

LD4344828

HOUSE BILL NO. 1267

Offered January 25, 1994

A BILL to amend and reenact §§ 2.1-1.1, 2.1-1.3, 2.1-1.7, 2.1-51.15, 2.1-342, 2.1-397.1, 2.1-703.1, 9-6.25:1, 9-6.25:2, 9-156, 9-271, 9-323, 19.2-389, 32.1-27.1, 32.1-102.1, 32.1-102.3:1, 32.1-102.3:2, 32.1-102.3:2.1, 32.1-102.6, 32.1-122.02, 32.1-123, 32.1-124, 32.1-125, 32.1-126, 32.1-127, 32.1-128, 32.1-129, 32.1-130, 32.1-132, 32.1-133, 32.1-134.1, 32.1-134.4, 32.1-136, 32.1-162.5, 32.1-313, 32.1-317, 32.1-319, 32.1-320, 32.1-321.1, 32.1-321.2, 32.1-321.4, 32.1-325.2, 32.1-325.3, 32.1-328, 36-47, 36-99.5:1, 36-139.3, 37.1-98, 37.1-123, 38.2-2800, 51.5-1, 51.5-2, 51.5-31, 54.1-2918, 54.1-3100, 54.1-3408, 58.1-346.4, 58.1-609.8, 58.1-2111, 58.1-2122, 63.1-314.8 and 65.2-401 of the Code of Virginia; to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 13, consisting of sections numbered 32.1-360 through 32.1-445, and by adding in Article 6 of Chapter 1 of Title 37.1 a section numbered 37.1-62.2; and to repeal Chapter 24 (§§ 2.1-371 through 2.1-373.9) of Title 2.1, §§ 32.1-126.01, 32.1-126.2, 32.1-127.01, 32.1-135, 32.1-138, 32.1-138.1, 32.1-138.2, and 32.1-138.3, Article 7.1 (§§ 32.1-162.7 through 32.1-162.15) of Chapter 5 of Title 32.1, §§ 32.1-326.1 and 32.1-329, Article 1 (§§ 63.1-172 through 63.1-182.1) of Chapter 9 of Title 63.1, and Article 3 (§§ 63.1-194.1 through 63.1-194.13) of Chapter 9 of Title 63.1 of the Code of Virginia, establishing the Department and Board of Aging and Long-Term Care Services; penalties.

Patrons—DeBoer, Ball, Brickley, Connally, Heilig, Melvin and Morgan; Senators: Holland, C.A., Holland, E.M., Lambert, Schewel, Walker and Woods

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.1, 2.1-1.3, 2.1-1.7, 2.1-51.15, 2.1-342, 2.1-397.1, 2.1-703.1, 9-6.25:1, 9-6.25:2, 9-156, 9-271, 9-323, 19.2-389, 32.1-27.1, 32.1-102.1, 32.1-102.3:1, 32.1-102.3:2, 32.1-102.3:2.1, 32.1-102.6, 32.1-122.02, 32.1-123, 32.1-124, 32.1-125, 32.1-126, 32.1-127, 32.1-128, 32.1-129, 32.1-130, 32.1-132, 32.1-133, 32.1-134.1, 32.1-134.4, 32.1-136, 32.1-162.5, 32.1-313, 32.1-317, 32.1-319, 32.1-320, 32.1-321.1, 32.1-321.2, 32.1-321.4, 32.1-325.2, 32.1-325.3, 32.1-328, 36-47, 36-99.5:1, 36-139.3, 37.1-98, 37.1-123, 38.2-2800, 51.5-1, 51.5-2, 51.5-31, 54.1-2918, 54.1-3100, 54.1-3408, 58.1-346.4, 58.1-609.8, 58.1-2111, 58.1-2122, 63.1-314.8, and 65.2-401 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 13, consisting of sections numbered 32.1-360 through 32.1-445, and by adding in Article 6 of Chapter 1 of Title 37.1 a section numbered 37.1-62.2 as follows:

§ 2.1-1.1. Departments generally.

There shall be, in addition to such others as may be established by law, the following administrative departments and divisions of the state government:

Chesapeake Bay Local Assistance Department.

Department of Accounts.

~~Department for the Aging.~~

Department of Agriculture and Consumer Services.

Department of Alcoholic Beverage Control.

Department of Aviation.

Department of Conservation and Recreation.

Department of Corporations.

Department of Correctional Education.

Department of Corrections.

Department of Criminal Justice Services.

Department for the Deaf and Hard-of-Hearing.

