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HOUSE BILL NO. 1148

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact §§ 51.5-125, 51.5-128, 51.5-131, 51.5-132, 51.5-134 through 51.5-138, 51.5-150, and 51.5-152 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 14 of Title 51.5 an article numbered 13, consisting of sections numbered 51.5-182 through 51.5-185; and to repeal §§ 51.5-139 through 51.5-142 and Article 8 (§§ 51.5-155 through 51.5-158) of Chapter 14 of Title 51.5 of the Code of Virginia, relating to Department for Aging and Rehabilitative Services, Respite Care Grant Program, State Long-Term Care Ombudsman Program.

Patron—Keam

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.5-125, 51.5-128, 51.5-131, 51.5-132, 51.5-134 through 51.5-138, 51.5-150, and 51.5-152 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 14 of Title 51.5 an article numbered 13, consisting of sections numbered 51.5-182 through 51.5-185, as follows:

§ 51.5-125. Gifts and donations.

The Department is authorized to receive such gifts and donations, either from public or private sources, as may be offered unconditionally or under such conditions as in the judgment of the Department are proper and consistent with this title. All moneys received as gifts or donations shall be deposited in the state treasury; and shall constitute a permanent *special* fund to be called the special fund for the rehabilitation of persons with disabilities; and shall be used by the Department to defray the expenses of rehabilitation and other services, including independent living services and advocacy services, and constructing, equipping, and operating necessary rehabilitation facilities. Such moneys may also be used in matching federal grants for the foregoing purposes. The Department shall annually submit to the Governor a full report of all gifts and donations offered and accepted, the names of the donors, the respective amounts contributed by each donor, and all disbursements of such gifts and donations.

§ 51.5-128. Duties of the Commonwealth Council on Aging.

A. The Commonwealth Council on Aging shall have the following duties:

1. Examine the needs of older Virginians and their caregivers and ways in which state government can most effectively and efficiently assist in meeting those needs;

2. Advise the Governor and General Assembly on aging issues and aging policy for the Commonwealth;

3. Advise the Governor on any proposed regulations deemed by the Director of the Department of Planning and Budget to have a substantial and distinct impact on older Virginians and their caregivers. Such advice shall be provided in addition to other regulatory reviews required by the Administrative Process Act (§ 2.2-4000 et seq.);

4. Advocate for and assist in developing the Commonwealth's planning for meeting the needs of the growing number of older Virginians and their caregivers; and

5. Assist and advise the Department with the development and ongoing review of the Virginia Respite Care Grant Program pursuant to Article 8 (§ 51.5-155 et seq.); and

6. Assist and advise the Department regarding strategies to improve nutritional health, alleviate hunger, and prevent malnutrition among older adults.

B. The Commonwealth Council on Aging may apply for and expend such grants, gifts, or bequests from any source as may become available in connection with its duties under this section, and may comply with such conditions and requirements as may be imposed in connection therewith.

§ 51.5-131. Powers and duties of Commissioner.

The Commissioner shall have the following powers and duties:

1. To employ such personnel, qualified by knowledge, skills, and abilities, as may be required to carry out the purposes of this chapter relating to the Department;

2. To make and enter into all contracts and agreements necessary for or incidental to the performance of the Department's duties and the execution of its powers under this title, including but not limited to contracts with the United States, other states, agencies, and governmental subdivisions of the Commonwealth;

3. To accept grants from the United States government and agencies and instrumentalities thereof and

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59 any other source and, to these ends, to comply with such conditions and execute such agreements as
60 may be necessary, convenient, or desirable;

61 4. To perform all acts necessary or convenient to carry out the purposes of this chapter;

62 5. To develop and analyze information on the needs of older Virginians and persons with disabilities;

63 6. To establish plans, policies, and programs for the delivery of services to older Virginians and
64 persons with disabilities for consideration by the Governor and the General Assembly. Such policies,
65 plans, and programs for services for those who cannot benefit from vocational rehabilitation shall be
66 prepared over time and as funds become available for such efforts;

67 7. To operate and maintain the Wilson Workforce and Rehabilitation Center and to organize,
68 supervise, and provide other necessary services and facilities (i) to prepare persons with disabilities for
69 useful and productive lives, including suitable employment, and (ii) to enable persons with disabilities,
70 to the degree possible, to become self-sufficient and have a sense of well-being;

