.

"Department" means the Department of Education.

"Person" means any individual, group of individuals, partnership, association, business trust, corporation, or other business entity.

"School for students with disabilities" or "school" or "schools" means a privately owned and operated preschool, school, or educational organization, no matter how titled, maintained or conducting classes for the purpose of offering instruction, for a consideration, profit or tuition, to persons determined to have autism, deaf-blindness, a developmental delay, a hearing impairment including deafness, ~~mental retardation~~ *intellectual disability*, multiple disabilities, an orthopedic impairment, other health impairment, an emotional disturbance, a severe disability, a specific learning disability, a speech or

language impairment, a traumatic brain injury, or a visual impairment including blindness.

"Superintendent" means the Superintendent of Public Instruction.

§ 23-38.2. Virginia Behavioral Health and Developmental Services Scholarship Fund.

(a) There is hereby established a fund, to be known as the Virginia Behavioral Health and Developmental Services Scholarship Fund, which shall consist of funds appropriated to it from time to time by the General Assembly and which shall be administered by the Department of Behavioral Health and Developmental Services, for the purpose of providing scholarships for study in various professions and skills that deal with the treatment, training and care of individuals with mental illness and ~~mental retardation~~ *intellectual disability*.

(b) The State Board of Behavioral Health and Developmental Services shall ~~promulgate~~ *adopt* the necessary rules and regulations, not inconsistent with other laws, for the implementation of this section. Such rules and regulations shall provide:

(1) That scholarships be awarded for a period no longer than one year, but that certain scholarships may be reawarded not more than two times;

(2) That persons who receive such scholarships agree to serve in state employment upon completion of training for a period at least as long as the length of training provided by the scholarship, and that if they do not fulfill this agreement they shall repay to the Commonwealth the amount of the scholarship with interest;

(3) That priorities be given for training in professions and skills where shortages exist and are anticipated in state ~~mental health and mental retardation institutions~~ *hospitals and training centers*; and

(4) That priorities be given to citizens of ~~this~~ *the* Commonwealth.

(c) The Commissioner of Behavioral Health and Developmental Services is hereby authorized to receive gifts, donations, bequests, and federal grants to the Virginia Behavioral Health and Developmental Services Scholarship Fund.

§ 25.1-100. Definitions.

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

"Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

"Body determining just compensation" means a panel of commissioners empanelled pursuant to § 25.1-227.2, jury selected pursuant to § 25.1-229, or the court if neither a panel of commissioners nor a jury is appointed or empanelled.

"Court" means the court having jurisdiction as provided in § 25.1-201.

"Date of valuation" means the time of the lawful taking by the petitioner, or the date of the filing of the petition pursuant to § 25.1-205, whichever occurs first.

"Freeholder" means any person owning an interest in land in fee, including a person owning a condominium unit.

"Land" means real estate and all rights and appurtenances thereto, together with the structures and other improvements thereon, and any right, title, interest, estate or claim in or to real estate.

"Locality" or "local government" means a county, city, or town, as the context may require.

"Owner" means any person who owns property, provided that the person's ownership of the property is of record in the land records of the clerk's office of the circuit court of the county or city where the property is located. The term "owner" shall not include trustees or beneficiaries under a deed of trust, any person with a security interest in the property, or any person with a judgment or lien against the property. This definition of the term "owner" shall not affect in any way the valuation of property.

"Person" means any individual; firm; cooperative; association; corporation; limited liability company; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in bankruptcy or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise; club, society or other group or combination acting as a unit; the Commonwealth or any department, agency or instrumentality thereof; any city, county, town, or other political subdivision or any department, agency or instrumentality thereof; or any interstate body to which the Commonwealth is a party.

"Petitioner" or "condemnor" means any person who possesses the power to exercise the right of eminent domain and who seeks to exercise such power. The term "petitioner" or "condemnor" includes a state agency.

"Property" means land and personal property, and any right, title, interest, estate or claim in or to such property.

"State agency" means any (i) department, agency or instrumentality of the Commonwealth; (ii) public authority, municipal corporation, local governmental unit or political subdivision of the Commonwealth or any department, agency or instrumentality thereof; (iii) person who has the authority to acquire property by eminent domain under state law; or (iv) two or more of the aforementioned that carry out

projects that cause persons to be displaced.

"State institution" means any (i) educational institution enumerated in § 23-14 or (ii) state hospital or state training center ~~for individuals with mental retardation~~ operated by the Department of Behavioral Health and Developmental Services.

§ 29.1-313. Issuance of licenses for use of individuals in certain state facilities.

The Director shall have authority to issue at the regular fee, up to ~~twenty-five~~ *25* state resident licenses to fish in the name of any state i~~nstitution~~*facility* operated by the Department of Behavioral Health and Developmental Services for use by ~~patients of the institution~~ *individuals receiving services in those facilities*.

§ 32.1-59. Examination and treatment in certain institutions.

Every person admitted to any state correctional institution and every person ~~who is confined~~ *admitted* to a state hospital ~~for the mentally ill or mentally retarded~~ *or training center operated by the Department of Behavioral Health and Developmental Services* shall be examined and tested for venereal disease. If ~~any such~~ *the* person is found to be infected with a venereal disease, the person in charge of such institution *or state hospital or training center* shall promptly provide treatment and shall report such case as provided in § 32.1-37.

§ 32.1-65. Certain newborn screening required.

In order to prevent ~~mental retardation~~ *intellectual disability* and permanent disability or death, every infant who is born in the Commonwealth shall be subjected to screening tests for various disorders consistent with, but not necessarily identical to, the uniform condition panel recommended by the American College of Medical Genetics in its report, Newborn Screening: Toward a Uniform Screening Panel and System, that was produced for the U.S. Department of Health and Human Services. Further, upon the issuance of guidance for states' newborn screening programs by the ~~federal~~ *U.S.* Department of Health and Human Services, every infant who is born in the Commonwealth shall be screened for a panel of disorders consistent with, but not necessarily identical to, the federal guidance document.

Any infant whose parent or guardian objects thereto on the grounds that such tests conflict with his religious practices or tenets shall not be required to receive such screening tests.

The physician or certified nurse midwife in charge of the infant's care after delivery shall cause such tests to be performed. The screening tests shall be performed by the Division of Consolidated Laboratory Services or any other laboratory the Department of Health has contracted with to provide this service.

The program for screening infants for sickle cell diseases shall be conducted in addition to the programs provided for in Article 8 (§ 32.1-68 et seq.) ~~of this chapter~~.

§ 32.1-102.1. Definitions.

As used in this article, unless the context indicates otherwise:

"Certificate" means a certificate of public need for a project required by this article.

"Clinical health service" means a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure or a series of such procedures that may be separately identified for billing and accounting purposes.

"Health planning region" means a contiguous geographical area of the Commonwealth with a population base of at least 500,000 persons which is characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

"Medical care facility," as used in this title, means any institution, place, building or agency, whether or not licensed or required to be licensed by the Board or the Department of Behavioral Health and Developmental Services, whether operated for profit or nonprofit and whether privately owned or privately operated or owned or operated by a local governmental unit, (i) by or in which health services are furnished, conducted, operated or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated ~~mentally or physically sick or injured~~ persons *who are injured or physically sick or have mental illness*, or for the care of two or more nonrelated persons requiring or receiving medical, surgical or nursing attention or services as acute, chronic, convalescent, aged, physically disabled or crippled or (ii) which is the recipient of reimbursements from third-party health insurance programs or prepaid medical service plans. For purposes of this article, only the following medical care facilities shall be subject to review:

1. General hospitals.

2. Sanitariums.

3. Nursing homes.

4. Intermediate care facilities, except those intermediate care facilities established for individuals with ~~mental retardation~~ *intellectual disability (ICF/MR)* that have no more than 12 beds and are in an area identified as in need of residential services for individuals with ~~mental retardation~~ *intellectual disability* in any plan of the Department of Behavioral Health and Developmental Services.

5. Extended care facilities.

6. Mental hospitals.

7. ~~Mental retardation facilities~~ *Facilities for individuals with intellectual disability*.

8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of individuals with substance abuse.

9. Specialized centers or clinics or that portion of a physician's office developed for the provision of outpatient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging, or such other specialty services as may be designated by the Board by regulation.

10. Rehabilitation hospitals.

11. Any facility licensed as a hospital.

The term "medical care facility" shall not include any facility of (i) the Department of Behavioral Health and Developmental Services; (ii) any nonhospital substance abuse residential treatment program operated by or contracted primarily for the use of a community services board under the Department of Behavioral Health and Developmental Services' Comprehensive State Plan; (iii) an intermediate care facility for individuals with ~~mental retardation~~ *intellectual disability (ICF/MR)* that has no more than 12 beds and is in an area identified as in need of residential services for ~~people~~ *individuals* with ~~mental retardation~~ *intellectual disability* in any plan of the Department of Behavioral Health and Developmental Services; (iv) a physician's office, except that portion of a physician's office described ~~above~~ in subdivision 9 of the definition of "medical care facility"; (v) the Woodrow Wilson Rehabilitation Center of the Department of Rehabilitative Services; (vi) the Department of Corrections; or (vii) the Department of Veterans Services. "Medical care facility" shall also not include that portion of a physician's office dedicated to providing nuclear cardiac imaging.

"Project" means:

1. Establishment of a medical care facility;

2. An increase in the total number of beds or operating rooms in an existing medical care facility;

3. Relocation of beds from one existing facility to another; provided that "project" shall not include the relocation of up to 10 beds or 10 percent of the beds, whichever is less, (i) from one existing facility to another existing facility at the same site in any two-year period, or (ii) in any three-year period, from one existing nursing home facility to any other existing nursing home facility owned or controlled by the same person that is located either within the same planning district, or within another planning district out of which, during or prior to that three-year period, at least 10 times that number of beds have been authorized by statute to be relocated from one or more facilities located in that other planning district and at least half of those beds have not been replaced; provided further that, however, a hospital shall not be required to obtain a certificate for the use of 10 percent of its beds as nursing home beds as provided in § 32.1-132;

4. Introduction into an existing medical care facility of any new nursing home service, such as intermediate care facility services, extended care facility services, or skilled nursing facility services, regardless of the type of medical care facility in which those services are provided;

5. Introduction into an existing medical care facility of any new cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), medical rehabilitation, neonatal special care, obstetrical, open heart surgery, positron emission tomographic (PET) scanning, psychiatric, organ or tissue transplant service, radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging, substance abuse treatment, or such other specialty clinical services as may be designated by the Board by regulation, which the facility has never provided or has not provided in the previous 12 months;

6. Conversion of beds in an existing medical care facility to medical rehabilitation beds or psychiatric beds;

7. The addition by an existing medical care facility of any medical equipment for the provision of cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, or other specialized service designated by the Board by regulation. Replacement of existing equipment shall not require a certificate of public need;

8. Any capital expenditure of $15 million or more, not defined as reviewable in subdivisions 1 through 7 of this definition, by or in behalf of a medical care facility. However, capital expenditures between $5 and $15 million shall be registered with the Commissioner pursuant to regulations developed by the Board. The amounts specified in this subdivision shall be revised effective July 1, 2008, and annually thereafter to reflect inflation using appropriate measures incorporating construction costs and

medical inflation; or

9. Conversion in an existing medical care facility of psychiatric inpatient beds approved under § 32.1-102.3:2 to nonpsychiatric inpatient beds.

"Regional health planning agency" means the regional agency, including the regional health planning board, its staff and any component thereof, designated by the Virginia Health Planning Board to perform the health planning activities set forth in this chapter within a health planning region.

"State Medical Facilities Plan" means the planning document adopted by the Board of Health which shall include, but not be limited to, (i) methodologies for projecting need for medical care facility beds and services; (ii) statistical information on the availability of medical care facilities and services; and (iii) procedures, criteria and standards for review of applications for projects for medical care facilities and services.

§ 32.1-127.01. Regulations to authorize certain sanctions and guidelines.

The regulations established pursuant to § 32.1-127 shall authorize the Commissioner to initiate court proceedings against nursing homes and certified nursing facilities, except for facilities or units certified as facilities for ~~the mentally retarded~~ *individuals with intellectual disability*. Such proceedings may be initiated by themselves or in conjunction with the administrative sanctions provided in § 32.1-135.

The Board shall promulgate guidelines for the Commissioner to determine when the imposition of administrative sanctions or initiation of court proceedings as specified in § 32.1-27.1, or both, are appropriate in order to ensure prompt correction of violations involving noncompliance with requirements of state or federal law or regulation as discovered on any inspection conducted by the Department of Health pursuant to the provisions of this article or the provisions of Title XVIII or Title XIX of the Social Security Act or as discovered on any inspection conducted by the Department of Medical Assistance Services pursuant to Title XIX of the Social Security Act.

§ 32.1-283. (Effective until July 1, 2012) Investigation of deaths; obtaining consent to removal of organs, etc.; fees.

A. Upon the death of any person from trauma, injury, violence, poisoning, accident, suicide or homicide, or suddenly when in apparent good health, or when unattended by a physician, or in jail, prison, other correctional institution or in police custody, or who is ~~a patient or resident of~~ *an individual receiving services in* a state ~~mental health or mental retardation facility~~ *hospital or training center operated by the Department of Behavioral Health and Developmental Services*, or suddenly as an apparent result of fire, or in any suspicious, unusual or unnatural manner, or the sudden death of any infant less than ~~eighteen~~ *18* months of age whose death is suspected to be attributable to Sudden Infant Death Syndrome (SIDS), the medical examiner of the county or city in which death occurs shall be notified by the physician in attendance, hospital, law-enforcement officer, funeral director or any other person having knowledge of such death. Good faith efforts shall be made by such person or institution having custody of the dead body to identify and to notify the next of kin of the decedent. Notification shall include informing the person presumed to be the next of kin that he has a right to have identification of the decedent confirmed without due delay and without being held financially responsible for any procedures performed for the purpose of the identification. Identity of the next of kin, if determined, shall be provided to the Chief Medical Examiner upon transfer of the dead body.

B. Upon being notified of a death as provided in subsection A, the medical examiner shall take charge of the dead body, make an investigation into the cause and manner of death, reduce his findings to writing, and promptly make a full report to the Chief Medical Examiner. In order to facilitate his investigation, the medical examiner is authorized to inspect and copy the pertinent medical records of the decedent whose death he is investigating. Full directions as to the nature, character and extent of the investigation to be made in such cases shall be furnished each medical examiner by the Chief Medical Examiner, together with appropriate forms for the required reports and instructions for their use. The facilities and personnel under the Chief Medical Examiner shall be made available to medical examiners in such investigations. Reports and findings of the Medical Examiner shall be confidential and shall not under any circumstance be disclosed or made available for discovery pursuant to a court subpoena or otherwise, except as provided in this chapter. Nothing in this subsection shall prohibit the Chief Medical Examiner from releasing the cause or manner of death, or prohibit disclosure of reports or findings to the parties in a criminal case.

C. A copy of each report pursuant to this section shall be delivered to the appropriate attorney for the Commonwealth and to the appropriate law-enforcement agency investigating the death. A copy of any such report regarding the death of a victim of a traffic accident shall be furnished upon request to the State Police and the Highway Safety Commission. In addition, a copy of any autopsy report concerning ~~a patient or resident of~~ *an individual receiving services in* a state ~~mental health or mental retardation facility~~ *hospital or training center operated by the Department of Behavioral Health and Developmental Services* shall be delivered to the Commissioner of Behavioral Health and Developmental Services and to the Inspector General for Behavioral Health and Developmental Services. A copy of any autopsy report concerning a prisoner committed to the custody of the Director of the Department of

Corrections shall, upon request of the Director of the Department of Corrections, be delivered to the Director of the Department of Corrections. A copy of any autopsy report concerning a prisoner committed to any local correctional facility shall be delivered to the local sheriff or superintendent. Upon request, the Chief Medical Examiner shall release such autopsy report to the decedent's attending physician and to the personal representative or executor of the decedent or, if no personal representative or executor is appointed, then at the discretion of the Chief Medical Examiner, to the following persons in the following order of priority: (i) the spouse of the decedent, (ii) an adult son or daughter of the decedent, (iii) either parent of the decedent, (iv) an adult sibling of the decedent, (v) any other adult relative of the decedent in order of blood relationship, or (vi) any appropriate health facility quality assurance program.

D. For each investigation under this article, including the making of the required reports, the medical examiner shall receive a fee established by the Board within the limitations of appropriations for the purpose. Such fee shall be paid by the Commonwealth, if the deceased is not a legal resident of the county or city in which his death occurred. In the event the deceased is a legal resident of the county or city in which his death occurred, such county or city shall be responsible for the fee up to $20. If the deceased is ~~a patient or resident of~~ *an individual receiving services in* a state ~~mental health or mental retardation facility~~ *hospital or training center operated by the Department of Behavioral Health and Developmental Services*, the fee shall be paid by the Department of Behavioral Health and Developmental Services.

E. Nothing herein shall be construed to interfere with the autopsy procedure or with the routine obtaining of consent for removal of organs as conducted by surgical teams or others.

§ 32.1-283. (Effective July 1, 2012) Investigation of deaths; obtaining consent to removal of organs, etc.; fees.

A. Upon the death of any person from trauma, injury, violence, poisoning, accident, suicide or homicide, or suddenly when in apparent good health, or when unattended by a physician, or in jail, prison, other correctional institution or in police custody, or who is ~~a patient or resident of~~ *an individual receiving services in* a state ~~mental health or mental retardation facility~~ *hospital or training center operated by the Department of Behavioral Health and Developmental Services*, or suddenly as an apparent result of fire, or in any suspicious, unusual or unnatural manner, or the sudden death of any infant less than ~~eighteen~~ *18* months of age whose death is suspected to be attributable to Sudden Infant Death Syndrome (SIDS), the medical examiner of the county or city in which death occurs shall be notified by the physician in attendance, hospital, law-enforcement officer, funeral director or any other person having knowledge of such death. Good faith efforts shall be made by such person or institution having custody of the dead body to identify and to notify the next of kin of the decedent. Notification shall include informing the person presumed to be the next of kin that he has a right to have identification of the decedent confirmed without due delay and without being held financially responsible for any procedures performed for the purpose of the identification. Identity of the next of kin, if determined, shall be provided to the Chief Medical Examiner upon transfer of the dead body.

B. Upon being notified of a death as provided in subsection A, the medical examiner shall take charge of the dead body, make an investigation into the cause and manner of death, reduce his findings to writing, and promptly make a full report to the Chief Medical Examiner. In order to facilitate his investigation, the medical examiner is authorized to inspect and copy the pertinent medical records of the decedent whose death he is investigating. Full directions as to the nature, character and extent of the investigation to be made in such cases shall be furnished each medical examiner by the Chief Medical Examiner, together with appropriate forms for the required reports and instructions for their use. The facilities and personnel under the Chief Medical Examiner shall be made available to medical examiners in such investigations. Reports and findings of the Medical Examiner shall be confidential and shall not under any circumstance be disclosed or made available for discovery pursuant to a court subpoena or otherwise, except as provided in this chapter. Nothing in this subsection shall prohibit the Chief Medical Examiner from releasing the cause or manner of death, or prohibit disclosure of reports or findings to the parties in a criminal case.

C. A copy of each report pursuant to this section shall be delivered to the appropriate attorney for the Commonwealth and to the appropriate law-enforcement agency investigating the death. A copy of any such report regarding the death of a victim of a traffic accident shall be furnished upon request to the State Police and the Highway Safety Commission. In addition, a copy of any autopsy report concerning ~~a patient or resident of~~ *an individual receiving services in* a state ~~mental health or mental retardation facility~~ *hospital or training center operated by the Department of Behavioral Health and Developmental Services* shall be delivered to the Commissioner of Behavioral Health and Developmental Services and to the State Inspector General. A copy of any autopsy report concerning a prisoner committed to the custody of the Director of the Department of Corrections shall, upon request of the Director of the Department of Corrections, be delivered to the Director of the Department of

Corrections. A copy of any autopsy report concerning a prisoner committed to any local correctional facility shall be delivered to the local sheriff or superintendent. Upon request, the Chief Medical Examiner shall release such autopsy report to the decedent's attending physician and to the personal representative or executor of the decedent or, if no personal representative or executor is appointed, then at the discretion of the Chief Medical Examiner, to the following persons in the following order of priority: (i) the spouse of the decedent, (ii) an adult son or daughter of the decedent, (iii) either parent of the decedent, (iv) an adult sibling of the decedent, (v) any other adult relative of the decedent in order of blood relationship, or (vi) any appropriate health facility quality assurance program.

D. For each investigation under this article, including the making of the required reports, the medical examiner shall receive a fee established by the Board within the limitations of appropriations for the purpose. Such fee shall be paid by the Commonwealth, if the deceased is not a legal resident of the county or city in which his death occurred. In the event the deceased is a legal resident of the county or city in which his death occurred, such county or city shall be responsible for the fee up to $20. If the deceased is ~~a patient or resident of~~ *an individual who receives services in* a state ~~mental health or mental retardation facility~~ *hospital or training center operated by the Department of Behavioral Health and Developmental Services*, the fee shall be paid by the Department of Behavioral Health and Developmental Services.

E. Nothing herein shall be construed to interfere with the autopsy procedure or with the routine obtaining of consent for removal of organs as conducted by surgical teams or others.

§ 32.1-323.2. Elimination of waiting lists for certain waivers.

It is the intent of the General Assembly to eliminate the waiting lists for services pursuant to the ~~Mental Retardation~~ *Intellectual Disability* Medicaid Waiver and the Individual and Family Developmental Disabilities and Support Medicaid Waiver.

In furtherance of this intent, beginning with the fiscal year starting July 1, 2010, and for each fiscal year thereafter, the Department of Medical Assistance Services shall add (i) at least 400 additional funded slots per fiscal year for the ~~Mental Retardation~~ *Intellectual Disability* Medicaid Waiver, and (ii) at least 67 additional funded slots per fiscal year for the Individual and Family Developmental Disabilities and Support Medicaid Waiver, until the waiting lists for the ~~Mental Retardation~~ *Intellectual Disability* Medicaid Waiver and the Individual and Family Developmental Disabilities and Support Medicaid Waiver have been eliminated.

In addition, the Governor shall develop a plan to eliminate the waiting lists for services provided to individuals on the ~~Mental Retardation~~ *Intellectual Disability* Medicaid Waiver and the Individual and Family Developmental Disabilities and Support Medicaid Waiver by the 2018-2020 biennium. The plan shall include provisions to reduce the total number of individuals on the waiting list for the ~~Mental Retardation~~ *Intellectual Disability* Medicaid Waiver by 10 percent in the 2008-2010 biennium. The Governor shall submit the plan to the chairman of the Joint Commission on Health Care, and the chairmen of the House Appropriations and Senate Finance Committees by October 1, 2009.

The Department of Medical Assistance Services shall work with the Department of Planning and Budget to incorporate additional costs pursuant to this section in the estimate of Medicaid expenditures required pursuant to § 32.1-323.1.

§ 32.1-331.13. Medicaid Prior Authorization Advisory Committee; membership.

The Board shall amend the state plan and promulgate regulations to establish the Medicaid Prior Authorization Advisory Committee, composed of ~~eleven~~ *11* members to be appointed by the Board. Five members shall be physicians, at least three of whom shall care for a significant number of Medicaid patients; four shall be pharmacists, two of whom shall be community pharmacists; one member shall be ~~a consumer of~~ *an individual receiving* mental health services; and one member shall be a Medicaid recipient. A quorum for action of the Committee shall consist of six members. The members shall serve at the pleasure of the Board, and vacancies shall be filled in the same manner as the original appointment. The Board shall consider nominations made by The Medical Society of Virginia, the Old Dominion Medical Society, the Psychiatric Society of Virginia, the Virginia Pharmaceutical Association, the ~~Virginia Alliance for the Mentally Ill~~ *National Alliance on Mental Illness of Virginia* and the Virginia Mental Health Consumers Association when making appointments to the Committee.

The Committee shall elect its own officers, establish its own procedural rules, and meet as needed or as called by the Board, the Director, or any two members of the Committee. The Department shall provide appropriate staffing to the Committee.

§ 36-96.6. Certain restrictive covenants void; instruments containing such covenants.

A. Any restrictive covenant and any related reversionary interest, purporting to restrict occupancy or ownership of property on the basis of race, color, religion, national origin, sex, elderliness, familial status, or handicap, whether heretofore or hereafter included in an instrument affecting the title to real or leasehold property, are declared to be void and contrary to the public policy of ~~this~~ *the* Commonwealth.

B. Any person who is asked to accept a document affecting title to real or leasehold property may decline to accept the same if it includes such a covenant or reversionary interest until the covenant or

reversionary interest has been removed from the document. Refusal to accept delivery of an instrument for this reason shall not be deemed a breach of a contract to purchase, lease, mortgage, or otherwise deal with such property.

C. No person shall solicit or accept compensation of any kind for the release or removal of any covenant or reversionary interest described in subsection A. Any person violating this subsection shall be liable to any person injured thereby in an amount equal to the greater of three times the compensation solicited or received, or $500, plus reasonable attorneys' fees and costs incurred.

D. A family care home, foster home, or group home in which ~~physically handicapped, mentally ill, mentally retarded, or developmentally disabled persons~~ *individuals with physical handicaps, mental illness, intellectual disability, or developmental disability* reside, with one or more resident counselors or other staff persons, shall be considered for all purposes residential occupancy by a single family when construing any restrictive covenant which purports to restrict occupancy or ownership of real or leasehold property to members of a single family or to residential use or structure.

§ 37.2-100. Definitions.

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

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the Department, excluding those operated by the Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to ~~a person~~ *an individual* receiving care or treatment for mental illness, ~~mental retardation~~ *intellectual disability*, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;

2. Assault or battery;

3. Use of language that demeans, threatens, intimidates, or humiliates the ~~person~~ *individual*;

4. Misuse or misappropriation of the ~~person's~~ *individual's* assets, goods, or property;

5. Use of excessive force when placing ~~a person~~ *an individual* in physical or mechanical restraint;

6. Use of physical or mechanical restraints on ~~a person~~ *an individual* that is not in compliance with federal and state laws, regulations, and policies, professionally accepted standards of practice, or ~~the person's~~ *his* individualized services plan; and

7. Use of more restrictive or intensive services or denial of services to punish ~~the person~~ *an individual* or that is not consistent with his individualized services plan.