Department of Economic Development.

Department of Education.

Department of Emergency Services.

Department of Employee Relations Counselors.

Department of Environmental Quality.

Department of Fire Programs.

Department of Forestry.

Department of Game and Inland Fisheries.

Department of General Services.

Department of Health.

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- 60 Department of Health Professions.
- 61 Department of Historic Resources.
- 62 Department of Housing and Community Development.
- 63 Department of Information Technology.
- 64 Department of Labor and Industry.
- 65 Department of Law.
- 66 *Department of Aging and Long-Term Care Services.*
- 67 Department of Medical Assistance Services.
- 68 Department of Mental Health, Mental Retardation and Substance Abuse Services.
- 69 Department of Military Affairs.
- 70 Department of Mines, Minerals and Energy.
- 71 Department of Minority Business Enterprise.
- 72 Department of Motor Vehicles.
- 73 Department of Personnel and Training.
- 74 Department of Planning and Budget.
- 75 Department of Professional and Occupational Regulation.
- 76 Department of Rail and Public Transportation.
- 77 Department of Rehabilitative Services.
- 78 Department for Rights of Virginians With Disabilities.
- 79 Department of Social Services.
- 80 Department of State Police.
- 81 Department of Taxation.
- 82 Department of Transportation.
- 83 Department of the Treasury.
- 84 Department of Veterans' Affairs.
- 85 Department for the Visually Handicapped.
- 86 Department of Workers' Compensation.
- 87 Department of Youth and Family Services.
- 88 Governor's Employment and Training Department.
- 89 § 2.1-1.3. Entities subject to standard nomenclature.
- 90 The following independent administrative entities are subject to the standard nomenclature provisions
- 91 of § 2.1-1.2:
- 92 Chesapeake Bay Local Assistance Department.
- 93 Department of Accounts.
- 94 ~~Department for the Aging.~~
- 95 Department of Agriculture and Consumer Services.
- 96 Department of Alcoholic Beverage Control.
- 97 Department of Aviation.
- 98 Department of Conservation and Recreation.
- 99 Department of Correctional Education.
- 100 Department of Corrections.
- 101 Department of Criminal Justice Services.
- 102 Department for the Deaf and Hard-of-Hearing.
- 103 Department of Economic Development.
- 104 Department of Education.
- 105 Department of Emergency Services.
- 106 Department of Environmental Quality.
- 107 Department of Employee Relations Counselors.
- 108 Department of Fire Programs.
- 109 Department of Forestry.
- 110 Department of Game and Inland Fisheries.
- 111 Department of General Services.
- 112 Department of Health.
- 113 Department of Health Professions.
- 114 Department of Historic Resources.
- 115 Department of Housing and Community Development.
- 116 Department of Information Technology.
- 117 Department of Labor and Industry.
- 118 *Department of Aging and Long-Term Care Services.*
- 119 Department of Medical Assistance Services.
- 120 Department of Mental Health, Mental Retardation and Substance Abuse Services.
- 121 Department of Military Affairs.

- 122 Department of Mines, Minerals and Energy.
 123 Department of Minority Business Enterprise.
 124 Department of Motor Vehicles.
 125 Department of Personnel and Training.
 126 Department of Planning and Budget.
 127 Department of Professional and Occupational Regulation.
 128 Department of Rail and Public Transportation.
 129 Department of Rehabilitative Services.
 130 Department for Rights of Virginians With Disabilities.
 131 Department of Social Services.
 132 Department of State Police.
 133 Department of Taxation.
 134 Department of Transportation.
 135 Department of the Treasury.
 136 Department of Veterans' Affairs.
 137 Department for the Visually Handicapped.
 138 Department of Youth and Family Services.
 139 Governor's Employment and Training Department.
 140 § 2.1-1.7. State councils.
 141 A. There shall be, in addition to such others as may be established by law, the following permanent
 142 collegial bodies either affiliated with more than one agency or independent of an agency within the
 143 executive branch:
 144 Adult Education and Literacy, Virginia Advisory Council for
 145 Agricultural Council, Virginia
 146 Alcohol and Drug Abuse Problems, Governor's Council on
 147 Apprenticeship Council
 148 Blue Ridge Regional Education and Training Council
 149 Child Day Care and Early Childhood Programs, Virginia Council on
 150 Child Day-Care Council
 151 Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion
 152 Commonwealth's Attorneys' Services Council
 153 Developmental Disabilities Planning Council, Virginia
 154 Disability Services Council
 155 Equal Employment Opportunity Council, Virginia
 156 Health Services Cost Review Council, Virginia
 157 Housing for the Disabled, Interagency Coordinating Council on
 158 Human Rights, Council on
 159 Human Services Information and Referral Advisory Council
 160 Indians, Council on
 161 Interagency Coordinating Council, Virginia
 162 Job Training Coordinating Council, Governor's
 163 Land Evaluation Advisory Council
 164 Local Debt, State Council on
 165 ~~Long-Term Care Council~~
 166 Maternal and Child Health Council
 167 Military Advisory Council, Virginia
 168 Needs of Handicapped Persons, Overall Advisory Council on the
 169 Prevention, Virginia Council on Coordinating
 170 Public Records Advisory Council, State
 171 Rate-setting for Children's Facilities, Interdepartmental Council on
 172 Revenue Estimates, Advisory Council on
 173 Southside Virginia Marketing Council
 174 Specialized Transportation Council
 175 State Health Benefits Advisory Council
 176 Status of Women, Council on the
 177 Virginia Business-Education Partnership Program, Advisory Council on the
 178 Virginia Recycling Markets Development Council.
 179 B. Notwithstanding the definition for "council" as provided in § 2.1-1.2, the following entities shall
 180 be referred to as councils:
 181 Council on Information Management
 182 Higher Education, State Council of