71 8. To develop criteria for the evaluation of plans and programs relative to the provision of ~~long-term~~
72 ~~aging services and supports~~ for older Virginians and persons with disabilities *as required by the Older*
73 *Americans Act, 42 U.S.C. § 3001 et seq., as amended*;

74 9. To investigate the availability of funds from any source for planning, developing, and providing
75 services to older Virginians and persons with disabilities, particularly those not capable of being
76 gainfully employed;

77 10. To coordinate the Department's plans, policies, programs, and services, and such programs and
78 services required under § 51.5-123, with those of the other state agencies providing services to persons
79 with disabilities so as to achieve maximum utilization of available resources to meet the needs of such
80 persons;

81 11. To compile and provide information on the availability of federal, state, regional, and local funds
82 and services for older Virginians and persons with disabilities;

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

85 13. To promulgate regulations necessary to carry out the provisions of the laws of the
86 Commonwealth administered by the Department;

87 14. To work with the Department of Veterans Services and the Department of Behavioral Health and
88 Developmental Services to establish a program for mental health and rehabilitative services for Virginia
89 veterans and members of the Virginia National Guard and Virginia residents in the Armed Forces
90 Reserves not in active federal service and their family members pursuant to § 2.2-2001.1;

91 15. To promote the use of technologies to realize communication access and increase livability across
92 the Commonwealth; and

93 16. To perform such other duties as may be required by the Governor and the Secretary of Health
94 and Human Resources.

95 **§ 51.5-132. Commissioner to establish regulations regarding human research.**

96 The Commissioner shall promulgate regulations pursuant to the Administrative Process Act
97 (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for
98 human research, as defined in § 32.1-162.16, to be conducted or authorized by the Department, *any area*
99 *agency on aging*, any sheltered workshop, any independent living center, or the Wilson Workforce and
100 Rehabilitation Center. The regulations shall require the human research review committee, as provided in
101 § 32.1-162.19, to submit to the Governor, the General Assembly, and the Commissioner or his designee,
102 at least annually, a report on the human research projects reviewed and approved by the committee and
103 shall require the committee to report any significant deviations from the proposals as approved.

104 **§ 51.5-134. Definitions.**

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

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

108 "Educational services" includes information on the long-term care services provided by agencies of
109 the Commonwealth, its localities, and private sector agencies, and public information as provided in
110 § 2.2-213.1.

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

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

114 "Long-term care services" means socialization services, health care services, nutrition services, daily
115 living services, educational services, housing services, transportation services, and supportive services
116 that include (i) a balanced range of health, social, and supportive services to deliver long-term care
117 services to older persons with chronic illnesses or functional impairments; (ii) meaningful choice,
118 increased functional ability, and affordability as determining factors in defining long-term care service
119 needs, which needs shall be determined by a uniform system for comprehensively assessing the needs
120 and preferences of individuals requiring such services; (iii) 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 (iv) 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.

"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 developmental services, counseling services, and legal aid.

"Transportation services" includes readily available access to public transportation or area coordinated paratransit systems.

"Access services" means care coordination; care transitions; communication, referral, information, and assistance; options counseling; transportation; and assisted transportation.

"Aging services" means access services, Care Coordination for Elderly Virginians, caregiver services, client services, disease prevention and health promotion services, in-home services, legal assistance, nutrition services, and elder abuse prevention that are supported with federal and state funds.

"Caregiver services" means counseling services, including individual counseling, support groups, and caregiver training, respite services including institutional respite and direct respite services, and supplemental services.

"Client services" means emergency services, Title III of the Older Americans Act, 42 U.S.C. § 3001 et seq., employment services, health education and screening, identification discount, long-term care coordinating activities, medication management, money management, public information and education, socialization and recreation, and volunteer programs.

"In-home services" means adult day care, checking, chore, homemaker, personal care, and residential repair and renovation services.