"Administrative policy community services board" or "administrative policy board" means the public body organized in accordance with the provisions of Chapter 5 *(§ 37.2-500 et seq.)* that is appointed by and accountable to the governing body of each city and county that established it to set policy for and administer the provision of mental health, ~~mental retardation~~ *developmental*, and substance abuse services. The "administrative policy community services board" or "administrative policy board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties enumerated in subsection A of § 37.2-504 and § 37.2-505. Mental health, ~~mental retardation~~ *developmental*, and substance abuse services are provided through local government staff or through contracts with other organizations and providers.

"Behavioral health authority" or "authority" means a public body and a body corporate and politic organized in accordance with the provisions of Chapter 6 *(§ 37.2-600 et seq.)* that is appointed by and accountable to the governing body of the city or county that established it for the provision of mental health, ~~mental retardation~~ *developmental*, and substance abuse services. "Behavioral health authority" or "authority" also includes the organization that provides ~~such~~*these* services through its own staff or through contracts with other organizations and providers.

"Behavioral health services" means the full range of mental health and substance abuse services.

"Board" means the State Board of Behavioral Health and Developmental Services.

"Commissioner" means the Commissioner of Behavioral Health and Developmental Services.

"Community services board" means the public body established pursuant to § 37.2-501 that provides mental health, ~~mental retardation~~ *developmental*, and substance abuse services within each city and county that established it; the term "community services board" shall include administrative policy community services boards, operating community services boards, and local government departments with policy-advisory community services boards.

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

"Department" means the Department of Behavioral Health and Developmental Services.

"Developmental services" means planned, individualized, and person-centered services and supports provided to individuals with intellectual disability for the purpose of enabling these individuals to increase their self-determination and independence, obtain employment, participate fully in all aspects of community life, advocate for themselves, and achieve their fullest potential to the greatest extent

possible.

"Facility" means a state or licensed hospital, training center, psychiatric hospital, or other type of residential or outpatient mental health or ~~mental retardation~~ *developmental services* facility. When modified by the word "state," "facility" means a state hospital or training center operated by the Department, including the buildings and land associated with it.

"Family member" means an immediate family member of ~~a consumer~~ *an individual receiving services* or the principal caregiver of ~~a consumer~~ *that individual*. A principal caregiver is a person who acts in the place of an immediate family member, including other relatives and foster care providers, but does not have a proprietary interest in the care of the ~~consumer~~ *individual receiving services*.

"Hospital", when not modified by the words "state" or "licensed," means a state hospital ~~or~~ *and a* licensed hospital that provides care and treatment for persons with mental illness.

"Individual receiving services" or "individual" means a current direct recipient of public or private mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and includes the terms "consumer," "patient," "resident," "recipient," or "client."

"Intellectual disability" means a disability, originating before the age of 18 years, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Licensed hospital" means a hospital or institution, including a psychiatric unit of a general hospital, that is licensed pursuant to the provisions of this title.

"Mental health services" means planned individualized interventions intended to reduce or ameliorate mental illness or the effects of mental illness through care, treatment, counseling, rehabilitation, medical or psychiatric care, or other supports provided to individuals with mental illness for the purpose of enabling these individuals to increase their self-determination and independence, obtain remunerative employment, participate fully in all aspects of community life, advocate for themselves, and achieve their fullest potential to the greatest extent possible.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

~~"Mental retardation" means a disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.~~

"Neglect" means failure by ~~an individual~~ *a person* or a program or facility operated, licensed, or funded by the Department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of ~~a person~~ *an individual* receiving care or treatment for mental illness, ~~mental retardation~~ *intellectual disability*, or substance abuse.

"Operating community services board" or "operating board" means the public body organized in accordance with the provisions of Chapter 5 *(§ 37.2-500 et seq.)* that is appointed by and accountable to the governing body of each city and county that established it for the direct provision of mental health, ~~mental retardation~~ *developmental*, and substance abuse services. The "operating community services board" or "operating board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties enumerated in subsection A of § 37.2-504 and § 37.2-505. "Operating community services board" or "operating board" also includes the organization that provides such services, through its own staff or through contracts with other organizations and providers.

"Performance contract" means the annual agreement negotiated and entered into by a community services board or behavioral health authority with the Department through which it provides state and federal funds appropriated for mental health, ~~mental retardation~~ *developmental*, and substance abuse services to that community services board or behavioral health authority.

"Policy-advisory community services board" or "policy-advisory board" means the public body organized in accordance with the provisions of Chapter 5 that is appointed by and accountable to the governing body of each city or county that established it to provide advice on policy matters to the local government department that provides mental health, ~~mental retardation~~ *developmental*, and substance abuse services pursuant to subsection A of § 37.2-504 and § 37.2-505. The "policy-advisory community services board" or "policy-advisory board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties enumerated in subsection B of § 37.2-504.

"Service area" means the city or county or combination of cities and counties or counties or cities that is served by a community services board or behavioral health authority or the cities and counties

that are served by a state facility.

"Special justice" means a person appointed by a chief judge of a judicial circuit for the purpose of performing the duties of a judge pursuant to § 37.2-803.

"State hospital" means a hospital, psychiatric institute, or other institution operated by the Department that provides care and treatment for persons with mental illness.

"Substance abuse" means the use of drugs, enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.), without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Training center" means a facility operated by the Department ~~for the treatment,~~ *that provides* training, ~~or~~ habilitation ~~of~~, *or other individually focused supports to* persons with ~~mental retardation~~ *intellectual disability*.

§ 37.2-200. State Board of Behavioral Health and Developmental Services.

A. The State Board of Behavioral Health and Developmental Services is established as a policy board, within the meaning of § 2.2-2100, in the executive branch of government. The Board shall consist of nine nonlegislative citizen members to be appointed by the Governor, subject to confirmation by the General Assembly. The nine members shall consist of one ~~consumer or former consumer~~ *individual who is receiving or who has received services*, one family member of ~~a consumer or former consumer~~ *an individual who is receiving or who has received services*, one ~~consumer or former consumer~~ *individual who is receiving or who has received services* or family member of ~~a consumer or former consumer~~ *such individual*, one elected local government official, one psychiatrist licensed to practice in Virginia, and four citizens of the Commonwealth at large. The Governor, in appointing the psychiatrist member, may make his selection from nominations submitted by the Medical Society of Virginia in collaboration with the Psychiatric Society of Virginia and the Northern Virginia Chapter of the Washington Psychiatric Society.

B. Appointments shall be made for terms of four years each, except appointments to fill vacancies that shall be for the unexpired terms of vacated appointments. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. However, no member shall be eligible to serve more than two four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. No person shall serve more than a total of 12 years. Members of the Board may be suspended or removed by the Governor at his pleasure.

C. Members of the Board shall receive compensation for their services and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. The Board is authorized to employ a secretary to assist in the Board's administrative duties. The compensation of the secretary shall be fixed by the Board within the specific limits of the appropriation made therefor by the General Assembly, and the compensation shall be subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. The secretary shall perform the duties required of him by the Board. The Department and all other agencies of the Commonwealth shall provide assistance to the Board upon request.

D. The main office of the Board shall be in the City of Richmond. The Board shall meet quarterly and at such other times as it deems proper. The Board shall elect a chairman and vice-chairman from among its membership. The meetings of the Board shall be held at the call of the chairman or whenever the majority of the members so request. Five members shall constitute a quorum.

E. The chairman of the Board shall submit to the Governor and the General Assembly an annual executive summary of the activity and work of the Board no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

§ 37.2-203. Powers and duties of Board.

The Board shall have the following powers and duties:

1. To develop and establish programmatic and fiscal policies governing the operation of state hospitals, training centers, community services boards, and behavioral health authorities;

2. To ensure the development of long-range programs and plans for mental health, ~~mental retardation~~ *developmental*, and substance abuse services provided by the Department, community services boards, and behavioral health authorities;

3. To review and comment on all budgets and requests for appropriations for the Department prior to their submission to the Governor and on all applications for federal funds;

4. To monitor the activities of the Department and its effectiveness in implementing the policies of the Board;

5. To advise the Governor, Commissioner, and General Assembly on matters relating to mental health, ~~mental retardation~~ *developmental*, and substance abuse *services*;

6. To adopt regulations that may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Commissioner or the Department;

7. To ensure the development of programs to educate citizens about and elicit public support for the activities of the Department, community services boards, and behavioral health authorities;

8. To ensure that the Department assumes the responsibility for providing for education and training of school-age ~~consumers~~ *individuals receiving services* in state facilities, pursuant to § 37.2-312; and

9. To change the names of state facilities.

Prior to the adoption, amendment, or repeal of any regulation regarding substance abuse services, the Board shall, in addition to the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq.), present the proposed regulation to the Substance Abuse Services Council, established pursuant to § 2.2-2696, at least 30 days prior to the Board's action for the Council's review and comment.

§ 37.2-204. Appointments to state and local human rights committees.

The Board shall appoint a state human rights committee that shall appoint local human rights committees to address alleged violations of ~~consumers'~~ human rights *of individuals receiving services*. One-third of the appointments made to the state or local human rights committees shall be ~~current or former consumers~~ *individuals who are receiving or who have received services* or family members of ~~current or former consumers~~ *such individuals*, with at least two ~~consumers~~ *individuals* who are receiving or who have received ~~within five years of their initial appointment~~ public or private mental health, ~~mental retardation~~ *developmental*, or substance abuse treatment or habilitation services *within five years of the date of their initial appointment* on each committee. In addition, at least one appointment to the state and each local human rights committee shall be a health care provider. Remaining appointments shall include lawyers and persons with interest, knowledge, or training in the mental health, ~~mental retardation~~ *developmental*, or substance abuse *services* field. No current employee of the Department, a community services board, or a behavioral health authority shall serve as a member of the state human rights committee. No current employee of the Department, a community services board, a behavioral health authority, or any facility, program, or organization licensed or funded by the Department or funded by a community services board or behavioral health authority shall serve as a member of any local human rights committee that serves an oversight function for the employing facility, program, or organization.

§ 37.2-303. Qualifications of Commissioner.

The Commissioner shall be a person of proven executive and administrative ability and shall have had appropriate education and substantial experience in the fields of mental health, ~~mental retardation~~ *developmental*, or substance abuse *services*.

§ 37.2-304. Duties of Commissioner.

The Commissioner shall be the chief executive officer of the Department and shall have the following duties and powers:

1. To supervise and manage the Department and its state facilities.

2. To employ the personnel required to carry out the purposes of this title.

3. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, including contracts with the United States, other states, and agencies and governmental subdivisions of the Commonwealth, consistent with policies and regulations of the Board and applicable federal and state statutes and regulations.

4. To accept, hold, and enjoy gifts, donations, and bequests on behalf of the Department from the United States government, agencies and instrumentalities thereof, and any other source, subject to the approval of the Governor. To these ends, the Commissioner shall have the power to comply with conditions and execute agreements that may be necessary, convenient, or desirable, consistent with policies and regulations of the Board.

5. To accept, execute, and administer any trust in which the Department may have an interest, under the terms of the instruments creating the trust, subject to the approval of the Governor.

6. To transfer between state hospitals and training centers school-age ~~consumers~~ *individuals* who have been identified as appropriate to be placed in public school programs and to negotiate with other school divisions for placements in order to ameliorate the impact on those school divisions located in a jurisdiction in which a state hospital or training center is located.

7. To provide to the Director of the Virginia Office for Protection and Advocacy, pursuant to § 51.5-39.12, a written report setting forth the known facts of critical incidents or deaths of ~~consumers~~ *individuals receiving services* in facilities within 15 working days of the critical incident or death.

8. To work with the appropriate state and federal entities to ensure that any ~~person~~ *individual* who

has ~~been~~ a ~~consumer~~ *received services* in a state facility for more than one year has possession of or receives prior to discharge any of the following documents, when they are needed to obtain the services contained in his discharge plan: a Department of Motor Vehicles approved identification card that will expire 90 days from issuance, a copy of his birth certificate if the ~~consumer~~ *individual* was born in the Commonwealth, or a social security card from the Social Security Administration. State facility directors, as part of their responsibilities pursuant to § 37.2-837, shall implement this provision when discharging ~~consumers~~ *individuals*.

9. To work with the Department of Veterans Services and the Department of Rehabilitative Services to establish a program for mental health and rehabilitative services for Virginia veterans and members of the Virginia National Guard and Virginia residents in the Armed Forces Reserves not in active federal service and their family members pursuant to § 2.2-2001.1.

10. To establish and maintain a pharmaceutical and therapeutics committee composed of representatives of the Department of Medical Assistance Services, state facilities operated by the Department, community services boards, at least one health insurance plan, and at least one ~~consumer~~ *individual receiving services* to develop a drug formulary for use at all community services boards, state facilities operated by the Department, and providers licensed by the Department.

Unless specifically authorized by the Governor to accept or undertake activities for compensation, the Commissioner shall devote his entire time to his duties.

§ 37.2-305. Receiving gifts and endowments.

The Commissioner may receive gifts, bequests, and endowments to or for state facilities in their names or to or for any ~~consumer~~ *individual receiving services* in state facilities. When gifts, bequests, and endowments are accepted by the Commissioner, he shall well and faithfully administer such trusts.

§ 37.2-306. Research into causes of mental illness, intellectual disability, substance abuse, and related subjects.

The Commissioner is hereby directed to promote research into the causes of mental illness, ~~mental retardation~~ *intellectual disability*, and substance abuse throughout the Commonwealth. The Commissioner shall encourage the directors of the state facilities and their staffs in the investigation of all subjects relating to mental illness, ~~mental~~ ~~retardation~~ *intellectual disability*, and substance abuse. In these research programs, the Commissioner shall make use, insofar as practicable, of the services and facilities of medical schools and the hospitals allied with them.

§ 37.2-312. Department responsible for education and training programs.

The Department shall be responsible for providing for education and training of school-age ~~consumers~~ *individuals* in state facilities. The Board of Education shall supervise the education and training provided to school-age ~~consumers~~ *individuals* in training centers, and *shall* provide for and direct the education for school-age ~~consumers~~ *individuals* in state hospitals in cooperation with the Department. In discharging this responsibility, the Department shall exercise leadership by: (i) coordinating actions with the Department of Education and state facilities to ensure consistency between treatment and educational priorities in the policy and implementation of direct services for school-age ~~consumers~~ *individuals* in state facilities; (ii) ensuring that comparable resources especially in career and technical education, appropriate to the students' disabilities and needs, are available in all state facilities; (iii) monitoring the quality of the instruction provided to all school-age ~~consumers~~ *individuals* in state facilities; (iv) requiring state facility directors to evaluate the performance of the education directors pursuant to guidelines developed in cooperation with the Board of Education; (v) developing and implementing, in cooperation with the Department of Education, programs to ensure that the educational and treatment needs of children with dual diagnoses in state facilities are met; (vi) taking an active role with the Department of Education to evaluate the effectiveness of prevalent educational models in state facilities; and (vii) designing a mechanism for maintaining constant direct contact and the sharing of ideas, approaches, and innovations between the education directors and teachers whether they are employees of local school divisions or of the Commonwealth who are educating school-age ~~consumers~~ *individuals* in state facilities.

§ 37.2-314. Background check required.

A. As a condition of employment, the Department shall require any ~~individual~~ *applicant* who (i) accepts a position of employment at a state facility and was not employed by that state facility prior to July 1, 1996, or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to fingerprinting and provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the ~~individual~~ *applicant*.

B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated employment persons who have been (i) convicted of murder or manslaughter, as set out in Article 1

(§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob, as set out in § 18.2-41; abduction, as set out in subsection A of § 18.2-47; abduction for immoral purposes, as set out in § 18.2-48; assault and bodily wounding, as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery, as set out in § 18.2-58; carjacking, as set out § 18.2-58.1; extortion by threat, as set out in § 18.2-59; threat, as set out in § 18.2-60; any felony stalking violation, as set out in § 18.2-60.3; sexual assault, as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson, as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary, as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting, as set out in § 18.2-286.1; use of a machine gun in a crime of violence, as set out in § 18.2-289; aggressive use of a machine gun, as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence, as set out in subsection A of § 18.2-300; pandering, as set out in § 18.2-355; crimes against nature involving children, as set out in § 18.2-361; taking indecent liberties with children, as set out in § 18.2-370 or 18.2-370.1; abuse or neglect of children, as set out in § 18.2-371.1, including failing to secure medical attention for an injured child, as set out in § 18.2-314; obscenity offenses, as set out in § 18.2-374.1; possession of child pornography, as set out in § 18.2-374.1:1; electronic facilitation of pornography, as set out in § 18.2-374.3; incest, as set out in § 18.2-366; abuse or neglect of incapacitated adults, as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in § 18.2-379; delivery of drugs to prisoners, as set out in § 18.2-474.1; escape from jail, as set out in § 18.2-477; felonies by prisoners, as set out in § 53.1-203; or an equivalent offense in another state; (ii) convicted of any felony violation relating to possession of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, in the five years prior to the application date for employment; or (iii) convicted of any felony violation relating to possession of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, and continue on probation or parole or have failed to pay required court costs.

C. The Central Criminal Records Exchange, upon receipt of an ~~individual's~~ *applicant's* record or notification that no record exists, shall submit a report to the state facility or to the Department. If an ~~individual~~ *applicant* is denied employment because of information appearing on his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the state facility or Department shall not be disseminated except as provided in this section.

D. Those ~~individuals~~ *applicants* listed in clause (i) of subsection A also shall provide to the state facility or Department a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on them.

E. The Board may adopt regulations to comply with the provisions of this section. Copies of any information received by the state facility or Department pursuant to this section shall be available to the Department and to the applicable state facility but shall not be disseminated further, except as permitted by state or federal law. The cost of obtaining the criminal history record and the central registry information shall be borne by the applicant, unless the Department or state facility decides to pay the cost.

§ 37.2-315. Comprehensive State Plan for Behavioral Health and Developmental Services.

The Department, in consultation with community services boards, behavioral health authorities, state hospitals and training centers, ~~consumers~~ *individuals receiving services*, ~~consumers'~~ families *of individuals receiving services*, advocacy organizations, and other interested parties, shall develop and update biennially a six-year Comprehensive State Plan for Behavioral Health and Developmental Services. The Comprehensive State Plan shall identify the needs of and the resource requirements for providing services and supports to persons with mental illness, ~~mental retardation~~ *intellectual disability*, or substance abuse across the Commonwealth and shall propose strategies to address these needs. The Comprehensive State Plan shall be used in the development of the Department's biennial budget submission to the Governor.

§ 37.2-316. System restructuring; state and community consensus and planning team required.

A. For the purpose of considering any restructuring of the system of mental health services involving an existing state hospital, the Commissioner shall establish a state and community consensus and planning team consisting of Department staff and representatives of the localities served by the state hospital, including local government officials, ~~consumers~~ *individuals receiving services*, family members of ~~consumers~~ *individuals receiving services*, advocates, state hospital employees, community services boards, behavioral health authorities, public and private service providers, licensed hospitals, local health department staff, local social services department staff, sheriffs' office staff, area agencies on aging, and other interested persons. In addition, the members of the House of Delegates and the Senate representing the localities served by the affected state hospital may serve on the state and community consensus and planning team for that state hospital. Each state and community consensus and planning team, in

collaboration with the Commissioner, shall develop a plan that addresses (i) the types, amounts, and locations of new and expanded community services that would be needed to successfully implement the closure or conversion of the state hospital to any use other than the provision of mental health services, including a six-year projection of the need for inpatient psychiatric beds and related community mental health services; (ii) the development of a detailed implementation plan designed to build community mental health infrastructure for current and future capacity needs; (iii) the creation of new and enhanced community services prior to the closure of the state hospital or its conversion to any use other than the provision of mental health services; (iv) the transition of *individuals receiving services in the* state hospital ~~consumers~~ to community services in the locality of their residence prior to admission or the locality of their choice after discharge; (v) the resolution of issues relating to the restructuring implementation process, including employment issues involving state hospital employee transition planning and appropriate transitional benefits; and (vi) a six-year projection comparing the cost of the current structure and the proposed structure.

B. The Commissioner shall ensure that each plan includes the following components:

1. A plan for community education;

2. A plan for the implementation of required community services, including state-of-the-art practice models and any models required to meet the unique characteristics of the area to be served, which may include models for rural areas;

3. A plan for assuring the availability of adequate staff in the affected communities, including specific strategies for transferring qualified state hospital employees to community services;

4. A plan for assuring the development, funding, and implementation of individualized discharge plans pursuant to § 37.2-505 for individuals discharged as a result of the closure or conversion of the state hospital to any use other than the provision of mental health services; and

5. A provision for suspending implementation of the plan if the total general funds appropriated to the Department for state hospital and community services decrease in any year of plan implementation by more than 10 percent from the year in which the plan was approved by the General Assembly.

C. At least nine months prior to any proposed state hospital closure or conversion of the state hospital to any use other than the provision of mental health services, the state and community consensus and planning team shall submit a plan to the Joint Commission on Health Care and the Governor for review and recommendation.

D. The Joint Commission on Health Care shall make a recommendation to the General Assembly on the plan no later than six months prior to the date of the proposed closure or conversion of the state hospital to any use other than the provision of mental health services.

E. Upon approval of the plan by the General Assembly and the Governor, the Commissioner shall ensure that the plan components required by subsection B are in place and may thereafter perform all tasks necessary to implement the closure or conversion of the state hospital to any use other than the provision of mental health services.

F. Any funds saved by the closure or conversion of the state hospital to any use other than the provision of mental health services and not allocated to individualized services plans for ~~consumers~~ *individuals* being transferred or discharged as a result of the closure or conversion of the state hospital to any use other than the provision of mental health services shall be invested in the Behavioral Health and Developmental Services Trust Fund established in Article 4 (§ 37.2-317 et seq.) ~~of this chapter~~.

G. Nothing in this section shall prevent the Commissioner from leasing unused, vacant space to any public or private organization.

§ 37.2-318. Behavioral Health and Developmental Services Trust Fund established; purpose.

There is hereby created in the state treasury a special nonreverting fund to be known as the Behavioral Health and Developmental Services Trust Fund to enhance and ensure for the coming years the quality of care and treatment provided to ~~consumers of~~ *individuals receiving* public mental health, ~~mental retardation~~ *developmental*, and substance abuse services. The Fund shall be established on the books of the Comptroller. Notwithstanding the provisions of § 2.2-1156, the Fund shall consist of the net proceeds of the sale of vacant buildings and land held by the Department. The Fund shall also consist of such moneys as shall be appropriated by the General Assembly and any private donations. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.

§ 37.2-319. Administration of Behavioral Health and Developmental Services Trust Fund.

A. The Fund shall be administered by the Commissioner. Moneys in the Fund shall be used for mental ~~illness~~ *health*, ~~mental retardation~~ *developmental*, or substance abuse services and to facilitate transition of individuals with ~~mental retardation~~ *intellectual disability* from state training centers to

community-based services. Notwithstanding any other provision of law, the net proceeds from the sale of any vacant buildings and land shall first be used to (i) deliver mental health, ~~mental retardation~~ *developmental*, and substance abuse services within the same service area where the sold buildings and land were located to ensure the same level of mental health, ~~mental retardation~~ *developmental*, and substance abuse services as before the sale and (ii) provide benefits pursuant to the Workforce Transition Act of 1995 (§ 2.2-3200 et seq.) to those persons who were employees of the Commonwealth and, as a result of the sale, are no longer employed by the Commonwealth or are otherwise negatively affected by the sale.

B. For each fiscal year starting with the Commonwealth's 2011-2012 fiscal year, any funds directed to be deposited into the Fund pursuant to the general appropriation act shall be appropriated for financing (i) a broad array of community-based services including but not limited to Intellectual Disability Home and Community Based ~~Waivers~~ *Waiver services* or (ii) appropriate community housing, for the purpose of transitioning individuals with ~~mental retardation~~ *intellectual disability* from state training centers to community-based care.

§ 37.2-400. Rights of individuals receiving services.

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

1. Retain his legal rights as provided by state and federal law;

2. Receive prompt evaluation and treatment or training about which he is informed insofar as he is capable of understanding;

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

4. Not be the subject of experimental or investigational research without his prior written and informed consent or that of his legally authorized representative;

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

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

7. Be allowed to send and receive sealed letter mail;

8. Have access to his medical and clinical treatment, training, or habilitation records and be assured of their confidentiality but, notwithstanding other provisions of law, this right shall be limited to access consistent with his condition and sound therapeutic treatment;

9. Have the right to an impartial review of violations of the rights assured under this section and the right of access to legal counsel;

10. Be afforded appropriate opportunities, consistent with the ~~person's~~ *individual's* capabilities and capacity, to participate in the development and implementation of his individualized services plan; and

11. Be afforded the opportunity to have ~~an individual~~ *a person* of his choice notified of his general condition, location, and transfer to another facility.

The Board shall adopt regulations to implement the provisions of this subsection after due notice and public hearing, as provided for in the Administrative Process Act (§ 2.2-4000 et seq.).

B. The Board shall adopt regulations delineating the rights of ~~consumers~~ *individuals receiving services* with respect to nutritionally adequate diet; safe and sanitary housing; participation in nontherapeutic labor; attendance or nonattendance at religious services; participation in treatment decision-making, including due process procedures to be followed when ~~a consumer~~ *an individual* may be unable to make an informed decision; notification of ~~an individual~~ *a person* of his choice regarding his general condition, location, and transfer to another facility; use of telephones; suitable clothing; possession of money and valuables; and related matters.

C. The human rights regulations shall be applicable to all hospitals, training centers, other facilities, and programs operated, funded, or licensed by the Department; these hospitals, training centers, other facilities, or programs may be classified as to ~~consumer~~ population *served*, size, type of services, or other reasonable classification.

D. The Board shall adopt regulations requiring public and private facilities and programs licensed or funded by the Department to provide nonprivileged information and statistical data to the Department related to (i) the results of investigations of abuse or neglect, (ii) deaths and serious injuries, (iii) instances of seclusion and restraint, including the duration, type, and rationale for use per ~~consumer~~ *individual receiving services*, and (iv) findings by state or local human rights committees or the Office of Human Rights in the Department of human rights violations, abuse, or neglect. The Board's

regulations shall address the procedures for collecting, compiling, encrypting, and releasing the data. This information and statistical data shall be made available to the public in a format from which all ~~provider and consumer-identifying~~ information *identifying a provider or an individual receiving services* has been removed. The Board's regulations shall specifically exclude all proceedings, minutes, records, and reports of any committee or nonprofit entity providing a centralized credentialing service that are identified as privileged pursuant to § 8.01-581.17.