183 World Trade Council, Virginia.

184 § 2.1-51.15. Agencies for which responsible.

185 The Secretary of Health and Human Resources shall be responsible to the Governor for the following
186 agencies: Department of Health, Department for the Visually Handicapped, Department of Health
187 Professions, Department for the Aging of Aging and Long-Term Care Services, Department of Mental
188 Health, Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services,
189 Department of Social Services, Virginia Health Services Cost Review Council, Department for Rights of
190 Virginians With Disabilities, Department of Medical Assistance Services, Governor's Employment and
191 Training Department, Child Day-Care Council, Virginia Department for the Deaf and Hard-of-Hearing,
192 the Virginia Council on Coordinating Prevention and the Virginia Council on Child Day Care and Early
193 Childhood Programs. The Governor may, by executive order, assign any other state executive agency to
194 the Secretary of Health and Human Resources, or reassign any agency listed above to another secretary.

195 § 2.1-342. Official records to be open to inspection; procedure for requesting records and responding
196 to request; charges; exceptions to application of chapter.

197 A. Except as otherwise specifically provided by law, all official records shall be open to inspection
198 and copying by any citizens of this Commonwealth during the regular office hours of the custodian of
199 such records. Access to such records shall not be denied to citizens of this Commonwealth,
200 representatives of newspapers and magazines with circulation in this Commonwealth, and representatives
201 of radio and television stations broadcasting in or into this Commonwealth. The custodian of such
202 records shall take all necessary precautions for their preservation and safekeeping. Any public body
203 covered under the provisions of this chapter shall make an initial response to citizens requesting records
204 open to inspection within five work days after the receipt of the request by the public body which is the
205 custodian of the requested records. Such citizen request shall designate the requested records with
206 reasonable specificity. A specific reference to this chapter by the requesting citizen in his request shall
207 not be necessary to invoke the provisions of this chapter and the time limits for response by the public
208 body. The response by the public body within such five work days shall be one of the following
209 responses:

210 1. The requested records shall be provided to the requesting citizen.

211 2. If the public body determines that an exemption applies to all of the requested records, it may
212 refuse to release such records and provide to the requesting citizen a written explanation as to why the
213 records are not available with the explanation making specific reference to the applicable Code sections
214 which make the requested records exempt.

215 3. If the public body determines that an exemption applies to a portion of the requested records, it
216 may delete or excise that portion of the records to which an exemption applies, disclose the remainder
217 of the requested records and provide to the requesting citizen a written explanation as to why these
218 portions of the record are not available to the requesting citizen with the explanation making specific
219 reference to the applicable Code sections which make that portion of the requested records exempt. Any
220 reasonably segregatable portion of an official record shall be provided to any person requesting the
221 record after the deletion of the exempt portion.

222 4. If the public body determines that it is practically impossible to provide the requested records or
223 to determine whether they are available within the five-work-day period, the public body shall so inform
224 the requesting citizen and shall have an additional seven work days in which to provide one of the three
225 preceding responses.