"Long-term care" means any service, care, or item, including an assistive device. "Long-term care" includes disease prevention and health promotion services, in-home services, and case management services that are intended to assist individuals in coping with, and to the extent practicable compensate for, a functional impairment in carrying out activities of daily living that are furnished at home, in a community care setting, or in a long-term care facility, and not furnished to prevent, diagnose, treat, or cure a medical disease or condition.

"Long-term care ombudsman program" means the program established in Article 13 (§ 51.5-182 et seq.).

"Nutrition services" means congregate and home-delivered nutrition services.

§ 51.5-135. Powers and duties of Department with respect to aging persons; area agencies on aging.

A. The Department shall provide ~~supports and~~ aging services to improve the quality of life for older persons in the Commonwealth and shall act as a focal point among state agencies for research, policy analysis, long-range planning, and education on aging issues. The Department shall also serve as the lead agency in coordinating the work of state agencies on meeting the needs of an aging society. The Department's policies and programs shall be designed to enable older persons to be as independent and self-sufficient as possible. The Department shall promote local participation in programs for older persons, evaluate and monitor the aging services ~~provided for older persons~~, and provide information to the general public. In furtherance of this mission, the Department shall have, without limitation, the following duties to:

1. Study the economic and physical condition of the residents in the Commonwealth whose age qualifies them for coverage under the Older Americans Act (42, 42 U.S.C. § 3001 et seq.), or any law amendatory or supplemental thereto, and the employment, medical, educational, recreational, and housing facilities available to them, with the view of determining the needs and problems of such persons;

2. Determine the services and facilities, private and governmental and state and local, provided for and available to older persons and recommend to the appropriate persons such coordination of and changes in such services and facilities as will make them of greater benefit to older persons and more responsive to their needs;

3. Act as the designated state unit on aging for the purposes of carrying out the requirements under P.L. 89-73 or any law amendatory or supplemental thereto, and as the sole agency for administering or supervising the administration of such plans as may be adopted in accordance with the provisions of such laws. The Department may prepare, submit, and carry out state plans and shall be the agency primarily responsible for coordinating state programs and activities related to the purposes of, or undertaken under, such plans or laws;

4. Apply, with the approval of the Governor, for and expend such grants, gifts, or bequests from any source that becomes available in connection with its duties under this section, and may comply with such conditions and requirements as may be imposed in connection therewith;

5. Hold hearings and conduct investigations necessary to pass upon applications for approval of a project under the plans and laws set out in subdivision 3, and shall make reports to the U.S. Secretary of Health and Human Services as may be required;

6. Designate area agencies on aging pursuant to P.L. 89-73 or any law amendatory or supplemental thereto of the Congress of the United States and to adopt regulations for the composition and operation of such area agencies on aging, each of which shall be designated as the lead agency in each respective area for the No Wrong Door system of aging and disability resource centers;

~~7. Provide information to consumers and their representatives concerning the recognized features of special care units. Such information shall educate consumers and their representatives on how to choose special care and may include brochures and electronic bulletin board notices;~~

8. Provide staff support to the Commonwealth Council on Aging;

9. 8. Assist state, local, and nonprofit agencies, including, but not limited to, area agencies on aging, in identifying grant and public-private partnership opportunities for improving services to older Virginians;

~~10. 9. Provide or contract for the administration of the state long-term care ombudsman program. Such program or contract shall provide a minimum staffing ratio of one ombudsman to every 2,000 long-term care beds, subject to sufficient appropriations by the General Assembly. The Department may also contract with such entities for the administration of elder rights programs as authorized under P.L. 89-73, such as insurance counseling and assistance, and the creation of an elder information/elder rights center;~~

~~11. 10. Serve as the focal point for the rights of older persons and their families by establishing, maintaining, and publicizing (i) a toll-free number and (ii) a means of electronic access to provide resource and referral information and other assistance and advice as may be requested; and~~

~~12. 11. Develop and maintain a four-year plan for aging services in the Commonwealth, pursuant to § 51.5-136.~~

B. The governing body of any county, city, or town may appropriate funds for support of area agencies on aging designated pursuant to subdivision A 6.

C. All agencies of the Commonwealth shall assist the Department in effectuating its functions in accordance with its designation as the single state agency as required in subdivision A 3.

§ 51.5-136. Strategic long-range planning for aging services; four-year plan; report.