§ 37.2-401. Authorized representative prohibition.

No employee of the Department, a state hospital or training center, a community services board or behavioral health authority, a community services board or behavioral health authority contractor, or any other public or private program or facility licensed or funded by the Department shall serve as ~~a legally~~ *an* authorized representative for ~~a consumer being treated~~ *an individual receiving services* in any state hospital or training center, community services board or behavioral health authority, community services board or behavioral health authority contractor, or other licensed or funded public or private program or facility, unless the employee is a relative or legal guardian of the ~~consumer~~ *individual receiving services*.

§ 37.2-403. Definitions.

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

"Brain injury" is any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or non-traumatic insults. Non-traumatic insults may include, but are not limited to anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor and stroke. Brain injury does not include hereditary, congenital or degenerative brain disorders, or injuries induced by birth trauma.

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to ~~persons~~*individuals* with mental illness, ~~mental retardation~~ *intellectual disability*, or substance abuse, (ii) services to ~~persons~~*individuals* who receive day support, in-home support, or crisis stabilization services funded through the Individual and Families Developmental Disabilities Support Waiver, *or* (iii) ~~services to persons under the Brain Injury Waiver, or~~ ~~(iv)~~ residential services for persons with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to § 54.1-3501, 54.1-3601, or 54.1-3701.

"Service or services" means:

1. Planned individualized interventions intended to reduce or ameliorate mental illness, ~~mental retardation~~ *intellectual disability*, or substance abuse through care, treatment, training, habilitation, or other supports that are delivered by a provider to ~~individuals~~ *persons* with mental illness, ~~mental retardation~~ *intellectual disability*, or substance abuse. Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment, and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, and other residential services;

2. Day support, in-home support, and crisis stabilization services provided to individuals under the Individual and Families Developmental Disabilities Support Waiver; and

3. Planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided ~~under the Brain Injury Waiver or~~ in residential services for persons with brain injury.

§ 37.2-406. Conditions for initial licensure of certain providers.

A. Notwithstanding the Commissioner's discretion to grant licenses pursuant to this article or any Board regulation regarding licensing, no initial license shall be granted by the Commissioner to a provider of treatment for persons with opiate addiction through the use of methadone or other opioid replacements, if the provider is to be located within one-half mile of a public or private licensed day care center or a public or private K-12 school, except when such service is provided by a hospital licensed by the Board of Health or the Commissioner or is owned or operated by an agency of the Commonwealth.

B. No provider shall be required to conduct, maintain, or operate services for the treatment of persons with opiate addiction through the use of methadone or other opioid replacements on Sunday except when such service is provided by a hospital licensed by the Board of Health or the Commissioner or is owned or operated by an agency of the Commonwealth, subject to regulations or guidelines issued by the Department consistent with the health, safety and welfare of ~~consumers~~ *individuals receiving services* and the security of take-home doses of methadone or other opiate replacements.

C. Upon receiving notice of a proposal for or an application to obtain an initial license from a provider of treatment for persons with opiate addiction through the use of methadone or other opioid replacements, the Commissioner shall, within 15 days of the receipt, notify the local governing body of and the community services board serving the jurisdiction in which the facility is to be located of the proposal or application and the facility's proposed location.

Within 30 days of the date of the notice, the local governing body and community services board shall submit to the Commissioner comments on the proposal or application. The local governing body shall notify the Commissioner within 30 days of the date of the notice concerning the compliance of the applicant with this section and any applicable local ordinances.

D. No license shall be issued by the Commissioner to the provider until the conditions of this section have been met, i.e., local governing body and community services board comments have been received and the local governing body has determined compliance with the provisions of this section and any relevant local ordinances.

E. No applicant for a license to provide treatment for persons with opiate addiction through the use of methadone or other opioid replacements that has obtained a certificate of occupancy in accordance with the law and regulations in effect on January 1, 2004, shall be required to comply with the provisions of this section. No existing licensed provider shall be required to comply with the provisions of this section in any city or county in which it is currently providing such treatment.

F. The provisions of subsection A ~~of this section~~ shall not apply to the jurisdictions in Planning District 8.

§ 37.2-408. Regulation of services delivered in group homes and residential facilities for children.

A. The Department shall assist and cooperate with other state departments in fulfilling their respective licensing and certification responsibilities. The Board shall adopt regulations that shall allow the Department to so assist and cooperate with other state departments. The Board may adopt regulations to enhance cooperation and assistance among agencies licensing similar programs.

B. The Board's regulations shall establish the Department as the single licensing agency, with the exception of educational programs licensed by the Department of Education, for group homes or residential facilities providing mental health, ~~mental retardation~~ *developmental*, brain injury, or substance abuse services other than facilities operated or regulated by the Department of Juvenile Justice. Such regulations shall address the services required to be provided in group homes and residential facilities for children as it may deem appropriate to ensure the health and safety of the children. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications for the structure and accommodations of such homes and facilities according to the needs of the children to be placed; (ii) rules concerning allowable activities, local government- and home- or facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

C. Pursuant to the procedures set forth in subsection D, the Commissioner may issue a summary order of suspension of the license of a group home or residential facility for children licensed pursuant to the Board's regulations under subsection A, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the children who are residents and the Commissioner believes the operation should be suspended during the pendency of such proceeding.

D. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Commissioner or his designee.

After such hearing, the Commissioner may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Department had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to children.

E. In addition to the requirements set forth above, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations; and (iv) be required to screen ~~residents~~ *children* prior to admission to exclude ~~individuals~~ *children* with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.

F. In addition, the Department shall:

1. Notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead licensure agency when such violations result in the lowering of the licensure status of the facility to provisional;

2. Post on the Department's website information concerning the application for initial licensure of or renewal, denial, or provisional licensure of any residential facility for children located in the locality;

3. Require all licensees to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of ~~residents~~ *children receiving services*;

4. Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the ~~residents~~ *children receiving services* in accordance with the facility's operational plan;

5. Modify the term of the license at any time during the term of the license based on a change in compliance; and

6. Disseminate to local governments, or post on the Department's website, an accurate (updated weekly or monthly as necessary) list of licensed and operating group homes and other residential facilities for children by locality with information on services and identification of the lead licensure agency.

§ 37.2-408.1. Background check required; children's residential facilities.

A. Notwithstanding the provisions of § 37.2-416, as a condition of employment, volunteering or providing services on a regular basis, every children's residential facility that is regulated or operated by the Department shall require any ~~individual~~ *person* who (i) accepts a position of employment at such a facility who was not employed by that facility prior to July 1, 2008, (ii) volunteers for such a facility on a regular basis and will be alone with a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1, 2008, or (iii) provides contractual services directly to a juvenile for such facility on a regular basis and will be alone with a juvenile in the performance of his duties who did not provide such services prior to July 1, 2008, to submit to fingerprinting and to provide personal descriptive information, to be forwarded along with the ~~applicant's~~ *person's* fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding ~~such~~ ~~applicant~~ *the person*. The children's residential facility shall inform the ~~applicant~~ *person* that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of the ~~applicant's~~ *person's* eligibility to have responsibility for the safety and well-being of children. The ~~applicant~~ *person* shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth. The results of the criminal history background check must be received prior to permitting ~~an~~ ~~applicant~~ *a person* to work with children.

The Central Criminal Records Exchange, upon receipt of ~~an~~ ~~individual's~~ *a person's* record or notification that no record exists, shall forward it to the state agency that operates or regulates the children's residential facility with which the ~~applicant~~ *person* is affiliated. The state agency shall, upon receipt of ~~an~~ ~~applicant's~~ *a person's* record lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the children's facility whether the ~~applicant~~ *person* is eligible to have responsibility for the safety and well-being of children. Except as otherwise provided in subsection B, no children's residential facility regulated or operated by the Department shall hire for compensated employment or allow to volunteer or provide contractual services persons who have been (a) convicted of or are the subject of pending charges for the following crimes: murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in subsection A of § 18.2-47; abduction for immoral purposes as set out in § 18.2-48; assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set

out in § 18.2-58; carjacking as set out in § 18.2-58.1; extortion by threat as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289; aggressive use of a machine gun as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300; pandering as set out in § 18.2-355; crimes against nature involving children as set out § 18.2-361; taking indecent liberties with children as set out in § 18.2-370 or 18.2-370.1; abuse or neglect of children as set out in § 18.2-371.1, including failure to secure medical attention for an injured child as set out in § 18.2-314; obscenity offenses as set out in § 18.2-374.1; possession of child pornography as set out in § 18.2-374.1:1; electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse or neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or (b) convicted of any felony violation relating to possession of drugs set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment, to be a volunteer, or to provide contractual services; or (c) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court costs. The provisions of this section also shall apply to structured residential programs, excluding secure detention facilities, established pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the court that alleges the juvenile is delinquent or in need of services or supervision.

B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for compensated employment or for volunteer or contractual service purposes persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his employment, volunteer, or contractual services.

If the ~~applicant~~ *person* is denied employment, or the opportunity to volunteer or provide services, at a children's residential facility because of information appearing on his criminal history record, and the ~~applicant~~ *person* disputes the information upon which the denial was based, upon written request of the ~~applicant~~ *person* the state agency shall furnish the ~~applicant~~*person* the procedures for obtaining his criminal history record from the Federal Bureau of Investigation. If the ~~applicant~~ *person* has been permitted to assume duties that do not involve contact with children pending receipt of the report, the children's residential facility is not precluded from suspending the ~~applicant~~ *person* from his position pending a final determination of the ~~applicant's~~ *person's* eligibility to have responsibility for the safety and well-being of children. The information provided to the children's residential facility shall not be disseminated except as provided in this section.

C. Those ~~individuals~~ *persons* listed in clauses (i), (ii), and (iii) of subsection A also shall authorize the children's residential facility to obtain a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The ~~applicant~~ *person* shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The children's residential facility shall receive the results of the central registry search prior to permitting ~~an applicant~~ *a person* to work alone with children. Children's residential facilities regulated or operated by the Department shall not hire for compensated employment or allow to volunteer or provide contractual services, persons who have a founded case of child abuse or neglect.

D. The cost of obtaining the criminal history record and the central registry information shall be borne by the ~~employee or volunteer~~ *person* unless the children's residential facility, at its option, decides to pay the cost.

§ 37.2-409. Intermediate care facilities for individuals with intellectual disability.

The Board may adopt regulations specifying the maximum number of ~~consumers~~ *individuals* to be served by any intermediate care facility for ~~the mentally retarded~~ *individuals with intellectual disability (ICF/MR)*.

§ 37.2-411. Inspections.

All services provided or delivered under any license shall be subject to review or inspection at any reasonable time by any authorized inspector or agent of the Department. The Commissioner or his authorized agents shall inspect all licensed providers and shall have access at all reasonable times to all services and records, including medical records. Records that are confidential under federal or state law shall be maintained as confidential by the Department and shall not be further disclosed except as

permitted by law; however, there shall be no right of access to communications that are privileged pursuant to § 8.01-581.17. The Commissioner shall call upon other state or local departments to assist in the inspections and those departments shall render an inspection report to the Commissioner. After receipt of all inspection reports, the Commissioner shall make the final determination with respect to the condition of the service so reviewed or inspected. The Commissioner or his authorized agents shall make at least one annual unannounced inspection of each service offered by each licensed provider. Inspections shall be focused on preventing specific risks to ~~consumers~~ *individuals receiving services,* including an evaluation of the physical facilities in which the services are provided. In addition, the Commissioner shall promptly investigate all complaints. The Board may adopt and the Commissioner shall enforce reasonable regulations that may be necessary or proper to carry out the general purposes of this article.

§ 37.2-416. Background checks required.

A. As used in this section, the term "direct ~~consumer~~ care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of ~~a consumer~~ *an individual receiving services* or (ii) immediately supervising a person in a position with this responsibility.

As used in this section, "hire for compensated employment" does not include (i) a promotion from one adult substance abuse or adult mental health treatment position to another such position within the same licensee licensed pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program licensed pursuant to this article if the person employed prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the application date for employment. As used in this section, "hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or ~~mental retardation~~ *developmental services* direct ~~consumer~~ care position within the same licensee licensed pursuant to this article or (b) new employment in any mental health or ~~mental retardation~~ *developmental services* direct ~~consumer~~ care position in another office or program of the same licensee licensed pursuant to this article for which the person has previously worked in an adult substance abuse treatment position.

B. Every provider licensed pursuant to this article shall require any applicant who accepts employment in any direct ~~consumer~~ care position to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no provider licensed pursuant to this article shall hire for compensated employment persons who have been convicted of any offense listed in subsection B of § 37.2-314.

The Central Criminal Records Exchange, upon receipt of an ~~individual's~~ *applicant's* record or notification that no record exists, shall submit a report to the requesting authorized officer or director of a provider licensed pursuant to this article. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the authorized officer or director of a provider licensed pursuant to this article shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment at adult substance abuse or adult mental health treatment facilities a person who was convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56; (ii) reckless handling of a firearm, as set out in § 18.2-56.1; or (iii) assault and battery, as set out in subsection A of § 18.2-57; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in § 18.2-92; or (d) possession of burglarious tools, as set out in § 18.2-94; or any felony violation relating to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or an equivalent offense in another state, if the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to ~~consumers~~ *individuals receiving services* based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment at adult substance abuse treatment facilities a person who has been convicted of not more than one offense of assault and battery of a law-enforcement officer under § 18.2-57, or an equivalent offense in another state, if (i) the person has been granted a simple pardon if the offense was a felony committed

in Virginia, or the equivalent if the offense was committed in another state; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to ~~consumers~~ *individuals receiving services* based on his criminal history background and his substance abuse history.

E. The hiring provider and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to ~~consumers~~ *individuals receiving services* based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the provider or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct ~~consumer~~ care position.

G. Providers licensed pursuant to this article also shall require, as a condition of employment for all applicants, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the provider licensed pursuant to this article decides to pay the cost.

I. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

§ 37.2-419. Human rights and licensing enforcement and sanctions; notice.

A. As used in this section, "special order" means an administrative order issued to any party licensed or funded by the Department that has a stated duration of not more than 12 months and that may include a civil penalty that shall not exceed $500 per violation per day, prohibition of new admissions, or reduction of licensed capacity for violations of § 37.2-400, the licensing or human rights regulations, or this article.

B. Notwithstanding any other provision of law, following a proceeding as provided in § 2.2-4019, the Commissioner may issue a special order for a violation of any of the provisions of § 37.2-400 or any regulation adopted under any provision of § 37.2-400 or of this article that adversely affects the human rights of ~~consumers~~ *individuals receiving services* or poses an imminent and substantial threat to the health, safety, or welfare of ~~consumers~~ *individuals receiving services*. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Commissioner shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders. The Commissioner may take the following actions to sanction public and private providers licensed or funded by the Department for noncompliance with § 37.2-400, the human rights regulations, or this article:

1. Place any service of any such provider on probation upon finding that it is substantially out of compliance with the licensing or human rights regulations and that the health or safety of ~~consumers~~ *individuals receiving services* is at risk.

2. Reduce licensed capacity or prohibit new admissions when he concludes that the provider cannot or will not make necessary corrections to achieve compliance with licensing or human rights regulations except by a temporary restriction of its scope of service.

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

4. Mandate training for the provider's employees, with any costs to be borne by the provider, when he concludes that the lack of training has led directly to violations of licensing or human rights regulations.

5. Assess civil penalties of not more than $500 per violation per day upon finding that the licensed or funded provider is substantially out of compliance with the licensing or human rights regulations and that the health or safety of ~~consumers~~ *individuals receiving services* is at risk.

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

C. The Commissioner shall inform other public agencies that provide funds to the licensee or the program, including the Departments of Social Services and Medical Assistance Services, of any licensee or program that is in violation of the licensing or human rights regulations.

D. The Board shall adopt regulations to implement the provisions of this section.

§ 37.2-420. Offer or payment of remuneration in exchange for referral prohibited.

No provider licensed pursuant to this article shall knowingly and willfully offer or pay any remuneration directly or indirectly, in cash or in kind, to induce any practitioner of the healing arts or any clinical psychologist licensed under the provisions of Chapters 29 (§ 54.1-2900 et seq.) and 36 (54.1-3600 et seq.) of Title 54.1 to refer ~~an individual~~ *a person* or ~~individuals~~ *persons* to any service of the provider. The term "remuneration" excludes any payments, business arrangements, or payment practices not prohibited by ~~Title~~ 42~~,~~ ~~Section~~ *U.S.C. §* 1320a-7b(b) ~~of the United States Code~~, as amended, or any regulations adopted pursuant thereto.

§ 37.2-427. Mistreatment of individuals receiving services in hospital or training center.

It shall be unlawful for any officer or employee of any hospital or training center or other person to maltreat or misuse any ~~consumer~~ *individual* who is ~~being served~~ *receiving services* in any hospital or training center or who is on a day pass, family visit, or trial visit from a hospital or training center. Any officer or employee of any hospital or training center or other person who maltreats or misuses any ~~consumer~~ *individual* who is ~~being served~~ *receiving services* in any hospital or training center or who is on a day pass, family visit, or trial visit from a hospital or training center is guilty of a Class 1 misdemeanor.

§ 37.2-428. Aiding and abetting in escapes.

It shall be unlawful for any officer or employee of any hospital or training center or any other person to aid or abet in the escape or secretion of any lawfully admitted ~~consumer of~~ *individual receiving services in* any hospital or training center, while the ~~consumer~~ *individual* is in the hospital or training center or on a day pass, family visit, trial visit, bond or escapement, or to willfully fail or refuse to return ~~a consumer~~ *an individual* on a day pass, family visit, or trial visit under his care and custody to any hospital or training center in which he is ~~a consumer~~ *receiving services*, having given written obligation to do so, when directed in writing to do so by the director of the hospital or training center. Any such officer or employee of any hospital or training center or any other person is guilty of a Class 1 misdemeanor.

§ 37.2-430. Providing alcoholic beverages to individuals receiving services.

It shall be unlawful for any person to sell or give alcoholic beverages to any ~~consumer at~~ *individual receiving services in* any hospital or training center, bring alcoholic beverages onto the premises of the hospital or training center, administer alcoholic beverages to any ~~consumer~~ *individual receiving services*, or place alcoholic beverages or cause them to be placed where any ~~consumer~~ *individual receiving services* may access them, except if the alcoholic beverages are prescribed by the director or physicians of the hospital or training center. Any such person is guilty of a Class 1 misdemeanor.

§ 37.2-500. Purpose; community services board; services to be provided.

The Department, for the purposes of establishing, maintaining, and promoting the development of mental health, ~~mental retardation~~ *developmental*, and substance abuse services in the Commonwealth, may provide funds to assist any city or county or any combinations of cities or counties or cities and counties in the provision of these services. Every county or city shall establish a community services board by itself or in any combination with other cities and counties, unless it establishes a behavioral health authority pursuant to Chapter 6 (§ 37.2-600 et seq.) ~~of this title~~. Every county or city or any combination of cities and counties that has established a community services board, in consultation with that board, shall designate it as an operating community services board, an administrative policy community services board or a local government department with a policy-advisory community services board. The governing body of each city or county that established the community services board may change this designation at any time by ordinance. In the case of a community services board established by more than one city or county, the decision to change this designation shall be the unanimous decision of all governing bodies.

The core of services provided by community services boards within the cities and counties that they serve shall include emergency services and, subject to the availability of funds appropriated for them, case management services. The core of services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, and other appropriate mental health, ~~mental retardation~~ *developmental*, and substance abuse services necessary to provide individualized services and supports to persons with mental ~~illnesses~~*illness*, ~~mental retardation~~ *intellectual disability*, or substance abuse. Community services boards may establish crisis stabilization units that provide residential crisis stabilization services.

In order to provide comprehensive mental health, ~~mental retardation~~ *developmental,* and substance abuse services within a continuum of care, the community services board shall function as the single point of entry into publicly funded mental health, ~~mental retardation~~ *developmental,* and substance abuse services.

§ 37.2-501. Community services board; appointment; membership; duties of fiscal agent.

A. Every city or county or any combination of counties and cities, before it shall come within the provisions of this chapter, shall establish a community services board with no less than six and no more than 18 members. When any city or county singly establishes a community services board, the board shall be appointed by the governing body of the city or county establishing the board. When any combination of counties and cities establishes a community services board, the board of supervisors of each county or the council of each city shall mutually agree on the size of the board and shall appoint the members of the community services board. Prior to making appointments, the governing body shall disclose the names of those persons being considered for appointment.

Appointments to the community services board shall be broadly representative of the community. One-third of the appointments to the board shall be ~~identified consumers or former consumers~~ *individuals who are receiving or who have received services* or family members of ~~consumers or former consumers~~ *individuals who are receiving or who have received services,* at least one of whom shall be ~~a consumer~~ *an individual* receiving services. One or more appointments may be nongovernmental service providers. Sheriffs or their designees also shall be appointed, when practical. No employee of the community services board or employee or board member of an organization that receives funding from any community services board shall be appointed a member of that board.

No community services board shall be composed of a majority of local government officials, elected or appointed, as members, nor shall any county or city be represented on a board by more than two officials, elected or appointed.

The board appointed pursuant to this section shall be responsible to the governing body of each county or city that established it.

B. The county or city or any combination of cities and counties that establishes an operating or administrative policy board shall receive an independent annual audit of the total revenues and expenditures of that board, a copy of which shall be provided to the Department, and designate an official of one member city or county to act as fiscal agent for the board. The county or city whose designated official serves as fiscal agent for the board in the case of boards established by more than one city or county shall review and act upon the independent audit of the board and, in conjunction with the other cities and counties, arrange for the provision of legal services to the board. When a single county or city establishes an operating or administrative policy board, it shall arrange for the provision of legal services to the board.

C. The county or city that establishes a policy-advisory board shall provide an annual audit of the total revenues and expenditures of the city or county government department to the board and the Department, carry out the responsibilities and duties enumerated in subsection A of § 37.2-504 and § 37.2-505, and provide legal services to the board. When any combination of cities and counties establishes a policy-advisory board, those cities and counties shall designate which local government shall operate the city or county government department. This local government shall provide an annual audit of the total revenues and expenditures of that department to the board and the Department, carry out the responsibilities and duties enumerated in subsection A of § 37.2-504 and § 37.2-505, and, in conjunction with the other cities and counties, arrange for the provision of legal services to the board.

§ 37.2-504. Community services boards; local government departments; powers and duties.

A. Every operating and administrative policy community services board and local government department with a policy-advisory board shall have the following powers and duties:

1. Review and evaluate public and private community mental health, ~~mental retardation~~ *developmental,* and substance abuse services and facilities that receive funds from it and advise the governing body of each city or county that established it as to its findings.

2. Pursuant to § 37.2-508, submit to the governing body of each city or county that established it an annual performance contract for community mental health, ~~mental retardation~~ *developmental,* and substance abuse services for its approval prior to submission of the contract to the Department.

3. Within amounts appropriated for this purpose, provide services authorized under the performance contract.

4. In accordance with its approved performance contract, enter into contracts with other providers for the delivery of services or operation of facilities.

5. In the case of operating and administrative policy boards, make policies or regulations concerning the delivery of services and operation of facilities under its direction or supervision, subject to applicable policies and regulations adopted by the Board.

6. In the case of an operating board, appoint an executive director of community mental health, ~~mental retardation~~ *developmental,* and substance abuse services, who meets the minimum qualifications

established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by the operating board within the amounts made available by appropriation for this purpose. The executive director shall serve at the pleasure of the operating board and be employed under an annually renewable contract that contains performance objectives and evaluation criteria. For an operating board, the Department shall approve the selection of the executive director for adherence to minimum qualifications established by the Department and the salary range of the executive director. In the case of an administrative policy board, the board shall participate with local government in the appointment and annual performance evaluation of an executive director of community mental health, ~~mental retardation~~ *developmental*, and substance abuse services, who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by local government in consultation with the administrative policy board within the amounts made available by appropriation for this purpose. In the case of a local government department with a policy-advisory board, the director of the local government department shall serve as the executive director. The policy-advisory board shall participate in the selection and the annual performance evaluation of the executive director, who meets the minimum qualifications established by the Department. The compensation of the executive director shall be fixed by local government in consultation with the policy-advisory board within the amounts made available by appropriation for this purpose.

7. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the board and establish procedures for the collection of those fees. All fees collected shall be included in the performance contract submitted to the local governing body or bodies pursuant to subdivision 2 ~~of this section~~ and § 37.2-508 and shall be used only for community mental health, ~~mental retardation~~ *developmental*, and substance abuse *services* purposes. Every board shall institute a reimbursement system to maximize the collection of fees from ~~persons~~ *individuals* receiving services under its jurisdiction or supervision, consistent with the provisions of § 37.2-511, and from responsible third party payors. Boards shall not attempt to bill or collect fees for time spent participating in commitment hearings for involuntary admissions pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8.

8. Accept or refuse gifts, donations, bequests, or grants of money or property from any source and utilize them as authorized by the governing body of each city or county that established it.

9. Seek and accept funds through federal grants. In accepting federal grants, the board shall not bind the governing body of any city or county that established it to any expenditures or conditions of acceptance without the prior approval of the governing body.

10. Notwithstanding any provision of law to the contrary, disburse funds appropriated to it in accordance with such regulations as may be established by the governing body of each city or county that established it.

11. Apply for and accept loans as authorized by the governing body of each city or county that established it.

12. Develop joint written agreements, consistent with policies adopted by the Board, with local school divisions; health departments; boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging; and regional Department of Rehabilitative Services offices. The agreements shall specify the services to be provided to ~~consumers~~ *individuals*. All participating agencies shall develop and implement the agreements and shall review the agreements annually.

13. Develop and submit to the Department the necessary information for the preparation of the Comprehensive State Plan for ~~mental health, mental retardation, and substance abuse services~~ *Behavioral Health and Developmental Services* pursuant to § 37.2-315.

14. Take all necessary and appropriate actions to maximize the involvement and participation of ~~consumers~~ *individuals receiving services* and family members of ~~consumers~~ *individuals receiving services* in policy formulation and services planning, delivery, and evaluation.

15. Institute, singly or in combination with other community services boards or behavioral health authorities, a dispute resolution mechanism that is approved by the Department and enables ~~consumers~~ *individuals receiving services* and family members of ~~consumers~~ *individuals receiving services* to resolve concerns, issues, or disagreements about services without adversely affecting their access to or receipt of appropriate types and amounts of current or future services from the community services board.