226 Nothing in this section shall prohibit any public body from petitioning the appropriate court for
227 additional time to respond to a request for records when the request is for an extraordinary volume of
228 records and a response by the public body within the time required by this chapter will prevent the
229 public body from meeting its operational responsibilities. Before proceeding with this petition, however,
230 the public body shall make reasonable efforts to reach an agreement with the requester concerning the
231 production of the records requested.

232 The public body may make reasonable charges for the copying, search time and computer time
233 expended in the supplying of such records; however, such charges shall not exceed the actual cost to the
234 public body in supplying such records, except that the public body may charge, on a pro rata per acre
235 basis, for the cost of creating topographical maps developed by the public body, for such maps or
236 portions thereof, which encompass a contiguous area greater than fifty acres. Such charges for the
237 supplying of requested records shall be estimated in advance at the request of the citizen. The public
238 body may require the advance payment of charges which are subject to advance determination.

239 In any case where a public body determines in advance that search and copying charges for
240 producing the requested documents are likely to exceed \$200, the public body may, before continuing to
241 process the request, require the citizen requesting the information to agree to payment of an amount not
242 to exceed the advance determination by five percent. The period within which the public body must
243 respond under this section shall be tolled for the amount of time that elapses between notice of the
244 advance determination and the response of the citizen requesting the information.

Official records maintained by a public body on a computer or other electronic data processing system which are available to the public under the provisions of this chapter shall be made reasonably accessible to the public at reasonable cost.

Public bodies shall not be required to create or prepare a particular requested record if it does not already exist. Public bodies may, but shall not be required to, abstract or summarize information from official records or convert an official record available in one form into another form at the request of the citizen. The public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

Failure to make any response to a request for records shall be a violation of this chapter and deemed a denial of the request.

B. 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. Memoranda, correspondence, evidence and complaints related to criminal investigations; reports submitted to the state and local police, to investigators authorized pursuant to § 53.1-16 and to the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of Title 23 in confidence; portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity; records of local police departments relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such departments under a promise of confidentiality; and all records of persons imprisoned in penal institutions in this Commonwealth provided such records relate to the imprisonment. Information in the custody of law-enforcement officials relative to the identity of any individual other than a juvenile who is arrested and charged, and the status of the charge or arrest, shall not be excluded from the provisions of this chapter.

Criminal incident information relating to felony offenses shall not be excluded from the provisions of this chapter; however, where the release of criminal incident information is likely to jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information.

2. Confidential records of all investigations of applications for licenses and all licensees made by or submitted to the Alcoholic Beverage Control Board or the State Lottery Department.

3. State income, business, and estate tax returns, personal property tax returns, scholastic records and personnel records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, and medical and mental records, except that such records can be personally reviewed by the subject person or a physician of the subject person's choice; however, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

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

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

4. Memoranda, working papers and correspondence held or requested by members of the General Assembly or by the office of the Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any political subdivision of the Commonwealth or the president or other chief executive officer of any state-supported institution of higher education. This exclusion shall not

306 apply to memoranda, studies or other papers held or requested by the mayor or other chief executive
307 officer of any political subdivision which are specifically concerned with the evaluation of performance
308 of the duties and functions of any locally elected official and were prepared after June 30, 1992.

309 5. Written opinions of the city, county and town attorneys of the cities, counties and towns in the
310 Commonwealth and any other writing protected by the attorney-client privilege.

311 6. Memoranda, working papers and records compiled specifically for use in litigation or as a part of
312 an active administrative investigation concerning a matter which is properly the subject of an executive
313 or closed meeting under § 2.1-344 and material furnished in confidence with respect thereto.

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

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

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

323 As used in this subdivision 9, "test or examination" shall include (i) any scoring key for any such
324 test or examination, and (ii) any other document which would jeopardize the security of such test or
325 examination. Nothing contained in this subdivision 9 shall prohibit the release of test scores or results as
326 provided by law, or limit access to individual records as is provided by law. However, the subject of
327 such employment tests shall be entitled to review and inspect all documents relative to his performance
328 on such employment tests.

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

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

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

342 12. Memoranda, legal opinions, working papers and records recorded in or compiled exclusively for
343 executive or closed meetings lawfully held pursuant to § 2.1-344.

344 13. Reports, documentary evidence and other information as specified in §§ ~~2.1-373.2~~ 32.1-367 and
345 63.1-55.4.

346 14. Proprietary information gathered by or for the Virginia Port Authority as provided in
347 § 62.1-132.4 or § 62.1-134.1.

348 15. Contract cost estimates prepared for the confidential use of the Department of Transportation in
349 awarding contracts for construction or the purchase of goods or services and records, documents and
350 automated systems prepared for the Department's Bid Analysis and Monitoring Program.