A. The Department shall develop and maintain a four-year plan for aging services in the Commonwealth. Such plan shall serve to inform the State Plan for Aging Services as required by the U.S. Administration on Aging. In developing the plan, the Department shall consult (i) various state and local services agencies, (ii) businesses, (iii) nonprofit organizations, (iv) advocacy organizations, (v) baccalaureate institutions of higher education, (vi) providers, (vii) organizations involved in providing services for and advocating for older Virginians and their caregivers, and (viii) stakeholders, including but not limited to the Virginia Association of Area Agencies on Aging; the state's health and human resources agencies, boards, councils, and commissions; the Departments of Transportation, Rail and Public Transportation, Housing and Community Development, and Corrections; and the Virginia Housing Development Authority.

In addition, the plan shall inform and serve as a resource to a long-term blueprint for state and community planning for aging populations that shall be comprehensive and not limited to traditional health and human services issues, but rather consists of broad-based issues of active daily life in communities throughout the Commonwealth.

B. The four-year plan shall include:

1. A description of Virginia's aging population and its impact on the Commonwealth, and issues related to ensuring and providing services to this population at both the state and local levels;

2. Factors for the Department to consider in determining when additional funding may be required for ~~certain programs or~~ aging services;

3. Information on changes in the aging population, with particular attention to the growing diversity of the population including low-income, minority, and non-English speaking older Virginians;

4. Information on unmet needs and waiting list data for ~~aging-related~~ aging services as reported by the Virginia Association of Area Agencies on Aging and those state agencies that may maintain and provide this information;

5. Results from periodic needs surveys and customer satisfaction surveys targeted to older Virginians that may be conducted by the Department, the Virginia Association of Area Agencies on Aging, or any other state or local agency from time to time;

6. An analysis by every state agency of how the aging of the population impacts the agency and its services and how the agency is responding to this impact. Such analysis shall be provided to the Department every four years on a schedule and in a format determined by the Secretary of Health and Human Resources in coordination with the Department;

7. The impact of changes in federal and state funding for aging services;

8. The current status and future development of Virginia's No Wrong Door Initiative; and
 9. Any other factors the Department deems appropriate.

C. In carrying out the duties provided by this section, the Commissioner shall submit the plan to the Governor and the General Assembly by October 1, 2015. Thereafter, the plan shall be submitted every four years.

§ 51.5-137. Administrative responsibilities of Department regarding aging services.

The Department shall have the following responsibilities regarding ~~long-term care~~ *aging* services in the Commonwealth:

1. Develop appropriate fiscal and administrative controls over ~~public long-term care~~ *aging* services in the Commonwealth;

2. Develop a state long-term care plan to guide the coordination and delivery of *aging* services by the ~~human resources agencies, including transportation services~~. The plan shall ensure the development of a continuum of ~~long-term care programs and~~ *aging* services for ~~impaired~~ older persons in need of services;

3. Identify ~~programmatic resources~~ and assure the equitable statewide distribution of ~~these~~ resources *for aging services*; and

4. Perform ongoing evaluations of the cost-effective utilization of ~~long-term care~~ *aging services* resources.

§ 51.5-138. Coordination of local aging services and long-term care by localities.

The governing body of each county or city, or a combination thereof, may designate a lead agency and member agencies to accomplish the coordination of local *aging services and* long-term care ~~services and supports~~. If established, the agencies ~~shall~~ *may* establish a long-term care coordination committee composed of, but not limited to, representatives of each agency. The coordination committee ~~shall~~ *may* guide the coordination and administration of ~~public long-term care aging and long-term services and supports~~ in the locality. The membership of the coordination committee ~~shall be comprised of~~ *may include*, but is not limited to, representatives of the local department of public health, the local department of social services, the community services board or community mental health clinic, the area agency on aging, the local nursing home pre-admission screening team, and representatives of housing, transportation, and other appropriate local organizations that provide long-term care ~~services~~. A plan ~~shall~~ *may* be implemented that ensures the cost-effective utilization of all funds available for *aging services and* long-term care ~~services and supports~~ in the locality. Localities are encouraged to provide services and supports within each category of service in the continuum and to allow one person to deliver multiple *aging* services, when possible.