16. Notwithstanding the provisions of § 37.2-400 or any regulations adopted thereunder, release data and information about ~~individual consumers~~ *each individual receiving services* to the Department so long as the Department implements procedures to protect the confidentiality of that data and information.

17. In the case of administrative policy boards and local government departments with policy-advisory boards, carry out other duties and responsibilities as assigned by the governing body of each city or county that established it.

18. In the case of *an* operating ~~boards~~ *board*, have authority, notwithstanding any provision of law to the contrary, to receive state and federal funds directly from the Department and act as its own fiscal agent, when authorized to do so by the governing body of each city or county that established it.

By local agreement between the administrative policy board and the governing body of the city or county that established it, additional responsibilities may be carried out by the local government, including personnel or financial management. In the case of an administrative policy board established by more than one city or county, the cities and counties shall designate which local government shall assume these responsibilities.

B. Every policy-advisory community services board, with staff support provided by the director of the local government department, shall have the following powers and duties:

1. Advise the local government regarding policies or regulations for the delivery of services and operation of facilities by the local government department, subject to applicable policies and regulations adopted by the Board.

2. Review and evaluate the operations of the local government department and advise the local governing body of each city or county that established it as to its findings.

3. Review the community mental health, ~~mental retardation~~ *developmental*, and substance abuse services provided by the local government department and advise the local governing body of each city or county that established it as to its findings.

4. Review and comment on the annual performance contract, performance reports, and Comprehensive State Plan information developed by the local government department. The board's comments shall be attached to the performance contract, performance reports, and Comprehensive State Plan information prior to their submission to the local governing body of each city or county that established it and to the Department.

5. Advise the local government as to the necessary and appropriate actions to maximize the involvement and participation of ~~consumers~~ *individuals receiving services* and family members of ~~consumers~~ *individuals receiving services* in policy formulation and services planning, delivery, and evaluation.

6. Participate in the selection and the annual performance evaluation of the local government department director employed by the city or county.

7. Carry out other duties and responsibilities as assigned by the governing body of each city or county that established it.

§ 37.2-505. Coordination of services for preadmission screening and discharge planning.

A. The community services board shall fulfill the following responsibilities:

1. Be responsible for coordinating the community services necessary to accomplish effective preadmission screening and discharge planning for persons referred to the community services board. When preadmission screening reports are required by the court on an emergency basis pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8, the community services board shall ensure the development of the report for the court. To accomplish this coordination, the community services board shall establish a structure and procedures involving staff from the community services board and, as appropriate, representatives from (i) the state hospital or training center serving the board's service area, (ii) the local department of social services, (iii) the health department, (iv) the Department of Rehabilitative Services office in the board's service area, (v) the local school division, and (vi) other public and private human services agencies, including licensed hospitals.

2. Provide preadmission screening services prior to the admission for treatment pursuant to § 37.2-805 or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of any person who requires emergency mental health services while in a city or county served by the community services board.

3. Provide, in consultation with the appropriate state hospital or training center, discharge planning for any ~~person~~ *individual* who, prior to admission, resided in a city or county served by the community services board or who chooses to reside after discharge in a city or county served by the board and who is to be released from a state hospital or training center pursuant to § 37.2-837. The discharge plan shall be completed prior to the ~~person's~~ *individual's* discharge. The plan shall be prepared with the involvement and participation of the ~~consumer~~ *individual receiving services* or his representative and must reflect the ~~consumer's~~ *individual's* preferences to the greatest extent possible. The plan shall include the mental health, ~~mental retardation~~ *developmental*, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the ~~consumer~~ *individual* will need upon discharge into the community and identify the public or private agencies that have agreed to provide these services.

No ~~person~~ *individual* shall be discharged from a state hospital or training center without completion by the community services board of the discharge plan described in this subdivision. If state hospital or training center staff identify ~~a consumer~~ *an individual* as ready for discharge and the community services board that is responsible for the ~~person's~~ *individual's* care disagrees, the community services board shall document in the treatment plan within 30 days of the ~~person's~~ *individual's* identification any

reasons for not accepting the ~~person~~ *individual* for discharge. If the state hospital or training center disagrees with the community services board and the board refuses to develop a discharge plan to accept the ~~person~~ *individual* back into the community, the state hospital or training center or the community services board shall ask the Commissioner to review the state hospital's or training center's determination that the ~~person~~ *individual* is ready for discharge in accordance with procedures established by the Department in collaboration with state hospitals, training centers, and community services boards. If the Commissioner determines that the ~~person~~ *individual* is ready for discharge, a discharge plan shall be developed by the Department to ensure the availability of adequate services for the ~~consumer~~ *individual* and the protection of the community. The Commissioner also shall verify that sufficient state-controlled funds have been allocated to the community services board through the performance contract. If sufficient state-controlled funds have been allocated, the Commissioner may contract with a private provider, another community services board, or a behavioral health authority to deliver the services specified in the discharge plan and withhold allocated funds applicable to that ~~consumer's~~ *individual's* discharge plan from the community services board in accordance with subsections C and E of § 37.2-508.

B. The community services board may perform the functions set out in subdivision A 1 in the case of children by referring them to the locality's family assessment and planning team and by cooperating with the community policy and management team in the coordination of services for troubled youths and their families. The community services board may involve the family assessment and planning team and the community policy and management team, but it remains responsible for performing the functions set out in subdivisions A 2 and A 3 in the case of children.

§ 37.2-506. Background checks required.

A. As used in this section, the term "direct ~~consumer~~ care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of ~~a~~ ~~consumer~~ *an individual receiving services* or (ii) immediately supervising a person in a position with this responsibility.

As used in this section, "hire for compensated employment" does not include (i) a promotion from one adult substance abuse or adult mental health treatment position to another such position within the same community services board or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program of the same community services board if the person employed prior to July 1, 1999, had no convictions in the five years prior to the application date for employment. As used in this section, "hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or ~~mental retardation~~ *developmental services* direct ~~consumer~~ care position within the same community services board or (b) new employment in any mental health or ~~mental retardation~~ *developmental services* direct ~~consumer~~ care position in another office or program of the same community services board for which the person has previously worked in an adult substance abuse treatment position.

B. Every community services board shall require any applicant who accepts employment in any direct ~~consumer~~ care position with the community services board to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no community services board shall hire for compensated employment persons who have been convicted of any offense listed in subsection B of § 37.2-314.

The Central Criminal Records Exchange, upon receipt of an ~~individual's~~ *applicant's* record or notification that no record exists, shall submit a report to the requesting executive director or personnel director of the community services board. If any applicant is denied employment because of information appearing on ~~the~~ *his* criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the executive director or personnel director of any community services board shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse or adult mental health treatment programs a person who was convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56; (ii) reckless handling of a firearm, as set out in § 18.2-56.1; (iii) assault and battery, as set out in subsection A of § 18.2-57; or (iv) assault and battery against a family or household member, as set out in subsection A of § 18.2-57.2; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in § 18.2-92; or (d) possession of burglarious tools, as set out in § 18.2-94; or any felony violation relating

to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsection H1 or H2 of § 18.2-248; or an equivalent offense in another state, if the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to ~~consumers~~ *individuals receiving services* based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse treatment programs a person who has been convicted of not more than one offense of assault and battery of a law-enforcement officer under § 18.2-57, or an equivalent offense in another state, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the offense was committed in another state; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to ~~consumers~~ *individuals receiving services* based on his criminal history background and his substance abuse history.

E. The community services board and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to ~~consumers~~ *individuals receiving services* based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the community services board or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the board decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a community services board may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct ~~consumer~~ care position.

G. Community services boards also shall require, as a condition of employment for all applicants, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the community services board decides to pay the cost.

I. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

§ 37.2-508. Performance contract for mental health, developmental, and substance abuse services.

A. The Department shall develop and initiate negotiation of the performance contracts through which it provides funds to community services boards to accomplish the purposes set forth in this chapter. In the case of operating boards, the Department may, notwithstanding any provision of law to the contrary, disburse state and federal funds appropriated to it for mental health, ~~mental retardation~~ *developmental*, or substance abuse services directly to the operating board, when that operating board is authorized by the governing body of each city or county that established it to receive such funds. Six months prior to the beginning of each fiscal year, the Department shall make available to the public the standard performance contract form that it intends to use as the performance contract for that fiscal year and solicit public comments for a period of 60 days.

B. Any community services board may apply for the assistance provided in this chapter by submitting annually to the Department its proposed performance contract for the next fiscal year together with (i) the approval of its board of directors for operating and administrative policy boards or the comments of the local government department's policy-advisory board and (ii) the approval of the contract by formal vote of the governing body of each city or county that established it. The community services board shall make its proposed performance contract available for public review and solicit public comments for a period of 30 days prior to submitting its proposed contract for the approval of its board of directors for operating and administrative policy boards or the comments of the local government department's policy-advisory board. To avoid disruptions in service continuity and allow

sufficient time to complete public review and comment about the contract and negotiation and approval of the contract, the Department may provide up to six semi-monthly payments of state-controlled funds to the community services board. If the governing body of each city or county does not approve the proposed performance contract by September 30 of each year, the performance contract shall be deemed approved.

C. The performance contract shall (i) delineate the responsibilities of the Department and the community services board; (ii) specify conditions that must be met for the receipt of state-controlled funds; (iii) identify the groups of ~~consumers~~ *individuals* to be served with state-controlled funds; (iv) contain specific ~~consumer~~ outcome *measures for individuals receiving services*, provider performance *measures*, ~~consumer~~ satisfaction *measures for individuals receiving services*, and ~~consumer~~ ~~and~~ ~~family member~~ participation and involvement measures *for individuals receiving services and their family members*; (v) contain mechanisms that have been identified or developed jointly by the Department and community services board and that will be employed collaboratively by the community services board and the state hospital to manage the utilization of state hospital beds; (vi) establish an enforcement mechanism, should a community services board fail to be in substantial compliance with its performance contract, including notice and appeal processes and provisions for remediation, withholding or reducing funds, methods of repayment of funds, and the Department's exercise of the provisions of subsection E; and (vii) include reporting requirements and ~~revenue, cost, service, and consumer~~ information *about revenues, costs, services, and individuals receiving services* displayed in a consistent, comparable format determined by the Department.

The Department may provide for performance monitoring in order to determine whether the community services boards are in substantial compliance with their performance contracts.

D. No community services board shall be eligible to receive state-controlled funds for mental health, ~~mental retardation~~ *developmental*, or substance abuse services after September 30 of each year unless (i) its performance contract has been approved by the governing body of each city or county that established it and by the Department; (ii) it provides service, cost, *and* revenue~~,~~ *data and information* and aggregate and individual ~~consumer~~ data and information *about individuals receiving services*, notwithstanding the provisions of § 37.2-400 or any regulations adopted thereunder, to the Department in the format prescribed by the Department; and (iii) it uses standardized cost accounting and financial management practices approved by the Department.

E. If, after unsuccessful use of a remediation process described in the performance contract, a community services board remains in substantial noncompliance with its performance contract with the Department, the Department may, after affording the community services board an adequate opportunity to use the appeal process described in the performance contract, terminate all or a portion of the contract. Using the state-controlled resources associated with that contract, the Department, after consulting with the governing body of each city or county that established the board, may negotiate a performance contract with another board, a behavioral health authority, or a private nonprofit or for-profit organization or organizations to obtain services that were the subject of the terminated performance contract.

§ 37.2-509. Mental health, developmental, and substance abuse services; allocation of funds by Department; reduction of funds.

A. At the beginning of each fiscal year, the Department shall allocate available state-controlled funds to community services boards for disbursement in accordance with procedures established by the Department and performance contracts approved by the Department. Allocations of state-controlled funds to each community services board shall be determined by the Department, after careful consideration of all of the following factors:

1. The total amounts of state-controlled funds appropriated for this purpose;

2. Previous allocations of state-controlled funds to each community services board;

3. Requirements or conditions attached to appropriations of state-controlled funds by the General Assembly, the Governor, or federal granting authorities;

4. Community services board input about the uses of and methodologies for allocating existing and new state-controlled funds; and

5. Other relevant and appropriate considerations.

Allocations to any community services board for operating expenses, including salaries and other costs, or the construction of facilities shall not exceed 90 percent of the total amount of state and local matching funds provided for these expenses or such construction, unless a waiver is granted by the Department pursuant to policy adopted by the Board.

B. The Department shall notify the governing body of each city or county that established the community services board before implementing any reduction of state-controlled funds. Before any city or county reduces local government matching funds, it shall notify its community services board and the Department.

C. All fees collected by the community services board shall be included in its performance contract and retained and used by the board for mental health, ~~mental retardation~~ *developmental*, and substance abuse *services* purposes.

§ 37.2-511. Liability for expenses of services.

The income and estate of ~~a consumer~~ *an individual receiving services* shall be liable for the expenses of services under the jurisdiction or supervision of any community services board that are utilized by the ~~consumer~~ *individual*. Any person responsible for holding, managing, or controlling the income and estate of the ~~consumer~~ *individual* shall apply the income and estate toward the expenses of the services utilized by the ~~consumer~~ *individual*.

Any person responsible for the support of ~~a consumer~~ *an individual receiving services* pursuant to § 20-61 or a common law duty to support shall be liable for the expenses of services under the jurisdiction or supervision of any community services board that are utilized by the ~~consumer~~ *individual*, unless the ~~consumer~~ *individual*, regardless of age, qualifies for and is receiving aid under a federal or state program of assistance to the blind or disabled. Any such person shall no longer be financially liable, however, when a cumulative total of 1,826 days of (i) care and treatment or training for the ~~consumer~~ *individual* in a state facility, (ii) utilization by the ~~consumer~~ *individual* of services under the jurisdiction or supervision of any community services board, or (iii) a combination of (i) and (ii) has passed and payment for or a written agreement to pay the charges for 1,826 days of care and services has been made. Not less than three hours of service per day shall be required to include one day in the cumulative total of 1,826 days of utilization of services under the jurisdiction or supervision of any community services board. In order to claim this exemption, the person legally liable for the ~~consumer~~ *individual* shall produce evidence sufficient to prove eligibility for it.

§ 37.2-512. Authority to enter into joint agreements.

A. A community services board may enter into joint agreements, pursuant to subdivision A 4 of § 37.2-504 with one or more community services boards or behavioral health authorities, to provide treatment, habilitation, or support services for ~~consumers~~ *individuals receiving services* with specialized and complex service needs and associated managerial, operational, and administrative services and support and to promote clinical, programmatic, or administrative effectiveness and efficiency. Services may be provided under a joint agreement by one or more community services boards or behavioral health authorities or by an administrator or management body established or contracted through a joint agreement.

B. Participation in a joint agreement shall be voluntary and at the discretion of the community services board. No community services board shall be required to enter into a joint agreement pursuant to this section as a condition for the receipt of funds.

C. No joint agreement shall relieve a community services board of any obligation or responsibility imposed upon it by law, but performance under the terms of a joint agreement may be offered in satisfaction of the obligation or responsibility of the community services board.

D. The community services board's participation in a joint agreement shall be described in the performance contract negotiated by the community services board and the Department pursuant to § 37.2-508. The community services board shall provide a copy of a joint agreement to the governing body of each city or county that established the board for its review and comment at least 30 days before executing the agreement.

E. A joint agreement shall state or describe:

1. The term or duration of the joint agreement, which shall be for at least one year but may be extended annually pursuant to provisions in the joint agreement;

2. The purpose or purposes of the joint agreement;

3. The community services boards or behavioral health authorities participating in the joint agreement;

4. The treatment, habilitation, or support services and associated managerial and administrative services and support to be provided through the joint agreement;

5. The manner in which the joint agreement will be administered and any necessary actions by the participants will be coordinated;

6. The manner in which the joint agreement will be financed, including the proportional share to be provided by each participating community services board or behavioral health authority, and the budget, which shall be incorporated as part of the joint agreement, will be established and administered;

7. The manner by which state general funds, fee revenues, and other funds for the operation of the joint agreement will be received and disbursed by the participating boards or behavioral health authorities;

8. The manner by which activities conducted under the joint agreement will be monitored, managed, reported, and evaluated;

9. The permissible method or methods to be employed in accomplishing the partial or complete termination of the joint agreement and for disposing of any property acquired under the joint agreement

upon such partial or complete termination; and

10. Any other matters that are necessary and proper for the effective operation of the joint agreement.

F. The joint agreement, in addition to the items enumerated in subsection E, may contain the following items.

1. The joint agreement may provide for an administrator or management body that shall be responsible for administering activities conducted under the joint agreement. The organization, term, powers, and duties of any administrator or management body shall be specified in the joint agreement. This administrator or management body may be given authority through the joint agreement to employ staff and obtain services provided under the joint agreement though contracts on behalf of the community services boards or behavioral health authorities that have entered into the joint agreement. This administrator or management body shall defend or compromise, as appropriate, all claims, suits, actions, or proceedings arising from its performance under this joint agreement and shall obtain and maintain insurance sufficient for this purpose.

2. The joint agreement may specify the manner of acquiring, holding, and disposing of real and personal property required for or used in activities conducted under the joint agreement.

3. The joint agreement may describe how issues of liability will be handled and the types, amounts, and limits of any liability insurance coverage, including whether such coverage will be obtained through the Department of Treasury's Division of Risk Management program pursuant to § 2.2-1839 or otherwise.

G. Any community services board entering into a joint agreement pursuant to this section may provide funds or property, personnel, or services to the administrator or management body responsible for administering activities conducted under this joint agreement that may be within its legal powers to sell, lease, give, or otherwise supply.

H. The community services boards or behavioral health authorities entering into a joint agreement pursuant to this section may create an administrator or management body to provide treatment, habilitation or support services on behalf of the participating community services boards or behavioral health authorities subject to the following conditions.

1. The administrator or management body created pursuant to this subsection shall operate under contract with the participating community services boards or behavioral health authorities, and this contract shall be exempt from the requirements of the Virginia Public Procurement Act, (§ 2.2-4300 et seq.).

2. The administrator or management body created pursuant to this subsection shall be subject to all statutory and regulatory requirements that apply to community services boards, including procurement, employment, Virginia Freedom of Information Act, disclosure and confidentiality of ~~consumer~~ *individual service* and administrative records, data collection and reporting, and all other aspects of their business and services.

3. The administrator or management body created pursuant to this subsection shall have the authority to receive funds from participating community services boards or behavioral health authorities; public and private sources such as foundations, gifts and grants; and public and private reimbursement from private insurers and the Department of Medical Assistance Services; but the administrator or management body shall not be authorized to receive funds directly from the Department.

4. The administrator or management body created pursuant to this subsection shall defend or compromise, as appropriate, all claims, suits, actions, or proceedings arising from its performance under this joint agreement and shall obtain and maintain insurance sufficient for this purpose.

§ 37.2-600. Definitions.

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

"Behavioral health" means the full range of mental health, ~~mental retardation~~ *developmental*, and substance abuse services and treatment modalities.

"Behavioral health authority board of directors" means the public body organized in accordance with provisions of this chapter that is appointed by and accountable to the governing body of the city or county that established it.

"Behavioral health project" means any facility suitable for providing adequate care for concentrated centers of population and includes structures, buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, franchises, machinery, equipment, furnishings, landscaping, approaches, roadways, and other necessary or desirable facilities.

"Member" means a person appointed by the governing body of a city or county to the behavioral health authority board of directors.

§ 37.2-601. Behavioral health authorities; purpose.

The Department, for the purposes of establishing, maintaining, and promoting the development of behavioral health services in the Commonwealth, may provide funds to assist certain cities or counties in

the provision of these services.

The governing body of the Cities of Virginia Beach or Richmond or the County of Chesterfield may establish a behavioral health authority and shall declare its intention to do so by resolution.

The behavioral health services provided by behavioral health authorities within the cities or counties they serve shall include emergency services and, subject to the availability of funds appropriated for them, case management services. The behavioral health services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, and other appropriate mental health, ~~mental retardation~~ *developmental*, and substance abuse services necessary to provide individualized services and supports to persons with mental ~~illnesses~~ *illness*, ~~mental retardation~~ *intellectual disability*, or substance abuse. Behavioral health authorities may establish crisis stabilization units that provide residential crisis stabilization services.

In order to provide comprehensive mental health, ~~mental retardation~~ *developmental*, and substance abuse services within a continuum of care, the behavioral health authority shall function as the single point of entry into publicly funded mental health, ~~mental retardation~~ *developmental*, and substance abuse services.

§ 37.2-602. Board of directors; appointment; membership.

A city or county, before it shall come within the provisions of this chapter, shall establish a behavioral health authority with a board of directors with no less than six and no more than 18 members. When any city or county establishes a behavioral health authority, the board of directors shall be appointed by the governing body of the city or county establishing the authority. Prior to making appointments, the governing body shall disclose the names of persons being considered for appointment.

Appointments to the board of directors shall be broadly representative of the community. One-third of the appointments to the board shall be ~~identified consumers or former consumers~~ *individuals who are receiving or who have received services* or family members of ~~consumers or former consumers~~ *individuals who are receiving or who have received services*, at least one of whom shall be ~~a consumer~~ *an individual* receiving services. One or more appointments may be nongovernmental services providers. Sheriffs or their designees also shall be appointed, when practical.

No board of directors shall include more than two local government officials, elected or appointed, as members.

The board of directors appointed pursuant to this section shall be responsible to the governing body of the city or county that established the authority.

The county or city that establishes a behavioral health authority shall receive an independent annual audit of the total revenues and expenditures from the authority, a copy of which shall be provided to the Department.

§ 37.2-605. Behavioral health authorities; powers and duties.

Every authority shall be deemed to be a public instrumentality, exercising public and essential governmental functions to provide for the public mental health, welfare, convenience, and prosperity of the residents and such other persons who might be served by the authority and to provide behavioral health services to those residents and persons. An authority shall have the following powers and duties:

1. Review and evaluate public and private community mental health, ~~mental retardation~~ *developmental*, and substance abuse services and facilities that receive funds from the authority and advise the governing body of the city or county that established it as to its findings.

2. Pursuant to § 37.2-608, submit to the governing body of the city or county that established the authority an annual performance contract for community mental health, ~~mental retardation~~ *developmental*, and substance abuse services for its approval prior to submission of the contract to the Department.

3. Within amounts appropriated for this purpose, provide services authorized under the performance contract.

4. In accordance with its approved performance contract, enter into contracts with other providers for the delivery of services or operation of facilities.

5. Make and enter into all other contracts or agreements as the authority may determine that are necessary or incidental to the performance of its duties and to the execution of powers granted by this chapter, including contracts with any federal agency, any subdivision or instrumentality of the Commonwealth, behavioral health providers, insurers, and managed care or health care networks on such terms and conditions as the authority may approve.

6. Make policies or regulations concerning the delivery of services and operation of facilities under its direction or supervision, subject to applicable policies and regulations adopted by the Board.

7. Appoint a chief executive officer of the behavioral health authority, who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of the chief executive officer shall be fixed by the authority within the amounts made available by appropriation for this purpose. The chief executive officer shall serve at the pleasure of the authority's board of directors and be employed under an annually renewable contract that contains performance objectives and

evaluation criteria. The Department shall approve the selection of the chief executive officer for adherence to minimum qualifications established by the Department and the salary range of the chief executive officer.

8. Authorize the chief executive officer to maintain a complement of professional staff to operate the behavioral health authority's service delivery system.

9. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the authority and establish procedures for the collection of those fees. All fees collected shall be included in the performance contract submitted to the local governing body pursuant to subdivision 2 of this section and § 37.2-608 and shall be used only for community mental health, ~~mental retardation~~ *developmental*, and substance abuse *services* purposes. Every authority shall institute a reimbursement system to maximize the collection of fees from ~~persons~~ *individuals* receiving services under the jurisdiction or supervision of the authority, consistent with the provisions of § 37.2-612, and from responsible third party payors. Authorities shall not attempt to bill or collect fees for time spent participating in commitment hearings for involuntary admissions pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8.

10. Accept or refuse gifts, donations, bequests, or grants of money or property or other assistance from the federal government, the Commonwealth, any municipality thereof, or any other sources, public or private; utilize them to carry out any of its purposes; and enter into any agreement or contract regarding or relating to the acceptance, use, or repayment of any such grant or assistance.

11. Seek and accept funds through federal grants. In accepting federal grants, the authority shall not bind the governing body of the city or county that established it to any expenditures or conditions of acceptance without the prior approval of that governing body.

12. Notwithstanding any provision of law to the contrary, disburse funds appropriated to it in accordance with applicable regulations.

13. Apply for and accept loans in accordance with regulations established by the board of directors.

14. Develop joint written agreements, consistent with policies adopted by the Board, with local school divisions; health departments; local boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging; and regional Department of Rehabilitative Services offices. The agreements shall specify the services to be provided to ~~consumers~~ *individuals*. All participating agencies shall develop and implement the agreements and shall review the agreements annually.

15. Develop and submit to the Department the necessary information for the preparation of the Comprehensive State Plan for Behavioral Health and Developmental Services pursuant to § 37.2-315.

16. Take all necessary and appropriate actions to maximize the involvement and participation of ~~consumers~~ *individuals receiving services* and family members of ~~consumers~~ *individuals receiving services* in policy formulation and service planning, delivery, and evaluation.

17. Institute, singly or in combination with community services boards or other behavioral health authorities, a dispute resolution mechanism that is approved by the Department and enables ~~consumers~~ *individuals receiving services* and family members of ~~consumers~~ *individuals receiving services* to resolve concerns, issues, or disagreements about services without adversely affecting their access to or receipt of appropriate types and amounts of current or future services from the authority.

18. Notwithstanding the provisions of § 37.2-400 and regulations adopted thereunder, release data and information about ~~individual consumers~~ *each individual receiving services* to the Department, so long as the Department implements procedures to protect the confidentiality of that data and information. Every authority shall submit data on children and youth in the same manner as community services boards, as set forth in § 37.2-507.

19. Fulfill all other duties and be subject to applicable provisions specified in the Code of Virginia pertaining to community services boards.

20. Make loans and provide other assistance to corporations, partnerships, associations, joint ventures, or other entities in carrying out any activities authorized by this chapter.

21. Transact its business, locate its offices and control, directly or through stock or nonstock corporations or other entities, facilities that will assist the authority in carrying out the purposes and intent of this chapter, including without limitations the power to own or operate, directly or indirectly, behavioral health facilities in its service area.

22. Acquire property, real or personal, by purchase, gift, or devise on such terms and conditions and in such manner as it may deem proper and such rights, easements, or estates therein as may be necessary for its purposes and sell, lease, and dispose of the same or any portion thereof or interest therein, whenever it shall become expedient to do so.