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

354 17. Data, records or information of a proprietary nature produced or collected by or for faculty or
355 staff of state institutions of higher learning, other than the institutions' financial or administrative
356 records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly
357 issues, whether sponsored by the institution alone or in conjunction with a governmental body or a
358 private concern, where such data, records or information has not been publicly released, published,
359 copyrighted or patented.

360 18. Financial statements not publicly available filed with applications for industrial development
361 financings.

362 19. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,
363 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by
364 the political subdivision.

365 20. Confidential proprietary records, voluntarily provided by private business pursuant to a promise
366 of confidentiality from the Department of Economic Development, used by that Department for business,
367 trade and tourism development.

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

22. Documents as specified in § 58.1-3.

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

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

25. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Personnel and Training; however, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

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

27. 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 *or by the Department of Aging and Long-Term Care Services pursuant to Article 6 (§ 32.1-436 et seq.) of Chapter 13 of Title 32.1.*

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

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

30. 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 (§ 2.1-714 et seq.); however, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form which does not reveal the identity of the parties involved or other persons supplying information.

31. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence ~~to the Department of Social Services~~ in connection with an active investigation of an applicant or licensee ~~to the Department of Social Services pursuant to Chapters 9 (§ 63.1-172 et seq.) (§ 63.1-189.1 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1 or to the Department of Aging and Long-Term Care Services pursuant to Article 3 (§ 32.1-396 et seq.) and Article 5 (§ 32.1-423 et seq.) of Chapter 13 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.

32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings or other information or materials of the Virginia Board of Corrections, the Virginia Department of Corrections or any institution thereof to the extent, as determined by the Director of the Department of Corrections or his designee or of the Virginia Board of Youth and Family Services, the Virginia Department of Youth and Family Services or any facility thereof to the extent as determined by the Director of the Department of Youth and Family Services, or his designee, that disclosure or public dissemination of such materials would jeopardize the security of any correctional or juvenile facility or institution, as follows:

(i) Security manuals, including emergency plans that are a part thereof;

(ii) Engineering and architectural drawings of correctional and juvenile facilities, and operational specifications of security systems utilized by the Departments, provided the general descriptions of such security systems, cost and quality shall be made available to the public;

(iii) Training manuals designed for correctional and juvenile facilities to the extent that they address procedures for institutional security, emergency plans and security equipment;

(iv) Internal security audits of correctional and juvenile facilities, but only to the extent that they specifically disclose matters described in (i), (ii), or (iii) above or other specific operational details the disclosure of which would jeopardize the security of a correctional or juvenile facility or institution;

(v) Minutes or recordings of divisional, regional and institutional staff meetings or portions thereof to the extent that such minutes deal with security issues listed in (i), (ii), (iii), and (iv) of this subdivision;

(vi) Investigative case files by investigators authorized pursuant to § 53.1-16; however, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of complainants or charging parties, persons supplying information, confidential

sources, or other individuals involved in the investigation, or other specific operational details the disclosure of which would jeopardize the security of a correctional or juvenile facility or institution; nothing herein shall permit the disclosure of materials otherwise exempt as set forth in subdivision 1 of subsection B of this section;

(vii) Logs or other documents containing information on movement of inmates, juvenile clients or employees; and

(viii) Documents disclosing contacts between inmates, juvenile clients and law-enforcement personnel.

Notwithstanding the provisions of this subdivision, reports and information regarding the general operations of the Departments, including notice that an escape has occurred, shall be open to inspection and copying as provided in this section.

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

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

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

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

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

38. Official 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 which cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) 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 subdivisions (iii), (iv) and (v) shall be subject to public disclosure under this chapter upon completion of the study or investigation.

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

40. [Repealed.]

41. Records concerning reserves established in specific claims administered by the Department of General Services through its Division of Risk Management as provided in Article 5.1 (§ 2.1-526.1 et seq.) of Chapter 32 of this title, or by any county, city, or town.

42. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Care System pursuant to § 32.1-112.

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

44. [Repealed.]

45. Investigative notes; correspondence and information furnished in confidence with respect to an investigation; and official records otherwise exempted by this chapter or any Virginia statute, provided

to or produced by or for the Auditor of Public Accounts and the Joint Legislative Audit and Review Commission; or investigative notes, correspondence, documentation and information furnished and provided to or produced by or for the Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; however, nothing in this chapter 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.