§ 51.5-150. Powers and duties of the Department with respect to public guardian and conservator program.

A. The Department shall fund from appropriations received for such purpose a statewide system of local or regional public guardian and conservator programs.

B. The Department shall:

1. Make and enter into all contracts necessary or incidental to the performance of its duties and in furtherance of the purposes as specified in this article in conformance with the Public Procurement Act (§ 2.2-4300 et seq.);

2. Contract with local or regional public or private entities to provide services as guardians and conservators operating as local or regional Virginia public guardian and conservator programs in those cases in which a court, pursuant to §§ 64.2-2010 and 64.2-2015, determines that a person is eligible to have a public guardian or conservator appointed;

3. Adopt reasonable regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) as appropriate to implement, administer, and manage the state and local or regional programs authorized by this article, including, but not limited to, the adoption of:

a. Minimum training and experience requirements for volunteers and professional staff of the local and regional programs;

b. An ideal range of staff to client ratios for the programs, and adoption of procedures to be followed whenever a local or regional program falls below or exceeds the ideal range of staff to client ratios, which shall include, but not be limited to, procedures to ensure that services shall continue to be available to those in need and that appropriate notice is given to the courts, sheriffs, where appropriate, and the Department;

c. Procedures governing disqualification of any program falling below or exceeding the ideal range of staff to client ratios, which shall include a process for evaluating any program that has exceeded the ratio to assess the effects falling below or exceeding the ideal range of ratios has, had, or is having upon the program and upon the incapacitated persons served by the program.

The regulations shall require that evaluations occur no less frequently than every six months and shall continue until the staff to client ratio returns to within the ideal range; and

d. Person-centered practice procedures that shall:

(1) Focus on the preferences and needs of the individual receiving public guardianship services; and

(2) Empower and support the individual receiving public guardianship services, to the extent feasible, in defining the direction for his life and promoting self-determination and community involvement.

4. Establish procedures and administrative guidelines to ensure the separation of local or regional Virginia public guardian and conservator programs from any other guardian or conservator program operated by the entity with whom the Department contracts, specifically addressing the need for separation in programs that may be fee-generating;

5. Establish recordkeeping and accounting procedures to ensure that each local or regional program (i) maintains confidential, accurate, and up-to-date records of the personal and property matters over which it has control for each incapacitated person for whom it is appointed guardian or conservator and (ii) files with the Department an account of all public and private funds received;

6. Establish criteria for the conduct of and filing with the Department and as otherwise required by law: values history surveys, annual decisional accounting and assessment reports, the care plan designed for the incapacitated person, and such other information as the Department may by regulation require;

7. Establish criteria to be used by the local and regional programs in setting priorities with regard to services to be provided;

8. Take such other actions as are necessary to ensure coordinated services and a reasonable review of all local and regional programs;

9. Maintain statistical data on the *operation of the* programs and report such data to the General Assembly on or before January 1 of each even-numbered year as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents regarding the status of the Virginia Public Guardian and Conservator Program and ~~the developing trends with regard to the need for guardians, conservators, and other types of surrogate decision-making services identified operational needs of the program.~~ Such statistical data report shall be posted on the Department's website. In addition, the Department shall enter into a contract with an appropriate research entity with expertise in gerontology, disabilities, and public administration to conduct an evaluation of local public guardian and conservator programs from funds specifically appropriated and allocated for this purpose, and the evaluator shall provide a report with recommendations to the Department and to the Public Guardian and Conservator Advisory Board established pursuant to § 51.5-149.1. Trends identified in the report, *including the need for public guardians, conservators, and other types of surrogate decision-making services*, shall be presented to the General Assembly. The Department shall request such a report from an appropriate research entity every four years, provided the General Assembly appropriates funds for that purpose; and

10. Recommend appropriate legislative or executive actions.

C. Nothing in this article shall prohibit the Department from contracting pursuant to subdivision B 2 with an entity that may also provide privately funded surrogate decision-making services, including guardian and conservator services funded with fees generated by the estates of incapacitated persons, provided such private programs are administered by the contracting entity entirely separately from the local or regional Virginia public guardian and conservator programs, in conformity with regulations established by the Department in that respect.