23. Participate in joint ventures with ~~individuals~~ *persons*, corporations, partnerships, associations, or other entities for providing behavioral health care or related services or other activities that the authority may undertake to the extent that such undertakings assist the authority in carrying out the purposes and intent of this chapter.

24. Conduct or engage in any lawful business, activity, effort, or project that is necessary or convenient for the purposes of the authority or for the exercise of any of its powers.

25. As a public instrumentality, establish and operate its administrative management infrastructure in whole or in part independent of the local governing body; however, nothing in the chapter precludes behavioral health authorities from acquiring support services through existing governmental entities.

26. Carry out capital improvements and bonding through existing economic or industrial development authorities.

27. Establish retirement, group life insurance, and group accident and sickness insurance plans or systems for its employees in the same manner as cities, counties, and towns are permitted to do under § 51.1-801.

28. Provide an annual report to the Department of the authority's activities.

29. Ensure a continuation of all ~~consumer~~ services *for individuals* during any transition period.

§ 37.2-608. Performance contract for mental health, developmental, and substance abuse services.

A. The Department shall develop and initiate negotiation of the performance contracts through which it provides funds to behavioral health authorities to accomplish the purposes set forth in this chapter. The Department may, notwithstanding any provision of law to the contrary, disburse state and federal funds appropriated to it for mental health, ~~mental retardation~~ *developmental*, and substance abuse services directly to the behavioral health authority. Six months prior to the beginning of each fiscal year, the Department shall make available to the public the standard performance contract form that it intends to use as the performance contract for that fiscal year and solicit public comments for a period of 60 days.

B. Any behavioral health authority may apply for the assistance provided in this chapter by submitting annually to the Department its proposed performance contract for the next fiscal year together with the approval of its board of directors and the approval by formal vote of the governing body of the city or county that established it. The behavioral health authority shall make its proposed performance contract available for public review and solicit public comments for a period of 30 days prior to submitting its proposed contract for the approval of its board of directors. To avoid disruptions in service continuity and allow sufficient time to complete public review and comment about the contract and negotiation and approval of the contract, the Department may provide up to six semi-monthly payments of state-controlled funds to the authority. If the governing body of the city or county does not approve the proposed performance contract by September 30 of each year, the performance contract shall be deemed approved.

C. The performance contract shall (i) delineate the responsibilities of the Department and the behavioral health authority; (ii) specify conditions that must be met for the receipt of state-controlled funds; (iii) identify the groups of ~~consumers~~ *individuals* to be served with state-controlled funds; (iv) contain specific ~~consumer~~ *outcome measures for individuals receiving services*, provider performance *measures*, ~~consumer~~ satisfaction *measures for individuals receiving services*, and ~~consumer and family member~~ participation and involvement measures *for individuals receiving services and their family members*; (v) contain mechanisms that have been identified or developed jointly by the Department and the behavioral health authority and that will be employed collaboratively by the behavioral health authority and the state hospital to manage the utilization of state hospital beds; (vi) establish an enforcement mechanism, should the behavioral health authority fail to be in substantial compliance with its performance contract, including notice and appeal processes and provisions for remediation, withholding or reducing funds, methods of repayment of funds, and the Department's exercise of the provisions of subsection E; and (vii) include reporting requirements and ~~revenue, cost, service, and consumer~~ information *about revenues, costs, services, and individuals receiving services* displayed in a consistent, comparable format determined by the Department.

The Department may provide for performance monitoring to determine whether behavioral health authorities are in substantial compliance with their performance contracts.

D. No behavioral health authority shall be eligible to receive state-controlled funds for mental health, ~~mental retardation~~ *developmental*, or substance abuse services after September 30 of each year unless (i) its performance contract has been approved by the governing body of the city or county that established it and by the Department; (ii) it provides service, cost, *and* revenue *data and information*, and aggregate and individual ~~consumer~~ data and information *about individuals receiving services*, notwithstanding § 37.2-400 or any regulations adopted thereunder, to the Department in the format prescribed by the Department; and (iii), it uses standardized cost accounting and financial management practices approved by the Department.

E. If, after unsuccessful use of a remediation process described in the performance contract, a behavioral health authority remains in substantial noncompliance with its performance contract with the Department, the Department may, after affording the authority an adequate opportunity to use the appeal process described in the performance contract, terminate all or a portion of the contract. Using the state-controlled resources associated with that contract, the Department, after consulting with the

governing body of the city or county that established the behavioral health authority, may negotiate a performance contract with a community services board, another behavioral health authority, or a private nonprofit or for-profit organization or organizations to obtain services that were the subject of the terminated performance contract.

§ 37.2-609. Exemption from taxation.

The exercise of the powers granted by this chapter shall be in all respects for the benefit of ~~individuals~~ *persons* in the authority's service area and for the promotion of their safety, health, welfare, convenience, and prosperity. As the operation and maintenance of any behavioral health project that the authority is authorized to undertake will constitute the performance of an essential governmental function, the authority shall not be required to pay any taxes or assessments upon any behavioral health project acquired or constructed by it or on the revenues generated by its operation.

§ 37.2-612. Liability for expenses of services.

~~Consumers~~ *Individuals receiving services* shall be liable for the expenses of services provided by a behavioral health authority in the same manner that they are liable to community services boards, as set forth in § 37.2-511.

§ 37.2-613. Proceedings for dissolution.

When the board of directors of a behavioral health authority determines that the need for the authority no longer exists, then, upon a petition by the board to the circuit court of the appropriate city or county, after giving 90 days' notice to the city or county and upon the production of satisfactory evidence in support of the petition and a detailed dissolution plan, the court may enter an order declaring that the need for the authority in that city or county no longer exists and approving a plan for the winding up of the authority's business, the payment or assumption of its obligations, and the transfer of its assets. In order for it to be approved by the court, the court must find that this plan describes specifically how the city or county that established the authority will fulfill the same duties and responsibilities required for community services boards under Chapter 5 (§ 37.2-500 et seq.) and how the city or county will ensure continuity of care for ~~consumers~~ *individuals* who are receiving services from the authority.

§ 37.2-615. Authority to enter into joint agreements.

A. A behavioral health authority may enter into joint agreements, pursuant to subsection 4 of § 37.2-605, with one or more behavioral health authorities or community services boards to provide needed treatment, habilitation, or support services for ~~consumers~~ *individuals* with specialized and complex service needs and associated managerial, operational, and administrative services and support and to promote clinical, programmatic, or administrative effectiveness and efficiency. Services may be provided under a joint agreement by one or more behavioral health authorities or community services boards or an administrator or management body established or contracted through a joint agreement.

B. Participation in a joint agreement shall be voluntary and at the discretion of the behavioral health authority. No behavioral health authority shall be required to enter into a joint agreement pursuant to this section as a condition for the receipt of funds.

C. No joint agreement shall relieve a behavioral health authority of any obligation or responsibility imposed upon it by law, but performance under the terms of a joint agreement may be offered in satisfaction of the obligation or responsibility of the authority.

D. The behavioral health authority's participation in a joint agreement shall be described in the performance contract negotiated by the authority and the Department pursuant to § 37.2-608. The behavioral health authority shall provide a copy of a joint agreement to the governing body of the city or county that established the authority for its review and comment at least 30 days before executing the agreement.

E. A joint agreement shall state or describe:

1. The term or duration of the joint agreement, which shall be for at least one year but may be extended annually pursuant to provisions in the joint agreement;

2. The purpose or purposes of the joint agreement;

3. The behavioral health authorities or community services boards participating in the joint agreement;

4. The treatment, habilitation, or support services and associated managerial and administrative services and support to be provided through the joint agreement;

5. The manner in which the joint agreement will be administered and any necessary actions by the participants will be coordinated;

6. The manner in which the joint agreement will be financed, including the proportional share to be provided by each participating behavioral health authority or community services board, and the budget, which shall be incorporated as part of the joint agreement, will be established and administered;

7. The manner by which state general funds, fee revenues, and other funds for the operation of the joint agreement will be received and disbursed by the participating behavioral health authorities or

community services boards;

8. The manner by which activities conducted under the joint agreement will be monitored, managed, reported, and evaluated;

9. The permissible method or methods to be employed in accomplishing the partial or complete termination of the joint agreement and for disposing of any property acquired under the joint agreement upon such partial or complete termination; and

10. Any other matters that are necessary and proper for the effective operation of the joint agreement.

F. The joint agreement, in addition to the items enumerated in subsection E, may contain the following items.

1. The joint agreement may provide for an administrator or management body that shall be responsible for administering activities conducted under the joint agreement. The organization, term, powers and duties of any administrator or management body shall be specified in the joint agreement. This administrator or management body may be given authority through the joint agreement to employ staff and obtain services provided under the joint agreement though contracts on behalf of the behavioral health authorities or community services boards that have entered into the joint agreement. This administrator or management body shall defend or compromise, as appropriate, all claims, suits, actions, or proceedings arising from its performance under this joint agreement and shall obtain and maintain insurance sufficient for this purpose.

2. The joint agreement may specify the manner of acquiring, holding, and disposing of real and personal property required for or used in activities conducted under the joint agreement.

3. The joint agreement may describe how issues of liability will be handled and the types, amounts, and limits of any liability insurance, including whether such coverage will be obtained through the Department of Treasury's Division of Risk Management program pursuant to § 2.2-1839 or otherwise.

G. Any behavioral health authority entering into a joint agreement pursuant to this section may provide funds or property, personnel, or services to the administrator or management body responsible for administering activities conducted under this joint agreement that may be within its legal powers to sell, lease, give, or otherwise supply.

H. The behavioral health authorities or community services boards entering into a joint agreement pursuant to this section may create an administrator or management body to provide treatment, habilitation or support services on behalf of the participating community services boards or behavioral health authorities subject to the following conditions.

1. The administrator or management body created pursuant to this subsection shall operate under contract with the participating community services boards or behavioral health authorities, and this contract shall be exempt from the requirements of the Virginia Public Procurement Act, (§ 2.2-4300 et seq.).

2. The administrator or management body created pursuant to this subsection shall be subject to all statutory and regulatory requirements that apply to behavioral health authorities, including procurement, employment, Virginia Freedom of Information Act, disclosure and confidentiality of ~~consumer~~ *individual service* and administrative records, data collection and reporting, and all other aspects of their business and services.

3. The administrator or management body created pursuant to this subsection shall have the authority to receive funds from the participating community services boards or behavioral health authorities; public and private sources such as foundations, gifts and grants; and public and private reimbursement from private insurers and the Department of Medical Assistance Services; but the administrator or management body shall not be authorized to receive funds directly from the Department.

4. The administrator or management body created pursuant to this subsection shall defend or compromise, as appropriate, all claims, suits, actions, or proceedings arising from its performance under this joint agreement and shall obtain and maintain insurance sufficient for this purpose.

§ 37.2-700. Construction of state facilities; razing buildings.

A. The Commissioner, subject to the approval of the Board and the Governor, shall determine the necessity for and select the site of any new state facility and any land to be taken or purchased by the Commonwealth for the purposes of any new or existing state facility. The Commissioner shall have charge of the construction of any new building at any state facility, shall determine the design of the building, and may employ architects and other experts or hold competitions for plans and designs for this purpose. If any land or property is taken or purchased by the Board, title shall be taken in the name of the Commonwealth.

B. If any building standing on property under the supervision and control of the Department is in such a state of dilapidation or disrepair that it is, in the opinion of the Commissioner, dangerous to ~~consumers~~ *individuals receiving services*, employees of the Department, or other persons frequenting that property, the Commissioner may, with the approval of the Board and the Governor, cause the building to be torn down or razed. For this purpose, the Commissioner may contract with any person on the

terms that he deems expedient and may sell or otherwise dispose of the materials composing the building.

§ 37.2-701. Examination of properties; certain property not to be declared surplus.

The Commissioner is hereby authorized to examine the condition of the state facilities operated by the Department based upon the practices and methods employed by the Department in the care and treatment of ~~persons~~ *individuals* admitted to any state facility. No property that is being used for the care and treatment of ~~consumers~~ *individual receiving services* or that is reasonably related to the present or future needs of the Department for care and treatment of ~~consumers~~ *individuals receiving services* shall be declared surplus.

§ 37.2-702. Separate state facilities for elderly individuals; free-standing state facilities authorized.

The Department shall establish and operate a separate geriatric unit within each state facility that serves significant numbers of elderly individuals. Each unit shall provide care and treatment for those ~~persons~~ *individuals* and shall be separated in a reasonable manner from the rest of the state facility.

The Board may, giving full consideration to the needs and resources available, authorize the establishment of free-standing state facilities for ~~geriatric~~ ~~consumers~~ *elderly individuals receiving services*.

§ 37.2-703. Commissioner to prescribe system of records, accounts, and reports; access to records, accounts, and reports.

The Commissioner shall prescribe and cause to be established and maintained at all state facilities:

(a) A uniform, proper, and approved system of keeping the records and accounts and making reports of money received and disbursed; and

(b) An efficient system of keeping records concerning the ~~consumers~~ *individuals* admitted to or ~~residing~~ *receiving services* in each state facility.

The Board, the Commissioner, and their duly authorized agents shall at all times have access to such records, accounts, and reports required to be kept under the provisions of this title.

§ 37.2-704. Commissioner authorized to receive and expend social security and other federal payments for individuals receiving services in state facilities.

The Commissioner, under any provision of federal law and regulation and with the approval of the Governor, may be appointed or function as the agent to whom payments may be made on behalf of any beneficiary in state facilities. These payments shall be expended for the use and benefit of the ~~consumers~~ *individuals receiving services* to whom they would otherwise be payable, and any residue resulting from such payments shall be set aside in a special fund to the credit of the ~~consumer~~ *individual* on whose account the payment is made. The charges provided for by law for the care of the ~~consumer~~ *individual receiving services* shall be defrayed from such payments. The provisions of subsection C of § 37.2-705 shall apply to any payments received under this section.

§ 37.2-705. Private funds provided for individuals receiving services.

A. The Commissioner is hereby authorized to provide for the deposit with the director or other proper officer of any state facility of any money given or provided for the purpose of supplying extra comforts, conveniences, or services to any ~~consumer~~ *individual* in a state facility and any money otherwise received and held from, for, or on behalf of any ~~consumer~~ *individual in a state facility*.

B. All funds so provided or received shall be deposited to the credit of the state facility in a special fund in a bank or banks designated by the Commissioner and shall be disbursed as may be required by the respective donors or, in the absence of such requirement, as directed by the director.

C. The director of each state facility shall furnish to the Commissioner annually a statement showing the amounts of funds received and deposited, the amounts expended, and the amounts remaining in such special funds at the end of the year. The Commissioner shall have authority to invest so much of the remaining funds as he may deem proper in United States government bonds or other securities authorized by law for the investment of fiduciary funds. The interest from these investments may be expended as a part of a welfare fund at each state facility.

D. If any ~~consumer~~ *individual receiving services* for whose benefit any such fund has been or shall be provided has departed or shall depart from any state facility, leaving any unexpended balance in such fund, and the director, in the exercise of reasonable diligence, has been or shall be unable to find the person or persons entitled to such unexpended balance, the Commissioner may, after the lapse of three years from the date of such departure, authorize the use of the balance for the benefit of all or any of the ~~consumers~~ *individuals* then in the state facility.

§ 37.2-706. Disposal of unclaimed personal property of certain individuals in state facilities.

If any ~~consumer~~ *individual receiving services* in a state facility dies, is released, is discharged, or escapes and leaves any article of personal property, including bonds, money, and any intangible assets, in the custody of a state facility, the director of the state facility may, after notification in person, by telephone, or by registered mail to the ~~consumer~~ *individual, or the* known next-of-kin~~,~~ or personal representative of the ~~consumer~~ *individual* and after the lapse of three years from the date of the death,

release, discharge, or escape, if no claim has been made:

1. Sell the personal property at public or private sale and deposit the net proceeds in the welfare fund of the state facility;

2. Retain and issue for use of ~~current~~ ~~consumers~~ *individuals receiving services* articles of clothing suitable for continued use; or

3. Order destruction or other disposal of personal care articles, articles of clothing, and other belongings that are not suitable by reason of their nature or condition for sale or use by others, including personal and private papers, writings, drawings, or photographs that would compromise the privacy or confidentiality of any person who may be the author, creator, or subject of them.

§ 37.2-709. State facility reporting requirements; Virginia Office for Protection and Advocacy.

Each director of a state facility shall notify the Director of the Virginia Office for Protection and Advocacy, pursuant to § 51.5-39.12, in writing within 48 hours of critical incidents or deaths of ~~consumers~~ *individuals receiving services* in the state facility.

§ 37.2-710. State facility reporting requirements; Virginia Patient Level Data system.

State facilities shall report such ~~patient-level~~ data *about each individual receiving services* and financial data as may be required to the Virginia Patient Level Data system in accordance with Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1.

§ 37.2-711. Exchange of information.

The Department and state facilities may exchange ~~consumer-specific~~ *specific* information ~~for~~ ~~former~~ ~~and~~ ~~current~~ ~~consumers~~ *about individuals who are receiving or who have received services* with community services boards or behavioral health authorities to monitor the delivery, outcome, and effectiveness of services; however, no publicly available report or information produced or generated by them shall reveal the identity of any ~~consumer~~ *individual who is receiving or who has received services*. Publicly available information shall be designed to prevent persons from being able to gain access to combinations of ~~consumer~~ characteristic data elements *about individuals who are receiving or who have received services* that reasonably could be expected to reveal the identity of ~~any~~ ~~consumer~~ *any individual*. In order to collect unduplicated information, the Department, subject to all regulations adopted by the Board or by agencies of the United States government that govern confidentiality of ~~patient~~ information *about individuals who are receiving or who have received services*, may require that the individuals ~~receiving~~ ~~services~~ disclose or furnish their social security numbers.

§ 37.2-712. Collection and dissemination of information concerning religious preferences and affiliations.

Notwithstanding any provision of law to the contrary, any state facility may collect and disseminate information concerning the religious preferences and affiliations of ~~its~~ ~~consumers~~ *individuals receiving services*, provided that no ~~consumer~~ *individual* may be required to indicate his religious preference or affiliation and that no dissemination of the information shall be made except to categories of persons as to whom the ~~consumer~~ *individual* or his guardian or other legally authorized representative or other fiduciary has given his authorization that dissemination may be made.

§ 37.2-713. Residence of individuals in state facilities and school-age children in state facilities generally.

For purposes of eligibility for and receipt of social services and public assistance, each ~~consumer~~ *individual receiving services* in a state facility shall be deemed a resident of the county or city in which he resided at the time of his admission to the state facility, and not of the county or city in which the state facility is located. The Department shall be entitled to receive annually from the Board of Education and the school division where the ~~person~~ *individual* resided at the time of his admission a sum equal to the required local expenditure per pupil, as set forth in the appropriation act, and an additional payment for special education, as applicable, for support of the ~~person's~~ *individual's* education. This amount shall be paid by the Board of Education, and the Board shall then deduct that payment from the amount payable by the Board of Education from the basic school aid fund to the school division.

§ 37.2-714. Children born in state facilities.

Any child born in a state facility shall be deemed a resident of the county or city in which the mother resided at the time of her admission. The child shall be removed from the state facility as soon after birth as the health and well-being of the child permit and shall be delivered to his father or other member of his family. If he is unable to effect the child's removal as herein provided, the director of the state facility shall cause the filing of a petition in the juvenile and domestic relations district court of the county or city in which the child is present, requesting adjudication of the care and custody of the child under the provisions of § 16.1-278.3. If the mother has ~~been~~ ~~a~~ ~~consumer~~ *received services* in a state facility continuously for 10 months, the Department of Social Services shall have financial responsibility for the care of the child, and the custody of the child shall be determined in accordance with the provisions of § 16.1-278.3. The judge of such court shall take appropriate action to effect prompt removal of the child from the state facility.

§ 37.2-715. Who liable for expenses; amount.

Any person who has been or who may be admitted to any state facility or who is the subject of counseling or receives treatment from the staff of a state facility shall be deemed to be ~~a consumer~~ *an individual receiving services* for the purposes of this article.

The income and estate of ~~a consumer~~ *an individual receiving services* shall be liable for the expenses of his care, treatment or training, and maintenance in a state facility. Any person responsible for holding, managing, or controlling the income and estate of the ~~consumer~~ *individual receiving services* shall apply the income and estate toward the expenses of the ~~consumer's~~ *individual's* care, treatment or training, and maintenance.

Any person responsible for the support of ~~a consumer~~ *an individual receiving services* pursuant to § 20-61 shall be liable for the expenses of his care, treatment or training, and maintenance in a state facility. Any such person shall no longer be financially liable, however, when a cumulative total of 1,826 days of (i) care and treatment or training for the ~~consumer~~ *individual* in a state facility, (ii) utilization by the ~~consumer~~ *individual* of services or facilities under the jurisdiction or supervision of any community services board or behavioral health authority, or (iii) a combination of (i) and (ii) has passed and payment for or a written agreement to pay the charges for 1,826 days of care and services has been made. Not less than three hours of service per day shall be required to include one day in the cumulative total of 1,826 days of utilization of services under the jurisdiction or supervision of a community services board or behavioral health authority. In order to claim this exemption, the person legally liable for the ~~consumer~~ *individual* shall produce evidence sufficient to prove eligibility for it.

Such expenses shall not exceed the average cost for the particular type of service rendered and shall be determined no less frequently than annually by the Department in accordance with generally accepted accounting principles applicable to the health care industry. In no event shall recovery be permitted for amounts more than five years past due. A certificate of the Commissioner or his designee shall be prima facie evidence of the actual charges for the particular type of service rendered.

§ 37.2-717. Department to investigate financial ability to pay expenses; assessments and contracts by Department.

A. The Department shall investigate and determine which ~~consumers~~ *individuals receiving services* or parents, guardians, conservators, trustees, or other persons legally responsible for ~~consumers~~ *individuals receiving services* are financially able to pay the expenses of the care, treatment or training, and maintenance, and the Department shall notify these ~~consumers~~ *individuals* or their parents, guardians, conservators, trustees, or other legally responsible persons of the expenses of care, treatment or training, and maintenance and, in general, of the provisions of this article.

B. The Department may assess or contract with any ~~consumer~~ *individual receiving services* or the parent, guardian, conservator, trustee, or other person liable for his support and maintenance to recover care, treatment or training, and maintenance expenses. In arriving at the amount to be paid, the Department shall have due regard for the financial condition and estate of the ~~consumer~~ *individual*, his present and future needs, and the present and future needs of his lawful dependents. Whenever it is deemed necessary to protect him or his dependents, the Department may assess or agree to accept a monthly sum for the ~~consumer's~~ *individual's* care, treatment or training, and maintenance that is less than the actual per diem cost, provided that the estate of the ~~consumer~~ *individual* other than income shall not be depleted below the sum of $500. Nothing contained in this title shall be construed as making any such contract permanently binding upon the Department or prohibiting it from periodically reevaluating the actual per diem cost of care, treatment or training, and maintenance and the financial condition and estate of any ~~consumer~~ *individual receiving services*, his present and future needs, and the present and future needs of his lawful dependents and entering into a new agreement with the ~~consumer~~ *individual* or the parent, guardian, conservator, trustee, or other person liable for his support and maintenance, increasing or decreasing the sum to be paid for the ~~consumer's~~ *individual's* care, treatment or training, and maintenance.

C. All contracts made by and between the Department and any person acting in a fiduciary capacity for any ~~consumer~~ *individual receiving services* adjudicated to be incapacitated under the provisions of Article 1 (§ 37.2-1000 et seq.) of Chapter 10 ~~of this title~~ and all assessments made by the Department upon that ~~consumer~~ *individual* or his fiduciaries, providing for payment of the expenses of such ~~consumer~~ *individual* in any state facility, shall be subject to the approval of any circuit court having jurisdiction over the incapacitated ~~person's~~ *individual's* estate or for the county or city in which he resides or from which he was admitted to the state facility.

§ 37.2-718. Order to compel payment of expenses.

A. When any ~~consumer~~ *individual receiving services* or his guardian, conservator, trustee, or other person liable for his expenses fails to pay those expenses and it appears from investigation that the ~~consumer~~ *individual*, his guardian, conservator, trustee, or other person liable for his support is able or has sufficient estate to pay the expenses, the Department shall petition the appropriate court having

jurisdiction over the estate of the ~~consumer~~ *individual* or the court for the county or city in which the ~~consumer~~ *individual* resides or from which he was admitted to a state facility for an order to compel payment of the expenses by the person liable therefor. In any case in which a person liable for the support of the ~~consumer~~ *individual* is being proceeded against, the petition shall be directed to the appropriate court of the county or city in which the person liable for the support of the ~~consumer~~ *individual* resides.

B. The ~~consumer~~ *individual receiving services* and his estate shall first be liable for the payment of his expenses and thereafter, the person liable for the support of the ~~consumer~~ *individual*. Such person shall be the father, mother, husband, wife, or child of the ~~consumer~~ *individual* who has attained the age of majority. Multiple persons shall be jointly and severally liable. The Department shall collect part or all of the expenses from the several sources as appears proper under the circumstances and may proceed against all sources, except that the principal or income or both from a trust created for the benefit of the ~~consumer~~ *individual* shall be liable for payment only as provided in Article 5 (§ 55-545.01 et seq.) of the Uniform Trust Code. In evaluating the circumstances, the Department may consider any events related to the admission of the ~~consumer~~ *individual* for treatment or training that have affected the person liable, such as the infliction of serious injury by the ~~consumer~~ *individual* on the person who is liable. The proceedings for the collection of expenses shall conform to the procedure for collection of debts due the Commonwealth.

C. Notice of any hearing on the petition of the Department for an order to compel payment of expenses shall be served at least 15 days prior to the hearing and in the manner provided for the service of civil process on the ~~consumer~~ *individual receiving services* and, if there is one, on his guardian, conservator, or trustee, on the other person legally responsible for the ~~consumer's~~ *individual's* support, or on the person against whom the proceedings are instituted.

D. At the hearing, the court shall hear the allegations and proofs of the parties and shall by order require full or partial payment of maintenance by the liable parties, if they have sufficient ability, having due regard for the financial condition and estate of the ~~consumer~~ *individual receiving services* or any other person liable for his expenses, his present and future needs, and the present and future needs of his lawful dependents, if the proceeding is to charge the ~~consumer~~ *individual* or any other person liable with such expenses.

E. Upon application of any interested party and upon like notice and procedure, the court may at any time modify an order to compel payment of expenses. If the application is made by any party other than the Department, the notice shall be served on the Commissioner.

F. Any party aggrieved by an order or by the judgment of the court may appeal therefrom in the manner provided by law.

G. Any order or judgment rendered by the court hereunder shall have the same force and effect and shall be enforceable in the same manner and form as any judgment recovered in favor of the Commonwealth.

§ 37.2-719. Statement forms to be completed by the person liable for support of an individual receiving services.

The Commissioner may prescribe statement forms that shall be completed by those persons liable under § 37.2-715 for the support of the ~~consumer~~ *individual receiving services*. The statement shall be sworn to by the person and returned to the Commissioner within 30 days from the time the statement was mailed to the person. Should the person fail to return the properly completed statement to the Commissioner within 30 days, the Commissioner shall send another statement by registered mail. If the statement is not then returned properly completed within 30 days, the person to whom it was sent by registered mail shall be assessed $5 for each week or part of each week in excess of the 30-day period that the statement is overdue. The Department shall collect these assessments in the same manner as other sums due for the care, treatment or training, and maintenance of ~~consumers~~ *individuals receiving services* from the persons whose duty it was to complete each statement. When collected, these assessments shall be paid into the same fund into which other collections are paid under this article.

A statement of liability imposed by this section shall be placed in a prominent place, in boldface type, upon each statement form.

§ 37.2-720. When collection of expenses not required.

This article shall not be held or construed to require the Department to collect the expenses of the care, treatment or training, and maintenance of any indigent ~~consumer~~ *individual receiving services* from that ~~person~~ *individual* or from any person liable for him when investigation discloses that the indigent ~~consumer~~ *individual* or person liable for his support is without financial means or that such payment would work a hardship on the ~~person~~ *individual* or his family. Neither shall it be the duty or obligation of the Department to institute any proceedings provided for in this article to effect collection where investigation discloses that proceedings would be without effect or would work a hardship on the ~~consumer~~ *individual receiving services* or the person liable for his support.

§ 37.2-721. Liability of estate of the individual receiving services.

Upon the death of any ~~consumer or former consumer~~ *individual who is receiving or who has received services*, his estate shall be liable only for the charges remaining unpaid and not more than five years past due and the unsatisfied portion of any judgment rendered by a court in a proceeding under this article. Upon the death of any ~~consumer or former consumer~~ *individual who is receiving or who has received services*, the provisions of § 37.2-717, which prohibit depleting the ~~consumer's~~ *individual's* estate below $500, shall after funeral expenses have no further application, and such sum may be applied to the charges of the Department remaining unpaid or may be applied to the unsatisfied portion of any judgment.

Upon the death of any ~~consumer or former consumer~~ *individual who is receiving or who has received services* in the event amounts remain unpaid for his care, treatment or training, and maintenance, the Department, having reason to believe that the ~~consumer~~ *individual* died possessed of real or personal property from which reimbursement may be had, shall prepare and acknowledge, as deeds are acknowledged, a notice showing the name of the ~~consumer~~ *individual* and the actual per diem cost of maintenance due and shall file the notice within four months of the date of the ~~consumer's~~ *individual's* death in the office of the clerk of the court in which deeds are admitted to record in the county or city in which the real or personal property is located. The clerk of court shall record this notice as a lien is recorded, indexing it in the names of the ~~consumer~~*individual* and the Department. The filing of this notice shall create a lien against the estate, both real and personal, of the deceased ~~consumer~~ *individual* prior to all other claims of the same class except prior liens. No such claim shall be enforced against any real estate of the deceased ~~consumer~~ *individual* while such real estate is occupied by the surviving spouse of the ~~consumer~~ *individual* or while such real estate is occupied by any dependent child of the ~~consumer~~ *individual*.

§ 37.2-802. Interpreters in admission or certification proceedings.

A. In any proceeding pursuant to § 37.2-806 or §§ 37.2-809 through 37.2-820 in which a person who is deaf is alleged to have ~~mental retardation~~ *intellectual disability* or mental illness, an interpreter for the person shall be appointed by the district court judge or special justice before whom the proceeding is pending from a list of qualified interpreters provided by the Department for the Deaf and Hard-of-Hearing. The interpreter shall be compensated as provided for in § 37.2-804.

B. In any proceeding pursuant to § 37.2-806 or §§ 37.2-809 through 37.2-820 in which a non-English-speaking person is alleged to have ~~mental retardation~~ *intellectual disability* or mental illness or is a witness in such proceeding, an interpreter for the person shall be appointed by the district court judge or special justice, or in the case of §§ 37.2-809 through 37.2-813 a magistrate, before whom the proceeding is pending. Failure to appoint an interpreter when an interpreter is not reasonably available or when the person's level of English fluency cannot be determined shall not be a basis to dismiss the petition or void the order entered at the proceeding. The compensation for the interpreter shall be fixed by the court in accordance with the guidelines set by the Judicial Council of Virginia and shall be paid out of the state treasury.

§ 37.2-806. Judicial certification of eligibility for admission of persons with intellectual disability.

A. Whenever a person alleged to have ~~mental retardation~~ *intellectual disability* is not capable of requesting admission to a training center pursuant to § 37.2-805, a parent or guardian of the person or another responsible person may initiate a proceeding to certify the person's eligibility for admission pursuant to this section.

B. Prior to initiating the proceeding, the parent or guardian or other responsible person seeking the person's admission shall first obtain (i) a preadmission screening report that recommends admission to a training center from the community services board or behavioral health authority that serves the city or county where the person who is alleged to have ~~mental retardation~~ *intellectual disability* resides and (ii) the approval of the training center to which it is proposed that the person be admitted. The Board shall adopt regulations establishing the procedure and standards for the issuance of such approval. These regulations may include provision for the observation and evaluation of the person in a training center for a period not to exceed 48 hours. No person alleged to have ~~mental retardation~~ *intellectual disability* who is the subject of a proceeding under this section shall be detained on that account pending the hearing except for observation and evaluation pursuant to the provisions of this subsection.

C. Upon the filing of a petition in any city or county alleging that the person has ~~mental retardation~~ *intellectual disability*, is in need of training~~, treatment,~~ or habilitation, and has been approved for admission pursuant to subsection B ~~of this section~~, a proceeding to certify the person's eligibility for admission to the training center may be commenced. The petition shall be filed with any district court or special justice. A copy of the petition shall be personally served on the person named in the petition, his attorney, and his guardian or conservator. Prior to any hearing under this section, the judge or special justice shall appoint an attorney to represent the person. However, the person shall not be precluded from employing counsel of his choosing and at his expense.

D. The person who is the subject of the hearing shall be allowed sufficient opportunity to prepare his

defense, obtain independent evaluations and expert opinion at his own expense, and summons other witnesses. He shall be present at any hearing held under this section, unless his attorney waives his right to be present and the judge or special justice is satisfied by a clear showing and after personal observation that the person's attendance would subject him to substantial risk of physical or emotional injury or would be so disruptive as to prevent the hearing from taking place.

E. Notwithstanding the above, the judge or special justice shall summons either a physician or a clinical psychologist who is licensed in Virginia and is qualified in the assessment of persons with ~~mental retardation~~ *intellectual disability* or a person designated by the local community services board or behavioral health authority who meets the qualifications established by the Board. The physician, clinical psychologist, or community services board or behavioral health authority designee may be the one who assessed the person pursuant to subsection B ~~of this section~~. The judge or special justice also shall summons other witnesses when so requested by the person or his attorney. The physician, clinical psychologist, or community services board or behavioral health authority designee shall certify that he has personally assessed the person and has probable cause to believe that the person (i) does or does not have ~~mental retardation~~ *intellectual disability*, (ii) is or is not eligible for a less restrictive service, and (iii) is or is not in need of training~~, treatment,~~ or habilitation in a training center. The judge or special justice may accept written certification of a finding of a physician, clinical psychologist, or community services board or behavioral health authority designee, provided such assessment has been personally made within the preceding 30 days and there is no objection to the acceptance of the written certification by the person or his attorney.

F. If the judge or special justice, having observed the person and having obtained the necessary positive certification and other relevant evidence, specifically finds that (i) the person is not capable of requesting his own admission, (ii) the training center has approved the proposed admission pursuant to subsection B ~~of this section~~, (iii) there is no less restrictive alternative to training center admission, consistent with the best interests of the person who is the subject of the proceeding, and (iv) the person has ~~mental retardation~~ *intellectual disability* and is in need of training~~, treatment,~~ or habilitation in a training center, the judge or special justice shall by written order certify that the person is eligible for admission to a training center.

G. Certification of eligibility for admission hereunder shall not be construed as a judicial commitment for involuntary admission of the person but shall authorize the parent or guardian or other responsible person to admit the person to a training center and shall authorize the training center to accept the person.

§ 37.2-837. Discharge from state hospitals or training centers, conditional release, and trial or home visits for individuals.

A. Except for *an individual receiving services in* a state hospital ~~consumer~~ *who is* held upon an order of a court for a criminal proceeding, the director of a state hospital or training center may discharge, after the preparation of a discharge plan:

1. Any ~~consumer~~ *individual* in a state hospital who, in his judgment, (a) is recovered, (b) does not have a mental illness, or (c) is impaired or not recovered but whose discharge will not be detrimental to the public welfare or injurious to the ~~consumer~~ *individual*;

2. Any ~~consumer~~ *individual* in a state hospital who is not a proper case for treatment within the purview of this chapter; or

3. Any ~~consumer~~ *individual* in a training center who chooses to be discharged or, if the ~~consumer~~ *individual* lacks the mental capacity to choose, whose legally authorized representative chooses for him to be discharged. Pursuant to regulations of the Centers for Medicare & Medicaid Services and the Department of Medical Assistance Services, no ~~consumer~~ *individual* at a training center who is enrolled in Medicaid shall be discharged if the ~~consumer~~ *individual* or his legally authorized representative on his behalf chooses to continue receiving services in a training center.

For all individuals discharged, the discharge plan shall be formulated in accordance with the provisions of § 37.2-505 by the community services board or behavioral health authority that serves the city or county where the ~~consumer~~ *individual* resided prior to admission or by the board or authority that serves the city or county where the ~~consumer~~ *individual* or his legally authorized representative on his behalf chooses to reside immediately following the discharge. The discharge plan shall be contained in a uniform discharge document developed by the Department and used by all state hospitals, training centers, and community services boards or behavioral health authorities, and shall identify (i) the services, including mental health, ~~mental retardation~~ *developmental*, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the ~~consumer~~ *individual* will require upon discharge into the community and (ii) the public or private agencies that have agreed to provide these services. If the individual will be housed in an assisted living facility, as defined in § 63.2-100, the discharge plan shall identify the facility, document its appropriateness for housing and capacity to care for the ~~consumer~~ *individual*, contain evidence of the facility's agreement to admit and care for the ~~consumer~~ *individual*, and describe how the community services board or

behavioral health authority will monitor the ~~consumer's~~ *individual's* care in the facility.

B. The director may grant a trial or home visit to ~~a~~ ~~consumer~~ *an individual receiving services* in accordance with regulations adopted by the Board. The state facility granting a trial or home visit to ~~a~~ ~~consumer~~ *an individual* shall not be liable for his expenses during the period of that visit. Such liability shall devolve upon the relative, conservator, person to whose care the ~~consumer~~ *individual* is entrusted while on the trial or home visit, or the appropriate local department of social services of the county or city in which the ~~consumer~~ *individual* resided at the time of admission pursuant to regulations adopted by the State Board of Social Services.

C. Any ~~consumer~~ *individual* who is discharged pursuant to subdivision A 2 shall, if necessary for his welfare, be received and cared for by the appropriate local department of social services. The provision of public assistance or social services to the ~~consumer~~ *individual* shall be the responsibility of the appropriate local department of social services as determined by regulations adopted by the State Board of Social Services. Expenses incurred for the provision of public assistance to the ~~consumer~~ *individual* who is receiving 24-hour care while in an assisted living facility licensed pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2 shall be the responsibility of the appropriate local department of social services of the county or city in which the ~~consumer~~ *individual* resided at the time of admission.

§ 37.2-838. Discharge of individuals from a licensed hospital.

The person in charge of a licensed hospital may discharge any ~~consumer~~ *individual* involuntarily admitted who is recovered or, if not recovered, whose discharge will not be detrimental to the public welfare or injurious to the ~~consumer~~ *individual*, or who meets other criteria as specified in § 37.2-837. The person in charge of the licensed hospital may refuse to discharge any ~~consumer~~ *individual* involuntarily admitted, if, in his judgment, the discharge will be detrimental to the public welfare or injurious to the ~~consumer~~ *individual*. The person in charge of a licensed hospital may grant a trial or home visit to ~~a~~ ~~consumer~~ *an individual* in accordance with regulations adopted by the Board.

§ 37.2-839. Exchange of information between community services boards or behavioral health authorities and state facilities.

Community services boards or behavioral health authorities and state facilities may, when the individual has refused authorization, exchange the information required to prepare and implement a comprehensive individualized treatment plan, including a discharge plan as specified in subsection A of § 37.2-837. This section shall apply to all ~~consumers~~ ~~of~~ *individuals receiving services from* community services boards, behavioral health authorities, and state facilities.

When ~~a~~ ~~consumer~~ *an individual* who is deemed suitable for discharge pursuant to subsection A of § 37.2-837 or his guardian or conservator refuses to authorize the release of information that is required to formulate and implement a discharge plan as specified in subsection A of § 37.2-837, then the community services board or behavioral health authority may release without authorization to those service providers and human service agencies identified in the discharge plan only the information needed to secure those services specified in the plan.

The release of any other ~~consumer~~ information *about an individual receiving services* to any agency or ~~individual~~ *person* not affiliated directly or by contract with community services boards, behavioral health authorities, or state facilities shall be subject to all regulations adopted by the Board or by agencies of the United States government that govern confidentiality of patient information.

§ 37.2-840. Transfer of individuals receiving services.

A. The Commissioner may order the transfer of ~~a~~ ~~consumer~~ *an individual receiving services* from one state hospital to another or from one training center to another. When so transferred, in accordance with appropriate admission, certification, or involuntary admission criteria as provided in this chapter, ~~a~~ ~~consumer~~ *the individual* is hereby declared to be lawfully admitted to the state facility to which he is transferred.

B. If the guardian, conservator, or relative of ~~a~~ ~~consumer~~ *an individual receiving services* in a licensed hospital refuses or is otherwise unable to provide properly for his care and treatment, the person in charge of the licensed hospital may:

1. Apply to the Commissioner for the transfer of the ~~consumer~~ *individual* to a state hospital, or

2. Apply to the Director of the United States Veterans Affairs Medical Center for the transfer of the ~~consumer~~ *individual* to ~~such~~*the* center.

Upon the transfer, the state hospital or Veterans Affairs Medical Center may admit the ~~consumer~~ *individual* under the authority of the admission or order applicable to the licensed hospital from which the ~~consumer~~ *individual* was transferred. The transfer shall not alter any right of ~~a~~ ~~consumer~~ *an individual* under the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 nor shall the transfer divest a judge or special justice before whom a hearing or request therefor is pending of jurisdiction to conduct a hearing. Prior to accepting the transfer of any ~~consumer~~ *individual* from a licensed hospital, the Commissioner shall receive from that hospital a report that indicates that the ~~consumer~~ *individual* is

in need of further hospitalization. Upon admission of ~~a person~~ *an individual* to a state hospital pursuant to this section, the director of the state hospital shall notify the community services board or behavioral health authority that serves the city or county where the admitted ~~person~~ *individual* resides of the ~~person's~~ *individual's* name and local address and of the location of the state hospital to which the ~~person~~ *individual* has been admitted, provided that the ~~person~~ *individual* or his guardian has authorized the release of the information.

C. Whenever ~~a person~~ *an individual* is admitted by a state hospital or training center, the Commissioner, upon a recommendation by the community services board or behavioral health authority serving the ~~person's~~ *individual's* county or city of residence prior to his admission to the hospital or training center, may order the transfer of the ~~person~~ *individual* to any other hospital, training center, or Veterans Affairs hospital, center, or other facility or installation. Such other hospital, training center, or Veterans Affairs hospital, center, or other facility or installation may admit the ~~person~~ *individual* under the authority of the admission or order applicable to the hospital or training center from which the ~~person~~ *individual* was transferred. The transfer shall not alter any right of the ~~person~~ *individual* under the provisions of this chapter nor shall the transfer divest a judge or special justice before whom a hearing or request therefor is pending of jurisdiction to conduct such hearing.

§ 37.2-843. Providing drugs or medicines for certain individuals discharged from state facilities.

When any ~~consumer~~ *individual* is discharged from a state facility and he or the person liable for his care and treatment is financially unable to pay for or otherwise access drugs or medicines that are prescribed for him by a member of the medical staff of the state facility in order to mitigate or prevent a recurrence of the condition for which he has received care and treatment in the state facility, the Department or the community services board or behavioral health authority serving the ~~consumer's~~ *individual's* county or city of residence may, from funds appropriated to the Department for that purpose, provide the ~~consumer~~ *individual* with such drugs and medicines, which shall be dispensed only in accordance with law.

§ 37.2-1028. Surrender of incapacitated person's estate not limited by provisions relating to expenses.

Nothing in §§ 37.2-715 through 37.2-721 shall be construed to relieve the fiduciary of any ~~consumer~~ *individual receiving services* in a state facility from paying to the state facility a sum for extra comforts or to make it unlawful for the fiduciary to make voluntary gifts that the fiduciary may deem conducive to the happiness and comfort of the ~~consumer~~ *individual*.

§ 37.2-1101. Judicial authorization of treatment.

A. An appropriate circuit court or district court judge or special justice may authorize treatment for a mental or physical disorder on behalf of an adult person, in accordance with this section, if it finds upon clear and convincing evidence that (i) the person is either incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder and (ii) the proposed treatment is in the best interest of the person.

B. Any person may request authorization of treatment for an adult person by filing a petition in the circuit court or district court or with a special justice of the county or city in which the person for whom treatment is sought resides or is located or in the county or city in which the proposed place of treatment is located. Upon filing the petition, the petitioner or the court shall deliver or send a certified copy of the petition to the person for whom treatment is sought and, if the identity and whereabouts of the person's next of kin are known, to the next of kin.

C. As soon as reasonably possible after the filing of the petition, the court shall appoint an attorney to represent the interests of the person for whom treatment is sought at the hearing. However, the appointment shall not be required in the event that the person or another interested person on behalf of the person elects to retain private counsel at his own expense to represent the interests of the person at the hearing. If the person for whom treatment is sought is indigent, his counsel shall be paid by the Commonwealth as provided in § 37.2-804 from funds appropriated to reimburse expenses incurred in the involuntary admission process. However, this provision shall not be construed to prohibit the direct payment of an attorney's fee by the person or an interested person on his behalf, which fee shall be subject to the review and approval of the court.

D. Following the appointment of an attorney pursuant to subsection C, the court shall schedule an expedited hearing of the matter. The court shall notify the person for whom treatment is sought, his next of kin, if known, the petitioner, and their respective counsel of the date and time for the hearing. In scheduling the hearing, the court shall take into account the type and severity of the alleged physical or mental disorder, as well as the need to provide the person's attorney with sufficient time to adequately prepare his client's case.

E. Notwithstanding the provisions of subsections B and D regarding delivery or service of the petition and notice of the hearing to the next of kin of any person for whom consent to treatment is sought, if the person is a patient in any hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123 or ~~a resident~~ *an individual receiving services* in any facility operated by the Department of Behavioral Health and Developmental Services and such person has no known

guardian or legally authorized representative, at the time the petition is filed, the court may dispense with the requirement of any notice to the next of kin. If treatment is necessary to prevent imminent or irreversible harm, the court in its discretion may dispense with the requirement of providing notice. This subsection shall not be construed to interfere with any decision made pursuant to the Health Care Decisions Act (§ 54.1-2981 et seq.).

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

G. Prior to authorizing treatment pursuant to this section, the court shall find:

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

2. That the person for whom treatment is sought is incapable of making an informed decision regarding treatment or is physically or mentally incapable of communicating such a decision;

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

4. That the proposed treatment is in the best interest of the person and is medically and ethically appropriate with respect to (i) the medical diagnosis and prognosis and (ii) any other information provided by the attending physician of the person for whom treatment is sought. However, the court shall not authorize a proposed treatment that is proven by a preponderance of the evidence to be contrary to the person's religious beliefs or basic values, unless the treatment is necessary to prevent death or a serious irreversible condition. The court shall take into consideration the right of the person to rely on nonmedical, remedial treatment in the practice of religion in lieu of medical treatment.

H. Any order authorizing treatment pursuant to subsection A shall describe any treatment authorized and may authorize generally such related examinations, tests, or services as the court may determine to be reasonably related to the treatment authorized. Treatment authorized by such order may include palliative care as defined in § 32.1-162.1, if appropriate. The order shall require the treating physician to review and document the appropriateness of the continued administration of antipsychotic medications not less frequently than every 30 days. The order shall require the treating physician or other service provider to report to the court and the person's attorney any change in the person's condition resulting in probable restoration or development of the person's capacity to make and to communicate an informed decision prior to completion of any authorized treatment and related services. The order may further require the treating physician or other service provider to report to the court and the person's attorney any change in circumstances regarding any authorized treatment or related services that may indicate that such authorization is no longer in the person's best interests. Upon receipt of such report or upon the petition of any interested party, the court may enter an order withdrawing or modifying its prior authorization as it deems appropriate. Any petition or order under this section may be orally presented or entered, provided a written order shall be subsequently executed.

§ 38.2-3323. Group life insurance coverages of spouses, dependent children, and other persons.

A. Coverage under a group life insurance policy, except a policy issued pursuant to § 38.2-3318.1 B, may be extended to insure:

1. The spouse and any child who is under the age of 19 years or who is a dependent and a full-time student under 25 years of age, or any class of spouses and dependent children, of each insured group member who so elects; and

2. Any other person in whom the insured group member has an insurable interest as defined in §§ 38.2-301 and 38.2-302 as may mutually be agreed upon by the insurer and the group policyholder.

The amount of insurance on the life of a spouse, child, or other person shall not exceed the amount of insurance for which the insured group member is eligible.

B. A spouse insured under this section shall have the same conversion right to the insurance on his or her life as the insured group member.

C. Notwithstanding the provisions of § 38.2-3331, one certificate may be issued for each insured group member if a statement concerning any spouse's, dependent child's, or other person's coverage is included in the certificate.

D. In addition to the coverages afforded by the provisions of this section, any such plan for group life insurance which includes coverage for children shall afford coverage to any child who is both (i) incapable of self-sustaining employment by reason of ~~mental retardation~~ *intellectual disability* or physical handicap and (ii) chiefly dependent upon the employee for support and maintenance. Upon

request of the insurer, proof of incapacity and dependency shall be furnished to the insurer by the insured group member within 31 days of the child's attainment of the specified age. Subsequent proof may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the specified age. The insurer shall be allowed to charge a premium at the insurer's then customary rate applicable to such group policy for such extended coverage.

E. 1. Upon termination of such group coverage of a child, the child shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual life insurance policy without disability or other supplementary benefits, if:

a. An application for the individual policy is made, and the first premium paid to the insurer, within 31 days after such termination; and

b. The individual policy, at the option of such person, is on any one of the forms then customarily issued by the insurer at the age and for the amount applied for, except that the group policy may exclude the option to elect term insurance;

c. The individual policy is in an amount not in excess of the amount of life insurance which ceases because of such termination, less the amount of any life insurance for which such person becomes eligible under the same or any other group policy within 31 days after such termination, provided that any amount of insurance which has matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

d. The premium on the individual policy is at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to the individual age attained on the effective date of the individual policy.

2. Subject to the same conditions set forth above, the conversion privilege shall be available (i) to a surviving dependent, if any, at the death of the group member, with respect to the coverage under the group policy which terminates by reason of such death, and (ii) to the dependent of the group member upon termination of coverage of the dependent, while the group member remains insured under the group policy, by reason of the dependent ceasing to be a qualified family member under the group policy.

§ 38.2-3409. Coverage of dependent children.

A. Any group or individual accident and sickness insurance policy or subscription contract delivered or issued for delivery in this Commonwealth which provides that coverage of a dependent child shall terminate upon that child's attainment of a specified age, shall also provide in substance that attainment of the specified age shall not terminate the child's coverage during the continuance of the policy while the dependent child is and continues to be both: (i) incapable of self-sustaining employment by reason of ~~mental retardation~~ *intellectual disability* or physical handicap, and (ii) chiefly dependent upon the policyowner for support and maintenance.

B. Proof of incapacity and dependency shall be furnished to the insurer by the policyowner within ~~thirty-one~~ *31* days of the child's attainment of the specified age. Subsequent proof may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the specified age.

C. The insurer may charge an additional premium for any continuation of coverage beyond the specified age. The additional premium shall be determined by the insurer on the basis of the class of risks applicable to the child.

§ 40.1-28.9. Definition of terms.

As used in this article:

A. "Employer" includes any individual, partnership, association, corporation, business trust, or any person or groups of persons acting directly or indirectly in the interest of an employer in relation to an employee;

B. "Employee" includes any individual employed by an employer, except the following:

1. Any person employed as a farm laborer or farm employee;

2. Any person employed in domestic service or in or about a private home or in an eleemosynary institution primarily supported by public funds;

3. Any person engaged in the activities of an educational, charitable, religious or nonprofit organization where the relationship of employer-employee does not, in fact, exist, or where the services rendered to such organizations are on a voluntary basis;

4. Newsboys, shoe-shine boys, caddies on golf courses, babysitters, ushers, doormen, concession attendants and cashiers in theaters;

5. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and operators;

6. Any person under the age of ~~eighteen~~ *18* in the employ of his father, mother or legal guardian;

7. Any person confined in any penal~~,~~ *or* corrective ~~or mental~~ institution of the State or any of its

political subdivisions *or admitted to a state hospital or training center operated by the Department of Behavioral Health and Developmental Services*;

8. Any person employed by a boys' and/or girls' summer camp;

9. Any person under the age of ~~sixteen~~ *16*, regardless of by whom employed;

10. Any person who normally works and is paid based on the amount of work done;

11. (Reserved);

12. Any person whose employment is covered by the Fair Labor Standards Act of 1938 as amended;

13. Any person whose earning capacity is impaired by physical ~~or mental~~ deficiency, *mental illness, or intellectual disability*;

14. Students and apprentices participating in a bona fide educational or apprenticeship program;

15. Any person employed by an employer who does not have four or more persons employed at any one time; provided that husbands, wives, sons, daughters and parents of the employer shall not be counted in determining the number of persons employed;

16. Any person who is less than ~~eighteen~~ *18* years of age and who is currently enrolled on a full-time basis in any secondary school, institution of higher education or trade school, provided the person is not employed more than ~~twenty~~ *20* hours per week;

16A. Any person of any age who is currently enrolled on a full-time basis in any secondary school, institution of higher education or trade school and is in a work-study program or its equivalent at the institution at which he or she is enrolled as a student;

17. Any person who is less than ~~eighteen~~ *18* years of age and who is under the jurisdiction and direction of a juvenile and domestic relations district court.