D. In accordance with the Public Procurement Act (§ 2.2-4300 et seq.) and recommendations of the Public Guardian and Conservator Advisory Board, the Department may contract with a not-for-profit private entity that does not provide services to incapacitated persons as guardian or conservator to administer the program, and, if it does, the term "Department" when used in this article shall refer to the contract administrator.

§ 51.5-152. Powers and duties of the Department with respect to Alzheimer's disease and related disorders.

The Department shall:

1. Serve as a referral point for linking families caring for persons with Alzheimer's disease and related disorders with Virginia's chapters of the Alzheimer's Disease and Related Disorders Association;

2. Provide information, counseling, *education*, and referral about services and programs, *including safe, secure environments as defined in § 63.2-1802*, that may support individuals and families dealing with Alzheimer's disease and related disorders;

3. Collect and monitor data related to the impact of Alzheimer's disease and related disorders on Virginians;

4. Evaluate the needs of individuals with Alzheimer's disease and related disorders and their caregivers, and identify the services, resources, and policies that may be needed to address such needs for individuals with Alzheimer's disease and related disorders and their caregivers;

5. Recommend strategies for coordination of services and resources among agencies involved in the delivery of services to Virginians with Alzheimer's disease and related disorders;

6. Monitor development and implementation of the state plan for meeting the needs of ~~patients~~

individuals with Alzheimer's disease and related disorders and their caregivers required pursuant to subdivision D 4 of § 51.5-154; and

7. Recommend policies, legislation, and funding necessary to implement the state plan for meeting the needs of ~~patients~~ individuals with Alzheimer's disease and related disorders and their caregivers required pursuant to subdivision D 4 of § 51.5-154.

Article 13.

State Long-Term Care Ombudsman Program.

§ 51.5-182. Responsibility for complaints and investigations.

In addition to its responsibilities for complaints regarding services provided by long-term care facilities pursuant to the Older Americans Act, 42 U.S.C. § 3001 et seq., as amended, the Office of the State Long-Term Care Ombudsman shall investigate complaints regarding services provided by (i) licensed adult day care centers as defined in § 63.2-100, (ii) home care organizations as defined in § 32.1-162.7, (iii) hospice facilities as defined in § 32.1-162.1, (iv) providers as defined in § 37.2-403, (v) state hospitals operated by the Department of Behavioral Health and Developmental Services, and (vi) an area agency on aging or any private nonprofit or proprietary agency providing services.

Nothing in this section shall affect the services provided by local departments of social services pursuant to § 63.2-1605.

§ 51.5-183. Access to clients, patients, individuals, providers, and records by Office of the State Long-Term Care Ombudsman; interference, retaliation, and reprisals against complainants.

A. The Office of the State Long-Term Care Ombudsman pursuant to the Older Americans Act, 42 U.S.C. § 3001 et seq., shall, in the performance of its functions, responsibilities, and duties, have access to (i) licensed assisted living facilities and adult day care centers as those terms are defined in § 63.2-100, (ii) home care organizations as defined in § 32.1-162.7, (iii) hospice facilities as defined in § 32.1-162.1, (iv) certified nursing facilities and nursing homes as those terms are defined in § 32.1-123, (v) providers as defined in § 37.2-403, (vi) state hospitals operated by the Department of Behavioral Health and Developmental Services, and (vii) providers of services by an area agency on aging or any private nonprofit or proprietary agency providing services; the clients, patients, and individuals receiving services; and the records of such clients, patients, and individuals whenever the Office of the State Long-Term Care Ombudsman has the consent of the client, patient, or individual receiving services or his legal representative. However, if a client, patient, or individual receiving services is unable to consent to the review of his medical and social records and has no legal representative, and access to the records is necessary to investigate a complaint, access shall be granted to the extent necessary to conduct the investigation. Further, access shall be granted to the Office of the State Long-Term Care Ombudsman if a legal representative of the client, patient, or individual receiving services refuses to give consent and the Office of the State Long-Term Care Ombudsman has reasonable cause to believe that the legal representative is not acting in the best interests of the client, patient, or individual receiving services. Notwithstanding the provisions of § 32.1-125.1, the Office of the State Long-Term Care Ombudsman shall have access to state hospitals in accordance with this section. Access to patients, residents, and individuals receiving services and their records and to providers shall be available at any time during a provider's regular business or visiting hours and at any other time when access is required by the circumstances to be investigated. Records that are confidential under federal or state law shall be maintained as confidential by the Office of the State Long-Term Care Ombudsman and shall not be further disclosed, except as permitted by law. However, notwithstanding the provisions of this section, there shall be no right of access to privileged communications pursuant to § 8.01-581.17.