C. "Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash on demand or upon acceptance at full value; provided, wages may include the reasonable cost to the employer of furnishing meals and for lodging to an employee, if such board or lodging is customarily furnished by the employer, and used by the employee.

D. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, except in the case of an employee who establishes by clear and convincing evidence that the actual amount of tips received by him was less than the amount determined by the employer. In such case, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount.

§ 46.2-314. Mental incapacity.

No driver's license shall be issued to any applicant who has previously been adjudged incapacitated and who has not, at the time of such application, been (i) adjudged restored to capacity by judicial decree or (ii) released from a hospital for ~~the mentally ill~~ *individuals with mental illness* on a certificate of the superintendent of the hospital that the person is capable. In either case, no driver's license shall be issued to him unless the Department is satisfied that he is competent to drive a motor vehicle with safety to persons and property.

§ 46.2-400. Suspension of license of person incompetent because of mental illness, intellectual disability, alcoholism, or drug addiction; return of license; duty of clerk of court.

The Commissioner, on receipt of notice that any person has been legally adjudged to be incapacitated in accordance with Article 1 (§ 37.2-1000 et seq.) of Chapter 10 of Title 37.2 or that a person discharged from ~~an institution~~ *a facility* operated or licensed by the Department of Behavioral Health and Developmental Services is, in the opinion of the authorities of the ~~institution~~ *facility*, not competent because of mental illness, ~~mental retardation~~ *intellectual disability*, alcoholism, or drug addiction to drive a motor vehicle with safety to persons or property, shall forthwith suspend his license; but he shall not suspend the license if the person has been adjudged competent by judicial order or decree.

In any case in which the person's license has been suspended prior to his discharge it shall not be returned to him unless the Commissioner is satisfied, after an examination such as is required of applicants by § 46.2-325, that the person is competent to drive a motor vehicle with safety to persons and property.

The clerk of the court in which the adjudication is made shall forthwith send a certified copy or abstract of such adjudication to the Commissioner.

§ 46.2-401. Reports to Commissioner of discharge of individuals from state facilities.

Whenever practicable, at least ~~ten~~ *10* days prior to the time when any ~~patient~~ *individual* is to be discharged from any ~~institution~~ *facility* operated or licensed by the Department of Behavioral Health and Developmental Services, if the mental condition of the ~~patient~~ *individual* is, because of mental illness, ~~mental retardation~~ *intellectual disability*, alcoholism, or drug addiction, in the judgment of the director or chief medical officer of the ~~institution~~ *facility* such as to prevent him from being competent to drive a motor vehicle with safety to persons and property, the director or chief medical officer shall forthwith report to the Commissioner, in sufficient detail for accurate identification, the date of discharge of the ~~patient~~ *individual*, together with a statement concerning his ability to drive a motor vehicle.

§ 51.1-513.3. Long-term care insurance program for employees of local governments, local officers, and teachers.

A. The Board shall maintain and administer a plan or plans, hereinafter "plan" or "plans," for providing long-term care coverage for employees of local governments, local officers, and teachers. The plan or plans may also extend coverage to eligible family members of such employees of local governments, local officers, or teachers. The plan or plans may, but need not, be rated separately from any plan developed to provide long-term care coverage for state employees under § 51.1-513.2. Participation in such insurance plan or plans shall be (i) voluntary, (ii) approved by the participant's respective governing body, or by the local school board in the case of teachers, and (iii) subject to policies and procedures adopted by the Board.

B. For the purposes of this section:

"Employees of local governments" shall include all officers and employees, working an average of at least 20 hours per week, of the governing body of any county, city, or town, and the directing or governing body of any political entity, subdivision, branch or unit of the Commonwealth or of any commission or public authority or body corporate created by or under an act of the General Assembly specifying the power or powers, privileges or authority capable of exercise by the commission or public authority or body corporate, as distinguished from § 15.2-1300, 15.2-1303, or similar statutes, provided that the officers and employees of a social services department; welfare board; ~~mental health, mental retardation and substance abuse~~ *community* services board *or behavioral health authority*; or library board of a county, city, or town shall be deemed to be employees of local government.

"Local officer" means the treasurer, registrar, commissioner of the revenue, attorney for the Commonwealth, clerk of a circuit court, sheriff, or constable of any county or city or deputies or employees, working an average of at least 20 hours per week, of any of the preceding local officers.

"Teacher" means any employee of a county, city, or other local public school board working an average of at least 20 hours per week.

§ 51.5-3. Definitions.

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

"Case management" is a dynamic collaborative process that utilizes and builds on the strengths and resources of consumers to assist them in identifying their needs, accessing and coordinating services, and achieving their goals. The major collaborative components of case management services include advocacy, assessment, planning, facilitation, coordination, and monitoring.

"Case management system" is a central point of contact linking a wide variety of evolving services and supports that are (i) available in a timely, coordinated manner, (ii) physically and programmatically accessible, and (iii) consumer-directed with procedural safeguards to ensure responsiveness and accountability.

"Client" means any person receiving a service provided by the personnel or facilities of a public or private agency, whether referred to as a client, participant, patient, resident, or other term.

"Commissioner" means the Commissioner of Rehabilitative Services.

"Consumer" is, with respect to case management services, a person with a disability or his designee, guardian, conservator or committee.

"Council" means the State Rehabilitation Council.

"Mental impairment" means (i) a disability attributable to ~~mental retardation~~ *intellectual disability*, autism, or any other neurologically handicapping condition closely related to ~~mental retardation~~ *intellectual disability* and requiring treatment similar to that required by ~~mentally retarded~~ individuals *with intellectual disability*; or (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions, including central nervous system disorders or significant discrepancies among mental functions of an individual. For the purposes of § 51.5-41, the term "mental impairment" does not include active alcoholism or current drug addiction and does not include any mental impairment, disease or defect that has been successfully asserted by an individual as a defense to any criminal charge.

"Otherwise qualified person with a disability" means a person with a disability who:

1. For the purposes of § 51.5-41, is qualified to perform the duties of a particular job or position; or

2. For the purposes of § 51.5-42, meets all the requirements for admission to an educational institution or meets all the requirements for participation in its extracurricular programs.

"Person with a disability" means any person who has a physical or mental impairment that substantially limits one or more of his major life activities or has a record of such impairment and that:

1. For purposes of § 51.5-41, is unrelated to the individual's ability to perform the duties of a particular job or position, or is unrelated to the individual's qualifications for employment or promotion;

2. For purposes of § 51.5-42, is unrelated to the individual's ability to utilize and benefit from educational opportunities, programs, and facilities at an educational institution;

3. For purposes of § 51.5-44, is unrelated to the individual's ability to utilize and benefit from a

place of public accommodation or public service;

4. For purposes of § 51.5-45, is unrelated to the individual's ability to acquire, rent, or maintain property.

"Physical impairment" means any physical condition, anatomic loss, or cosmetic disfigurement that is caused by bodily injury, birth defect, or illness.

"Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation.

§ 51.5-30. Cooperative agreements with community services boards and schools.

No services funded under the authority of this chapter shall be provided to:

1. Persons whose primary impairment is mental illness, ~~mental retardation~~ *intellectual disability*, or substance abuse, except by cooperative agreement with the local community services board established pursuant to Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 *or the behavioral health authority established pursuant to Chapter 6 (§ 37.2-600 et seq.) of Title 37.2* when that board *or authority* is currently offering the same services; or

2. Public school-aged persons, except by cooperative agreement with that person's school.

§ 51.5-39.7. (See Editor's notes) Ombudsman services for persons with disabilities.

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

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

2. When appropriate, provide written notice of a complaint to the Department of Behavioral Health and Developmental Services or any other appropriate agency within seven days after receiving the complaint. The Department or agency shall report its findings and actions no later than ~~fourteen~~ *14* days after receiving the complaint;

3. Immediately refer a complaint made under this section to the Department of Behavioral Health and Developmental Services or any other appropriate governmental agency whenever the complaint involves an immediate and substantial threat to the health or safety of a person with ~~mental retardation~~ *intellectual disability*, developmental disabilities, mental illness, or other disability. The Department or agency receiving the complaint shall report its findings and actions no later than ~~forty-eight~~ *48* hours following its receipt of the complaint;

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

5. Advise the complainant and any person with a disability affected by the complaint, no more than ~~thirty~~ *30* days after it receives the complaint, of any action it has taken and of any opinions and recommendations it has with respect to the complaint. The ombudsman section may request any party affected by the opinions or recommendations to notify the section, within a time period specified by the section, of any action the party has taken on its recommendation; and

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

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

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

complaints.

§ 51.5-39.8. Confidentiality of information.

A. All documentary and other evidence received or maintained by the Office or its agents in connection with specific complaints or investigations shall be confidential and not subject to the provisions concerning disclosure of public records under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However, access to one's own records shall not be denied unless otherwise prohibited by state or federal law. Records concerning closed cases shall be subject to the disclosure requirements of the Virginia Freedom of Information Act, but in a manner that does not identify any complainant or any person with mental illness, ~~mental retardation~~ *intellectual disability*, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

B. Communications between employees and agents of the Office and its clients or prospective clients concerning specific complaints, investigations or cases shall be confidential.

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

1. Issue a public report of the results of an investigation of a founded complaint that does not release the identity of any complainant or any person with mental illness, ~~mental retardation~~ *intellectual disability*, developmental disabilities or other disability, unless (a) such complainant or person or his legal representative consents in writing to such disclosure or (b) such disclosure is required by court order; and

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

§ 51.5-39.12. Notification of critical incidents and deaths in state facilities.

Notwithstanding any other provision of law, the directors of state facilities as defined in § 37.2-100 shall notify the Director of the Office in writing within ~~forty-eight~~ *48* hours of critical incidents or deaths of ~~patients or residents~~ *individuals receiving services* in state facilities. For purposes of this section, a critical incident shall be defined as serious bodily injury or loss of consciousness requiring medical treatment. The Commissioner of the Department of Behavioral Health and Developmental Services shall provide to the Director of the Office a written report setting forth the known facts of critical incidents or deaths of ~~patients or residents of~~ *individuals receiving services in* state facilities within ~~fifteen~~ *15* working days of the critical incident or death.

§ 53.1-40.3. Place of hearing or proceeding.

Any hearing held by a court pursuant to § 53.1-40.1 or ~~§~~ 53.1-40.2 may be held in any courtroom available within the county or city wherein the prisoner is located or any appropriate place which may be made available by the Director and approved by the judge. Nothing herein shall be construed as prohibiting holding the hearing on the grounds of a state or local correctional facility or a hospital or facility for the care and treatment of ~~the mentally ill~~ *individuals with mental illness*.

§ 53.1-40.5. Transfer of prisoner involuntarily admitted.

Whenever a prisoner is admitted to a hospital or facility for the care and treatment of ~~the mentally ill~~ *individuals with mental illness*, the Director may order the transfer of the prisoner to any other willing hospital or facility for the care and treatment of ~~the mentally ill~~ *individuals with mental illness*, and such other hospital or facility is authorized to admit such prisoner under the authority of the commitment order applicable to the hospital or facility from which such prisoner was transferred. No such transfer shall alter any right of a prisoner under the provisions of this article nor shall such transfer divest a judge or court, before which a hearing or request therefor is pending, of jurisdiction to conduct such hearing.

§ 53.1-40.7. Discharge of prisoner involuntarily admitted.

A. The prisoner shall be discharged from a hospital or facility for the care and treatment of ~~the mentally ill~~ *individuals with mental illness* to a state or local correctional facility designated by the Director if there is no further need for involuntary hospitalization or at the expiration of 180 days unless involuntarily committed by further petition and order of a court as provided herein.

B. Notwithstanding the provisions of subsection A, if there is no further need for involuntary hospitalization, the prisoner may be retained in such hospital or facility if the prisoner (i) is capable of and consents to voluntary admission, and (ii) has been examined by a licensed physician, psychiatrist, or clinical psychologist acting on staff within his area of expertise and is determined to be in need of continued hospitalization.

§ 53.1-216. Governor to execute; form of compact.

The Governor is authorized and requested to execute, on behalf of the Commonwealth, with any other state or states legally joining therein a compact which shall be in form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I.

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, and with the Federal Government, thereby serving the best interest of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II.

As used in this compact, unless the context clearly requires otherwise:

a. "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

b. "Sending state" means a state party to this compact in which conviction or court commitment was had.

c. "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

d. "Inmate" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

e. "Institution" means any penal or correctional facility, including but not limited to a facility for ~~the mentally ill or mentally defective~~ *individuals with mental illness or intellectual disability,* in which inmates as defined in d above may lawfully be confined.

ARTICLE III.

a. Each party state may make one or more contracts with any one or more of the other party states, or with the Federal Government, for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(1) Its duration.

(2) Payments to be made to the receiving state or to the Federal Government, by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

(3) Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

(4) Delivery and retaking of inmates.

(5) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

b. The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV.

a. Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

b. The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

c. Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

d. Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a

source of information for the sending state.

e. All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

f. Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

g. Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

h. Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

i. The parents, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V.

a. Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharge from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

b. An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI.

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally-aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII.

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

ARTICLE VIII.

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate official of all other party states. An actual withdrawal shall not take effect until one year after the notice provided in said statute has been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before effective date of withdrawal, a withdrawing state shall remove to its territory, at its

own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX.

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X.

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

§ 54.1-701. Exemptions.

The provisions of this chapter shall not apply to:

1. Persons authorized by the laws of the Commonwealth to practice medicine and surgery or osteopathy or chiropractic;

2. Registered nurses licensed to practice in the Commonwealth;

3. Persons employed in state or local penal or correctional institutions, rehabilitation centers, sanatoria, or institutions for care and treatment of ~~the mentally ill or mentally deficient~~ *individuals with mental illness or intellectual disability*, or for care and treatment of geriatric patients, as barbers, cosmetologists, wax technicians, nail technicians, hair braiders, estheticians, barber instructors, cosmetology instructors, wax technician instructors, nail technician instructors, or esthetics instructors who practice only on inmates of or patients in such sanatoria or institutions;

4. Persons licensed as funeral directors or embalmers in the Commonwealth;

5. Gratuitous services as a barber, nail technician, cosmetologist, wax technician, hair braider, tattooer, body-piercer, or esthetician;

6. Students enrolled in an approved school taking a course in barbering, nail care, cosmetology, waxing, hair braiding, tattooing, body-piercing, or esthetics;

7. Persons working in a cosmetology salon whose duties are expressly confined to hair braiding or the shampooing and cleansing of human hair under the direct supervision of a cosmetologist or barber;

8. Apprentices serving in a barbershop, nail salon, waxing salon, cosmetology salon, hair braiding salon, or esthetics spa licensed by the Board in accordance with the Board's regulations;

9. Schools of barbering, nail care, waxing, cosmetology, or hair braiding in public schools; and

10. Persons whose activities are confined solely to applying make-up, including such activities that are ancillary to applying make-up.

§ 54.1-2970. Medical treatment for certain persons incapable of giving informed consent.

When a delay in treatment might adversely affect recovery, a licensed health professional or licensed hospital shall not be subject to liability arising out of a claim based on lack of informed consent or be prohibited from providing surgical, medical or dental treatment to an individual who is ~~a patient or resident of a hospital or~~ *receiving service in a* facility operated by the Department of Behavioral Health and Developmental Services or ~~to a consumer~~ who is receiving case management services from a community services board or behavioral health authority and who is incapable of giving informed consent to the treatment by reason of mental illness or ~~mental retardation~~ *intellectual disability* under the following conditions:

1. No legally authorized guardian or committee was available to give consent;

2. A reasonable effort is made to advise a parent or other next of kin of the need for the surgical, medical or dental treatment;

3. No reasonable objection is raised by or on behalf of the alleged incapacitated person; and

4. Two physicians, or in the case of dental treatment, two dentists or one dentist and one physician, state in writing that they have made a good faith effort to explain the necessary treatment to the individual, and they have probable cause to believe that the individual is incapacitated and unable to consent to the treatment by reason of mental illness or ~~mental retardation~~ *intellectual disability* and that delay in treatment might adversely affect recovery.

The provisions of this section shall apply only to the treatment of physical injury or illness and not to any treatment for a mental, emotional or psychological condition.

Treatment pursuant to this section of an individual's mental, emotional or psychological condition when the individual is unable to make an informed decision and when no legally authorized guardian or committee is available to provide consent shall be governed by regulations ~~promulgated~~ *adopted* by the

State Board of Behavioral Health and Developmental Services under § 37.2-400.

§ 54.1-2982. Definitions.

As used in this article:

"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983.

"Agent" means an adult appointed by the declarant under an advance directive, executed or made in accordance with the provisions of § 54.1-2983, to make health care decisions for him. The declarant may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of his body pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1.

"Attending physician" means the primary physician who has responsibility for the health care of the patient.

"Capacity reviewer" means a licensed physician or clinical psychologist who is qualified by training or experience to assess whether a person is capable or incapable of making an informed decision.

"Declarant" means an adult who makes an advance directive, as defined in this article, while capable of making and communicating an informed decision.

"Durable Do Not Resuscitate Order" means a written physician's order issued pursuant to § 54.1-2987.1 to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest. For purposes of this article, cardiopulmonary resuscitation shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, and defibrillation and related procedures. As the terms "advance directive" and "Durable Do Not Resuscitate Order" are used in this article, a Durable Do Not Resuscitate Order is not and shall not be construed as an advance directive.

"Health care" means the furnishing of services to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability, including but not limited to, medications; surgery; blood transfusions; chemotherapy; radiation therapy; admission to a hospital, nursing home, assisted living facility, or other health care facility; psychiatric or other mental health treatment; and life-prolonging procedures and palliative care.

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, ~~mental retardation~~ *intellectual disability*, or any other mental or physical disorder that precludes communication or impairs judgment, to make an informed decision about providing, continuing, withholding or withdrawing a specific health care treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed health care decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered incapable of making an informed decision.

"Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the dying process. The term includes artificially administered hydration and nutrition. However, nothing in this act shall prohibit the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain, including the administration of pain relieving medications in excess of recommended dosages in accordance with §§ 54.1-2971.01 and 54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include cardiopulmonary resuscitation.

"Patient care consulting committee" means a committee duly organized by a facility licensed to provide health care under Title 32.1 or Title 37.2, or a hospital or nursing home as defined in § 32.1-123 owned or operated by an agency of the Commonwealth that is exempt from licensure pursuant to § 32.1-124, to consult on health care issues only as authorized in this article. Each patient care consulting committee shall consist of five individuals, including at least one physician, one person licensed or holding a multistate licensure privilege under Chapter 30 (§ 54.1-3000 et seq.) to practice professional nursing, and one individual responsible for the provision of social services to patients of the facility. At least one committee member shall have experience in clinical ethics and at least two committee members shall have no employment or contractual relationship with the facility or any involvement in the management, operations, or governance of the facility, other than serving on the patient care consulting committee. A patient care consulting committee may be organized as a subcommittee of a standing ethics or other committee established by the facility or may be a separate and distinct committee. Four members of the patient care consulting committee shall constitute a quorum of the patient care consulting committee.

"Persistent vegetative state" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner, other than reflex activity of muscles and nerves for low level conditioned response, and from which, to a reasonable degree of medical probability, there can be no recovery.

"Physician" means a person licensed to practice medicine in the Commonwealth of Virginia or in the jurisdiction where the health care is to be rendered or withheld.

"Terminal condition" means a condition caused by injury, disease or illness from which, to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is in a persistent vegetative state.

"Witness" means any person over the age of 18, including a spouse or blood relative of the declarant. Employees of health care facilities and physician's offices, who act in good faith, shall be permitted to serve as witnesses for purposes of this article.

§ 58.1-638. Disposition of state sales and use tax revenue; localities' share; Game Protection Fund.

A. The Comptroller shall designate a specific revenue code number for all the state sales and use tax revenue collected under the preceding sections of this chapter.

1. The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided in this section, to the Transportation Trust Fund as defined in § 33.1-23.03:1. Of the funds paid to the Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund as provided in this section; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund as provided in this section; and an aggregate of 14.5 percent in fiscal year 1998-1999 and 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass Transit Fund as provided in this section. The Fund's share of such net revenue shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

2. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Port Fund.

a. The Commonwealth Port Fund shall be established on the books of the Comptroller and the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it. Funds may be paid to any authority, locality or commission for the purposes hereinafter specified.

b. The amounts allocated pursuant to this section shall be allocated by the Commonwealth Transportation Board to the Board of Commissioners of the Virginia Port Authority to be used to support port capital needs and the preservation of existing capital needs of all ocean, river, or tributary ports within the Commonwealth.

c. Commonwealth Port Fund revenue shall be allocated by the Board of Commissioners to the Virginia Port Authority in order to foster and stimulate the flow of maritime commerce through the ports of Virginia, including but not limited to the ports of Richmond, Hopewell and Alexandria.

3. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be part of the Transportation Trust Fund and which shall be known as the Commonwealth Airport Fund. The Commonwealth Airport Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the funds shall be credited to the Fund. The funds so allocated shall be allocated by the Commonwealth Transportation Board to the Virginia Aviation Board. The funds shall be allocated by the Virginia Aviation Board to any Virginia airport which is owned by the Commonwealth, a governmental subdivision thereof, or a private entity to which the public has access for the purposes enumerated in § 5.1-2.16, or is owned or leased by the Metropolitan Washington Airports Authority (MWAA), as follows:

Any new funds in excess of $12.1 million which are available for allocation by the Virginia Aviation Board from the Commonwealth Transportation Fund, shall be allocated as follows: 60 percent to MWAA, up to a maximum annual amount of $2 million, and 40 percent to air carrier airports as provided in subdivision A 3 a. Except for adjustments due to changes in enplaned passengers, no air carrier airport sponsor, excluding MWAA, shall receive less funds identified under subdivision A 3 a than it received in fiscal year 1994-1995.

Of the remaining amount:

a. Forty percent of the funds shall be allocated to air carrier airports, except airports owned or leased by MWAA, based upon the percentage of enplanements for each airport to total enplanements at all air carrier airports, except airports owned or leased by MWAA. No air carrier airport sponsor, however, shall receive less than $50,000 nor more than $2 million per year from this provision.

b. Forty percent of the funds shall be allocated by the Aviation Board for air carrier and reliever airports on a discretionary basis, except airports owned or leased by MWAA.

c. Twenty percent of the funds shall be allocated by the Aviation Board for general aviation airports on a discretionary basis.

4. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Mass Transit Fund.

a. The Commonwealth Mass Transit Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall be credited to the Fund. Funds may be paid to any local governing body, transportation district commission, or public service corporation for the purposes hereinafter specified.

b. The amounts allocated pursuant to this section shall be used to support the public transportation administrative costs and the costs borne by the locality for the purchase of fuels, lubricants, tires and maintenance parts and supplies for public transportation at a state share of 80 percent in 2002 and 95 percent in 2003 and succeeding years. These amounts may be used to support up to 95 percent of the local or nonfederal share of capital project costs for public transportation and ridesharing equipment, facilities, and associated costs. Capital costs may include debt service payments on local or agency transit bonds. The term "borne by the locality" means the local share eligible for state assistance consisting of costs in excess of the sum of fares and other operating revenues plus federal assistance received by the locality.

c. Commonwealth Mass Transit Fund revenue shall be allocated by the Commonwealth Transportation Board as follows:

(1) Funds for special programs, which shall include ridesharing, experimental transit, and technical assistance, shall not exceed 1.5 percent of the Fund.

(2) The Board may allocate these funds to any locality or planning district commission to finance up to 80 percent of the local share of all costs associated with the development, implementation, and continuation of ridesharing programs.

(3) Funds allocated for experimental transit projects may be paid to any local governing body, transportation district commission, or public corporation or may be used directly by the Department of Rail and Public Transportation for the following purposes:

(a) To finance up to 95 percent of the capital costs related to the development, implementation and promotion of experimental public transportation and ridesharing projects approved by the Board.

(b) To finance up to 95 percent of the operating costs of experimental mass transportation and ridesharing projects approved by the Board for a period of time not to exceed 12 months.

(c) To finance up to 95 percent of the cost of the development and implementation of any other project designated by the Board where the purpose of such project is to enhance the provision and use of public transportation services.

d. Funds allocated for public transportation promotion and operation studies may be paid to any local governing body, planning district commission, transportation district commission, or public transit corporation, or may be used directly by the Department of Rail and Public Transportation for the following purposes and aid of public transportation services:

(1) At the approval of the Board to finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout Virginia.

(2) To finance up to 50 percent of the local share of public transportation operations planning and technical study projects approved by the Board.

e. At least 73.5 percent of the Fund shall be distributed to each transit property in the same proportion as its operating expenses bear to the total statewide operating expenses and shall be spent for the purposes specified in subdivision 4 b.

f. The remaining 25 percent shall be distributed for capital purposes on the basis of 95 percent of the nonfederal share for federal projects and 95 percent of the total costs for nonfederal projects. In the event that total capital funds available under this subdivision are insufficient to fund the complete list of eligible projects, the funds shall be distributed to each transit property in the same proportion that such capital expenditure bears to the statewide total of capital projects. Prior to the annual adoption of the Six-Year Improvement Program, the Commonwealth Transportation Board may allocate up to 20 percent of the funds in the Commonwealth Mass Transit Fund designated for capital purposes to transit operating assistance if operating funds for the next fiscal year are estimated to be less than the current fiscal year's allocation, to attempt to maintain transit operations at approximately the same level as the previous fiscal year.

g. There is hereby created in the Department of the Treasury a special nonreverting fund known as the Commonwealth Transit Capital Fund. The Commonwealth Transit Capital Fund shall be part of the

Commonwealth Mass Transit Fund. The Commonwealth Transit Capital Fund subaccount shall be established on the books of the Comptroller and consist of such moneys as are appropriated to it by the General Assembly and of all donations, gifts, bequests, grants, endowments, and other moneys given, bequeathed, granted, or otherwise made available to the Commonwealth Transit Capital Fund. Any funds remaining in the Commonwealth Transit Capital Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Commonwealth Transit Capital Fund. Interest earned on funds within the Commonwealth Transit Capital Fund shall remain in and be credited to the Commonwealth Transit Capital Fund. Proceeds of the Commonwealth Transit Capital Fund may be paid to any political subdivision, another public entity created by an act of the General Assembly, or a private entity as defined in § 56-557 and for purposes as enumerated in subdivision 4c of § 33.1-269 or expended by the Department of Rail and Public Transportation for the purposes specified in this subdivision. Revenues of the Commonwealth Transit Capital Fund shall be used to support capital expenditures involving the establishment, improvement, or expansion of public transportation services through specific projects approved by the Commonwealth Transportation Board. Projects financed by the Commonwealth Transit Capital Fund shall receive local, regional or private funding for at least 20 percent of the nonfederal share of the total project cost.

5. Funds for Metro shall be paid by the Northern Virginia Transportation Commission (NVTC) to the Washington Metropolitan Area Transit Authority (WMATA) and be a credit to the Counties of Arlington and Fairfax and the Cities of Alexandria, Falls Church and Fairfax in the following manner:

a. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality using WMATA's capital formula shall be paid first by NVTC. NVTC shall use 95 percent state aid for these payments.

b. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall include 20 percent of annual local bus capital expenses. Hold harmless protections and obligations for NVTC's jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.

Appropriations from the Commonwealth Mass Transit Fund are intended to provide a stable and reliable source of revenue as defined by Public Law 96-184.

B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of ~~this~~ *the* Commonwealth in the manner provided in subsections C and D.

C. The localities' share of the net revenue distributable under this section among the counties and cities shall be apportioned by the Comptroller and distributed among them by warrants of the Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each month during which the net revenue was received into the state treasury. The distribution of the localities' share of such net revenue shall be computed with respect to the net revenue received into the state treasury during each month, and such distribution shall be made as soon as practicable after the close of each such month.

D. The net revenue so distributable among the counties and cities shall be apportioned and distributed upon the basis of the latest yearly estimate of the population of cities and counties ages five to 19, provided by the Weldon Cooper Center for Public Service of the University of Virginia. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who are domiciled in orphanages or charitable institutions or who are dependents living on any federal military or naval reservation or other federal property within the school division in which the institutions or federal military or naval reservation or other federal property is located. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for members of the military services who are under 20 years of age within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for ~~persons who are confined~~ *individuals receiving services* in state hospitals~~, state training schools or~~, state training centers ~~for the mentally retarded~~, *or* mental ~~institutions, or~~ *health facilities, persons who are confined in* state or federal correctional institutions, or *persons* who attend the Virginia School for the Deaf and the Blind within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who attend institutions of higher education within the school division in which the student's parents or guardians legally reside. To such estimate, the Department of Education shall add the population of students with disabilities, ages two through four and 20 through 21, as provided to the Department of Education by school divisions. The revenue so apportionable and distributable is hereby appropriated to the several counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, which shall be considered as funds raised from local resources. In any

county, however, wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire county. If the school population of any city or of any town constituting a school division is increased by the annexation of territory since the last estimate of school population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school population of such city or town as shown by the last such estimate and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.

E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a two percent sales and use tax, up to an annual amount of $13 million, collected from the sales of hunting equipment, auxiliary hunting equipment, fishing equipment, auxiliary fishing equipment, wildlife-watching equipment, and auxiliary wildlife-watching equipment in Virginia, as estimated by the most recent U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the Census National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, shall be paid into the Game Protection Fund established under § 29.1-101 and shall be used, in part, to defray the cost of law enforcement. Not later than 30 days after the close of each quarter, the Comptroller shall transfer to the Game Protection Fund the appropriate amount of collections to be dedicated to such Fund. At any time that the balance in the Capital Improvement Fund, established under § 29.1-101.01, is equal to or in excess of $35 million, any portion of sales and use tax revenues that would have been transferred to the Game Protection Fund, established under § 29.1-101, in excess of the net operating expenses of the Board, after deduction of other amounts which accrue to the Board and are set aside for the Game Protection Fund, shall remain in the general fund until such time as the balance in the Capital Improvement Fund is less than $35 million.

F. 1. Of the net revenue generated from the one-half percent increase in the rate of the state sales and use tax effective August 1, 2004, pursuant to enactments of the 2004 Special Session I of the General Assembly, the Comptroller shall transfer from the general fund of the state treasury to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § 58.1-638.1 an amount equivalent to one-half of the net revenue generated from such one-half percent increase as provided in this subdivision. The transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund under this subdivision shall be for one-half of the net revenue generated (and collected in the succeeding month) from such one-half percent increase for the month of August 2004 and for each month thereafter.

2. For the purposes of the Comptroller making the required transfers under subdivision 1, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund.

G. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next quarter or for subsequent quarters.

H. The term "net revenue," as used in this section, means the gross revenue received into the general fund or the Transportation Trust Fund of the state treasury under the preceding sections of this chapter, less refunds to taxpayers.

§ 58.1-3214. Absence from residence.

The fact that persons who are otherwise qualified for tax exemption or deferral by an ordinance promulgated pursuant to this article are residing in hospitals, nursing homes, convalescent homes or other facilities for physical or mental *health* care for extended periods of time shall not be construed to mean that the real estate for which tax exemption or deferral is sought does not continue to be the sole dwelling of such persons during such extended periods of other residence so long as such real estate is not used by or leased to others for consideration.

§ 60.2-213. Employment with hospital, higher education, state, subdivision, or certain religious or charitable organizations.

A. "Employment" includes:

1. Service performed by an individual (i) in the employ of ~~this~~ *the* Commonwealth or any of its political subdivisions or instrumentalities or (ii) in the employ of ~~this~~ *the* Commonwealth and one or more other states or their political subdivisions or instrumentalities, for a hospital or institution of higher education located in this Commonwealth provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of § 3306 (c) (7) of that act and is not excluded from "employment" under subsection B ~~of this section~~;

2. Service performed by an individual (i) in the employ of ~~this~~ *the* Commonwealth or any of its wholly owned instrumentalities or (ii) in the employ of ~~this~~ *the* Commonwealth and one or more other

states or their instrumentalities, provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act (26 U.S.C.) by § 3306 (c) (7) of that act and is not excluded from "employment" under subsection B ~~of this section~~;

3. Service performed by an individual (i) in the employ of any political subdivision of ~~this~~ *the* Commonwealth or any of its wholly owned instrumentalities or (ii) in the employ of any instrumentality wholly owned by this Commonwealth, any of its political subdivisions or instrumentalities, or any instrumentality wholly owned by any of the foregoing and one or more other states or their political subdivisions, provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by § 3306 (c) (7) of that act and is not excluded from "employment" under subsection B ~~of this section~~;

4. Service performed by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

a. Their service is excluded from "employment" as defined in the Federal Unemployment Tax Act (26 U.S.C.) solely by reason of § 3306 (c) (8) of that act; and

b. The organization had four or more individuals in employment for some portion of a day in each of ~~twenty~~ *20* different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

B. For the purposes of subdivisions *A* 3 and 4 ~~of subsection A of this section~~, the term "employment" does not apply to service performed:

1. In the employ of (i) a church or convention or association of churches, or (ii) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

2. By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

3. In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age ~~or~~, physical ~~or mental~~ deficiency, *mental illness, intellectual disability,* or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

4. As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training;

5. By an inmate of a custodial or penal institution; or

6. In the employ of ~~this~~ *the* Commonwealth, or any political subdivision thereof or any instrumentality of any one or more of the foregoing as set forth in subdivisions *A* 1 through 3 ~~of subsection A of this section~~, if such service is performed by an individual in the exercise of duties:

a. As an elected official;

b. As a member of a legislative body, or a member of the judiciary;

c. As a member of the state National Guard or Air National Guard;

d. As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

e. In a position which, under or pursuant to the laws of ~~this~~ *the* Commonwealth, is designated as (i) a major nontenured policymaking or advisory position~~,~~ or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.

§ 63.2-1000. Interstate Compact on the Placement of Children; form of compact.

The Governor of Virginia is hereby authorized and requested to execute, on behalf of the Commonwealth of Virginia, with any other state or states legally joining therein, a compact which shall be in form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I. Purpose and Policy.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. Definitions.

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for ~~the mentally ill, mentally defective or epileptic~~ *individuals with mental illness, intellectual disability, or epilepsy* or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. Conditions for Placement.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. Penalty for Illegal Placement.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V. Retention of Jurisdiction.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such cases by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a

private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI. Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. Compact Administrator.

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have the power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. Limitations.

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX. Enactment and Withdrawal.

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. Construction and Severability.

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

§ 63.2-1105. Children placed out of Commonwealth.

A. Any child-placing agency, licensed pursuant to Subtitle IV (§ 63.2-1700 et seq.), local board or court that takes or sends, or causes to be taken or sent, any resident child out of the Commonwealth for the purpose of an interstate or intercountry placement shall comply with the appropriate provisions of the Interstate Compact on the Placement of Children (§ 63.2-1000 et seq.) or shall first obtain the consent of the Commissioner, given in accordance with regulations of the Board relating to resident children so taken or sent out of the Commonwealth.

B. The Board is authorized to adopt regulations for the placement of children out of the Commonwealth by licensed child-placing agencies, local boards or courts as are reasonably conducive to the welfare of such children and as comply with the Interstate Compact on the Placement of Children (§ 63.2-1000 et seq.). Provided, however, notwithstanding the provisions of subdivision (d) of Article II of the compact that exclude from the definition of "placement" those institutions that care for ~~the mentally ill, mentally defective or epileptic~~ *individuals with mental illness, intellectual disability, or epilepsy* or any institution primarily educational in character and any hospital or other medical facility, the Board shall prescribe procedures and regulations to govern such placements out of the Commonwealth by licensed child-placing agencies, local boards or courts.

§ 63.2-1602. Other adult services.

Each local board shall:

1. Participate in nursing home pre-admission screenings of all individuals pursuant to § 32.1-330;

2. Provide assisted living facility assessments of residents and applicants pursuant to § 63.2-1804;

3. Participate in long-term care service coordination pursuant to § 2.2-708;

4. Provide social services or public assistance, as appropriate, to ~~consumers~~ *individuals* discharged from state hospitals or training centers pursuant to §§ 37.2-505 and 37.2-837; and

5. Participate in other programs pursuant to state and federal law.

§ 63.2-1603. Protection of adults; definitions.

As used in this article:

"Adult" means any person 60 years of age or older, or any person 18 years of age or older who is incapacitated and who resides in the Commonwealth; provided, however, "adult" may include qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services.

"Emergency" means that an adult is living in conditions that present a clear and substantial risk of death or immediate and serious physical harm to himself or others.

"Incapacitated person" means any adult who is impaired by reason of mental illness, ~~mental retardation~~ *intellectual disability*, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out responsible decisions concerning his or her well-being.

§ 63.2-1801. Access to assisted living facilities by community services boards and behavioral health authorities.

All assisted living facilities shall provide reasonable access to staff or contractual agents of community services boards or behavioral health authorities as defined in § 37.2-100 for the purposes of (i) assessing or evaluating, (ii) providing case management or other services or assistance, or (iii) monitoring the care of ~~consumers~~ *individuals receiving services who are* residing in the facility. Such staff or contractual agents also shall be given reasonable access to other facility residents who have previously requested their services.

§ 63.2-1805. Admissions and discharge.

A. The Board shall adopt regulations:

1. Governing admissions to assisted living facilities;

2. Requiring that each assisted living facility prepare and provide a statement, in a format prescribed by the Department, to any prospective resident and his legal representative, if any, prior to admission and upon request, that discloses information, fully and accurately in plain language, about the (i) services; (ii) fees, including clear information about what services are included in the base fee and any fees for additional services; (iii) admission, transfer, and discharge criteria, including criteria for transfer to another level of care within the same facility or complex; (iv) general number and qualifications of staff on each shift; (v) range, frequency, and number of activities provided for residents; and (vi) ownership structure of the facility;

3. Establishing a process to ensure that each resident admitted or retained in an assisted living facility receives appropriate services and periodic independent reassessments and reassessments when there is a significant change in the resident's condition in order to determine whether a resident's needs can continue to be met by the facility and whether continued placement in the facility is in the best interests of the resident;

4. Governing appropriate discharge planning for residents whose care needs can no longer be met by the facility;

5. Addressing the involuntary discharge of residents;

6. Requiring that residents are informed of their rights pursuant to § 63.2-1808 at the time of admission;

7. Establishing a process to ensure that any resident temporarily detained in a facility pursuant to §§ 37.2-809 through 37.2-813 is accepted back in the assisted living facility if the resident is not involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819; and

8. Requiring that each assisted living facility train all employees who are mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting procedures and the consequences for failing to make a required report.

B. If there are observed behaviors or patterns of behavior indicative of mental illness, ~~mental retardation~~ *intellectual disability*, substance abuse, or behavioral disorders, as documented in the uniform assessment instrument completed pursuant to § 63.2-1804, the facility administrator or designated staff member shall ensure that an evaluation of the individual is or has been conducted by a qualified professional as defined in regulations. If the evaluation indicates a need for mental health, ~~mental retardation~~ *developmental*, substance abuse, or behavioral disorder services, the facility shall provide (i) a notification of the resident's need for such services to the authorized contact person of record when available and (ii) a notification of the resident's need for such services to the community services board or behavioral health authority established pursuant to Title 37.2 that serves the city or county in which

the facility is located, or other appropriate licensed provider. The Department shall not take adverse action against a facility that has demonstrated and documented a continual good faith effort to meet the requirements of this subsection.

C. The Department shall not order the removal of a resident from an assisted living facility if (i) the resident, the resident's family, the resident's physician, and the facility consent to the resident's continued stay in the assisted living facility and (ii) the facility is capable of providing, obtaining, or arranging for the provision of necessary services for the resident, including, but not limited to, home health care and/or hospice care.

D. Notwithstanding the provisions of subsection C ~~above~~, assisted living facilities shall not admit or retain an individual with any of the following conditions or care needs:

1. Ventilator dependency.

2. Dermal ulcers III and IV, except those stage III ulcers that are determined by an independent physician to be healing.

3. Intravenous therapy or injections directly into the vein except for intermittent intravenous therapy managed by a health care professional licensed in Virginia or as permitted in subsection E.

4. Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold.

5. Psychotropic medications without appropriate diagnosis and treatment plans.

6. Nasogastric tubes.

7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection E.

8. An imminent physical threat or danger to self or others is presented by the individual.

9. Continuous licensed nursing care (seven-days-a-week, 24-hours-a-day) is required by the individual.

10. Placement is no longer appropriate as certified by the individual's physician.

11. Maximum physical assistance is required by the individual as documented by the uniform assessment instrument and the individual meets Medicaid nursing facility level-of-care criteria as defined in the State Plan for Medical Assistance, unless the individual's independent physician determines otherwise. Maximum physical assistance means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

12. The assisted living facility determines that it cannot meet the individual's physical or mental health care needs.

13. Other medical and functional care needs that the Board determines cannot be met properly in an assisted living facility.

E. Except for auxiliary grant recipients, at the request of the resident in an assisted living facility and when his independent physician determines that it is appropriate, (i) care for the conditions or care needs defined in subdivisions D 3 and D 7 may be provided to the resident by a licensed physician, a licensed nurse or a nurse holding a multistate licensure privilege under a physician's treatment plan, or a home care organization licensed in Virginia or (ii) care for the conditions or care needs defined in subdivision D 7 may also be provided to the resident by facility staff if the care is delivered in accordance with the regulations of the Board of Nursing for delegation by a registered nurse~~,~~ *Part VIII (*18 VAC 90-20-420 et seq.*) of 18 VAC 90-20*.

The Board shall adopt regulations to implement the provisions of this subsection.

F. In adopting regulations pursuant to subsections A, B, C, D, and E the Board shall consult with the Departments of Health and Behavioral Health and Developmental Services.

§ 63.2-1808.1. Life-sharing communities.

A. For the purposes of this section:

"Life-sharing community" ~~is defined as~~ *means* a residential setting, operated by a ~~non-profit~~ *nonprofit* organization, that (i) offers a safe environment in free standing, self-contained homes for residents that have been determined by a licensed health-care professional as having at least one developmental disability; (ii) is an environment located in a community setting where residents participate in therapeutic activities including artistic crafts, stewardship of the land, and agricultural activities; (iii) consists of the residents as well as staff and volunteers who live together in residential homes; (iv) operates at a ratio of at least one staff member, volunteer, or supervising personnel for every three residents in each self-contained home household; and (v) has at least one supervisory staff member on premises to be responsible for the care, safety, and supervision of the residents at all times.

"Resident" means an individual who has been determined by a physician or nurse practitioner to have at least one developmental disability and who resides at the life-sharing community on a full-time basis.

"Volunteer" means an individual who resides in the life-sharing community on a full-time basis and who assists residents with their daily activities and receives no wages. A volunteer may receive a small

stipend for personal expenses.

B. Any facility seeking to operate as a life-sharing community shall file with the Commissioner: (i) a statement of intent to operate as a life-sharing community; (ii) a certification that at the time of admission, a contract and written notice was provided to each resident and his legally authorized representative that includes a statement of disclosure that the facility is exempt from licensure as an "assisted living facility," and (iii) documentary evidence that such life-sharing community is a private ~~non-profit~~ *nonprofit* organization in accordance with 501(c)(3) of the Internal Revenue Code of 1954, as amended.

C. Upon filing an initial statement of intent to operate as a life-sharing community, and every two years thereafter, the life-sharing community shall certify that the local health department, building inspector, fire marshal, or other local official designated by the locality to enforce the Statewide Fire Prevention Code, and any other local official required by law to inspect the premises, have inspected the physical facilities of the life-sharing community and have determined that the facility is in compliance with all applicable laws and regulations with regard to food service activities, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code and the Uniform Statewide Building Code.

D. Upon filing an initial statement of intent to operate as a life-sharing community, and every two years thereafter, the life-sharing community shall provide the Commissioner documentary evidence that:

1. Life-sharing community staff and volunteers have completed a training program that includes instruction in personal care of residents, house management, and therapeutic activities;

2. Volunteers and staff have completed first aid and Cardio-Pulmonary Resuscitation training;

3. Each resident's needs are evaluated using the Uniform Assessment Instrument, and Individual Service Plans are developed for each resident annually;

4. The residents of the life-sharing community are each 21 years of age or older;

5. A criminal background check through the Criminal Records Exchange has been completed for each (i) full-time salaried staff member and (ii) volunteer as defined in this section.

E. A residential facility operating as a life-sharing facility shall be exempt from the licensing requirements of Article 1 (§ 63.2-1800 et seq.) of Chapter 18 of Title 63.2 applicable to assisted living facilities.

F. The Commissioner may perform unannounced on-site inspections of a life-sharing community to determine compliance with the provisions of this section and to investigate any complaint that the life-sharing community is not in compliance with the provisions of this section, or to otherwise ensure the health, safety, and welfare of the life-sharing community residents. The Commissioner may revoke the exemption from licensure pursuant to this chapter for any life-sharing community for serious or repeated violation of the requirements of this section and order that the facility cease operations or comply with the licensure requirements of an assisted living facility. If a life-sharing community does not file the statement and documentary evidence required by this section, the Commissioner shall give reasonable notice to such life-sharing community of the nature of its noncompliance and may thereafter take action as he determines appropriate, including a suit to enjoin the operation of the life-sharing community.

G. All life-sharing communities shall provide access to their facilities and residents by staff of community services boards and behavioral health authorities as defined in § 37.2-100 for the purpose of (i) assessing or evaluating, (ii) providing case management or other services or assistance, or (iii) monitoring the care of ~~consumers~~ *individuals receiving services who are* residing in the facility. Such staff or contractual agents also shall be given reasonable access to other facility residents who have previously requested their services.

H. Any residents of any life-sharing community shall be accorded the same rights and responsibilities as residents in assisted living facilities as provided in subsections A through F of § 63.2-1808.

I. A life-sharing community shall not admit or retain individuals with any of the conditions or care needs as provided in subsection C of § 63.2-1805.

J. Notwithstanding § 63.2-1805, at the request of the resident, hospice care may be provided in a life-sharing community under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1 if the hospice program determines that such a program is appropriate for the resident.

§ 64.1-62.3. How certain legacies and devises to be construed; nonademption in certain cases.

A. Unless a contrary intention appears in the will:

1. A bequest of specific securities, whether or not expressed in number of shares, shall include as much of the bequeathed securities as is part of the estate at time of the testator's death, any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity, excluding any securities acquired by the exercise of purchase options, and any securities of another entity acquired with respect to the specific securities mentioned in the bequest as a result of a merger, consolidation, reorganization or other similar action initiated by the entity;

2. A bequest or devise of specific property shall include the amount of any condemnation award for the taking of the property which remains unpaid at death and any proceeds unpaid at death on fire and casualty insurance on the property; and

3. A bequest or devise of specific property shall, in addition to such property as is part of the estate of the testator, be deemed to be a legacy of a pecuniary amount if such specific property shall, during the life of the testator and while he is under a disability, be sold by a conservator, guardian, or committee for the testator, or if proceeds of fire or casualty insurance as to such property are paid to the fiduciary. For purposes of this subdivision, the pecuniary amount shall be the net sale price or insurance proceeds, reduced by the sums received under subdivision 2. This subdivision shall not apply if, after the sale or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year.

B. Unless a contrary intention appears in a testator's will or durable power of attorney, a bequest or devise of specific property shall, in addition to such property as is part of the estate of the testator, be deemed to be a legacy of a pecuniary amount if such specific property shall, during the life of the testator and while he is incapacitated, be sold by an agent acting within the authority of a durable power of attorney for the testator, or if proceeds of fire or casualty insurance as to such property are paid to the agent. For purposes of this subdivision, (i) the pecuniary amount shall be the net sale price or insurance proceeds, reduced by the sums received under subdivision 2, (ii) no adjudication of testator's incapacity before death is necessary, (iii) the acts of an agent within the authority of a durable power of attorney are rebuttably presumed to be for an incapacitated testator, and (iv) an "incapacitated" person is one who is impaired by reason of mental illness, ~~mental deficiency~~ *intellectual disability*, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions. This subdivision shall not apply (i) if the agent's sale of the specific property or receipt of the insurance proceeds is thereafter ratified by the testator or (ii) to a power of attorney limited to one or more specific purposes.

§ 64.1-157.1. Nonexoneration; payment of lien if granted by agent.

A. Unless a contrary intent is clearly set out in the will, a specific devise or bequest of real or personal property passes, subject to any mortgage, pledge, security interest, or other lien existing at the date of death of the testator, without the right of exoneration. A general directive in the will to pay debts shall not be evidence of a contrary intent that the mortgage, pledge, security interest or other lien be exonerated prior to passing to the legatee.

B. Subsection A shall not apply to any mortgage, pledge, security interest or other lien existing at the date of death of the testator against any specifically devised or bequeathed real or personal property that was granted by an agent acting within the authority of a durable power of attorney for the testator while the testator was incapacitated. For the purposes of this section, (i) no adjudication of the testator's incapacity is necessary, (ii) the acts of an agent within the authority of a durable power of attorney are rebuttably presumed to be for an incapacitated testator, and (iii) an incapacitated person is one who is impaired by reason of mental illness, ~~mental deficiency~~ *intellectual disability*, physical illness or disability, chronic use of drugs, chronic intoxication or other cause creating a lack of sufficient understanding or capacity to make or communicate responsible decisions. This subsection shall not apply (a) if the mortgage, pledge, security interest or other lien granted by the agent on the specific property is thereafter ratified by the testator while he is not incapacitated, or (b) if the durable power of attorney was limited to one or more specific purposes and was not general in nature.

C. Subsection A shall not apply to any mortgage, pledge, security interest or other lien existing at the date of the death of the testator against any specific devise or bequest of any real or personal property that was granted by a conservator, guardian or committee of the testator. This subsection shall not apply if, after the mortgage, pledge, security interest or other lien granted by the conservator, guardian or committee, there is an adjudication that the testator's disability has ceased and the testator survives that adjudication by at least one year.

§ 66-18. Examination and placing of such children.

The Department shall make a careful physical and mental examination of every child committed to it by the courts, investigate the personal and family history of the child and his environment, and place such children at such facilities as are available. Any children committed to the Department and afterwards found to be eligible for commitment by proper proceedings to any state hospital or admission to a training center for ~~the mentally retarded~~ *individuals with intellectual disability* shall take precedence as to admission over all others and shall in all cases be received into the state hospital or training center within ~~forty-five~~ *45* days.

§ 66-19. Behavioral services unit; director and personnel; examination of children.

To assist in the performance of the duties imposed by § 66-18, the Department shall maintain a behavioral services unit and employ as director thereof a clinically competent person. The Department shall also employ such other medical, technical and clinical personnel skilled in the diagnosis and

treatment of physical ~~and~~ ~~mental~~ diseases *or mental illnesses* of children as may be desirable for the operation of such unit. The personnel of the unit, when visiting the various facilities maintained by the Department for the care of children committed to the Department, shall conduct a thorough examination of each child at such facilities not theretofore examined by the unit, and other children at the facilities for whom such examination is indicated. Such examination shall be for the purpose of determining, diagnosing and treating physical~~,~~ ~~mental~~ and learning ailments or impairments *and mental illnesses* with a view to improving the general functioning of such children and hastening their rehabilitation.

§ 66-20. Observation and treatment of children with mental illness or intellectual disability.

After commitment of any child to the Department, if the Department finds, as a result of psychiatric examinations and case study, that such child ~~is~~ ~~mentally~~ ~~ill~~ ~~or~~ ~~mentally~~ ~~retarded~~ *has mental illness or intellectual disability*, it shall be the duty of the Department to obtain treatment for the child's mental condition. If the Department determines that transfer to a state hospital, training center, or other appropriate treatment facility is required to further diagnose or treat the child's mental condition, the proceedings shall be in accordance with the provisions of § 37.2-806 or §§ 16.1-341 through 16.1-345, except that provisions requiring consent of the child's parent or guardian for treatment shall not apply in such cases. No child transferred to a state hospital pursuant to this section or the provisions of Title 37.2 shall, however, be held or cared for in any maximum security unit where adults determined to be criminally insane reside and such child shall be kept separate and apart from such adults. ldtitle>