B. No provider, entity, or person may interfere with, retaliate against, or subject to reprisals a person who in good faith complains or provides information to, or otherwise cooperates with, the Office of the State Long-Term Care Ombudsman or any of its representatives or designees. The Commissioner shall promulgate regulations regarding the investigation of allegations of interference, retaliation, or reprisals and the implementation of sanctions with respect to such interference, retaliation, or reprisals as required under the Older Americans Act, 42 U.S.C. § 3001 et seq.

§ 51.5-184. Confidentiality of records of Office of the State Long-Term Care Ombudsman.

A. All documentary and other evidence received or maintained by the Office of the State Long-Term Care Ombudsman, the Department, or their agents in connection with specific complaints or investigations under any program of the Office of the State Long-Term Care Ombudsman shall be confidential and not subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that such information may be released on a confidential basis in compliance with regulations adopted by the Department and consistent with provisions of subdivision 4 of § 2.2-601 and with the requirements of the Older Americans Act, 42 U.S.C. § 3001 et seq.

B. The Office of the State Long-Term Care Ombudsman shall release information concerning completed investigations of complaints made under the programs of the Office of the State Long-Term Care Ombudsman but shall in no event release the identity of any complainant or individual receiving

428 services from a long-term care provider that was the subject of a complaint unless (i) the complainant,
429 or if the complainant is not the individual receiving services, the individual receiving services, or his
430 legal representative and the complainant, consents to disclosure or (ii) disclosure is required by court
431 order. The Office of the State Long-Term Care Ombudsman shall establish procedures to notify
432 long-term care providers of the nature of complaints and its findings.

433 **§ 51.5-185. Protection for representatives of the Office of the State Long-Term Care Ombudsman;**
434 **interference, retaliation, and reprisals.**

435 A. Any designated representative of the Office of the State Long-Term Care Ombudsman who in
436 good faith with reasonable cause and without malice performs the official duties of ombudsman,
437 including acting to report, investigate, or cause any investigation to be made regarding a long-term
438 care provider, shall be immune from any civil liability that might otherwise be incurred or imposed as
439 the result of making the report or investigation.

440 B. No provider, entity, or person may interfere with, retaliate against, or subject to reprisals the
441 Office of the State Long-Term Care Ombudsman or any of its representatives or designees for actions
442 taken in fulfillment of its functions, responsibilities, or duties. The Commissioner shall promulgate
443 regulations regarding the investigation of allegations of interference, retaliation, or reprisals and the
444 implementation of sanctions with respect to such interference, retaliation, or reprisals as required under
445 the Older Americans Act, 42 U.S.C. § 3001 et seq.

446 C. The Department shall put in place mechanisms to ensure that the Office of the State Long-Term
447 Care Ombudsman may (i) analyze, comment on, and monitor the development and implementation of
448 federal, state, and local laws, regulations, and policies and actions related to long-term care services
449 and providers or to the health, safety, welfare, and rights of individuals receiving long-term care
450 services; (ii) recommend changes to such laws, regulations, and policies; and (iii) provide information,
451 recommendations, and the position of the Office of the State Long-Term Care Ombudsman to public and
452 private agencies, legislators, media, and other persons regarding concerns of individuals receiving
453 long-term care services. Any comments, determinations, recommendations, and positions of the Office of
454 the State Long-Term Care Ombudsman shall be clearly labeled as those of the Office of the State
455 Long-Term Care Ombudsman and shall not be binding on the Department.

456 2. That §§ 51.5-139 through 51.5-142 and Article 8 (§§ 51.5-155 through 51.5-158) of Chapter 14 of
457 Title 51.5 of the Code of Virginia are repealed.