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

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

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

49. In the case of corporations organized by the Virginia Retirement System, RF&P Corporation and its wholly owned subsidiaries, (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors, and (ii) records concerning the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.

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

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

52. Patient level data collected by the Virginia Health Services Cost Review Council and not yet processed, verified, and released, pursuant to § 9-166.7, to the Council by the nonprofit organization with which the Executive Director has contracted pursuant to § 9-166.4.

53. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Interstate Commerce Commission or the Federal Rail Administration with respect to data provided in confidence to the Interstate Commerce Commission and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

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

C. Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et seq.) of this title shall be construed as denying public access to contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 3 of subsection B of this section, or to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to, any public officer, official or employee at any level of state, local or regional government in this Commonwealth or to the compensation or benefits paid by any corporation organized by the Virginia Retirement System, RF&P Corporation and its wholly owned subsidiaries, to their officers or employees. The provisions of this subsection, however, shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

§ 2.1-397.1. Participation of certain agencies in budget development process of other agencies.

Agencies having responsibilities granted under §§ ~~2.1-373~~, 2.1-563.17, 2.1-563.18, 10.1-1204, ~~32.1-364~~, and 37.1-207 shall participate in the budget development process of relevant agencies and receive from these agencies, prior to submission to the Department of Planning and Budget, their

552 proposed programs and budgets. Recommendations to the appropriate agencies and the secretaries of the
 553 Governor on related matters shall be made prior to budget submissions.

554 § 2.1-703.1. Interagency Coordinating Council on Housing for the Disabled.

555 There shall be an Interagency Coordinating Council on Housing for the Disabled, hereinafter referred
 556 to as "Council." The Council shall consist of one representative, to be appointed by the agency
 557 executive, from each of the following: Department of Professional and Occupational Regulation,
 558 Department of Housing and Community Development, Virginia Housing Development Authority,
 559 Department for Rights of Virginians With Disabilities, Department ~~for the Aging of Aging and~~
 560 ~~Long-Term Care Services~~, Department for the Deaf and Hard-of-Hearing, Department of Mental Health,
 561 Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services, Department of
 562 Social Services and Department for the Visually Handicapped. The Secretary of Commerce and Trade
 563 and Secretary of Health and Human Resources shall serve ex officio on the Council. The appropriate
 564 agency executive may appoint additional members as required. The Council shall annually elect a
 565 chairman. Each agency shall contribute a pro rata share of the required support services.

566 The Council shall provide and promote cross-secretariat interagency leadership for comprehensive
 567 planning and coordinated implementation of proposals to increase and maximize use of existing
 568 low-income housing for the disabled and to ensure development of accompanying community support
 569 services. The Council shall stimulate action by government agencies and enlist the cooperation of the
 570 nonprofit and private sectors. The Council shall develop a state policy on housing for the disabled for
 571 submission to the Governor. The policy shall be reviewed and updated as necessary. The Council shall
 572 submit to the Governor and various agency executives a report and recommendations at least annually.

573 § 9-6.25:1. Advisory boards, commissions and councils.

574 There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the
 575 following advisory boards, commissions and councils within the executive branch:

576 Advisory Board for the Department for the Deaf and Hard-of-Hearing
 577 ~~Advisory Board for the Department for the Aging~~
 578 Advisory Board on Child Abuse and Neglect
 579 Advisory Board on Medicare and Medicaid
 580 Advisory Board on Occupational Therapy
 581 Advisory Board on Physical Therapy to the Board of Medicine
 582 Advisory Board on Respiratory Therapy to the Board of Medicine
 583 Advisory Board on Teacher Education and Licensure
 584 Advisory Council on Revenue Estimates
 585 Advisory Council on the Virginia Business-Education Partnership Program
 586 Appomattox State Scenic River Advisory Board
 587 Aquaculture Advisory Board
 588 Art and Architectural Review Board
 589 (Effective until July 1, 1994) Board for the Visually Handicapped
 590 Board of Directors, Virginia Truck and Ornaments Research Station
 591 Board of Forestry
 592 Board of Military Affairs
 593 (Effective until July 1, 1994) Board of Rehabilitative Services
 594 Board of Transportation Safety
 595 Board of Trustees of the Family and Children's Trust Fund
 596 Board of Visitors, Gunston Hall Plantation
 597 Board on Veterans' Affairs
 598 Catoctin Creek State Scenic River Advisory Board
 599 Cave Board
 600 Chickahominy State Scenic River Advisory Board
 601 Clinch Scenic River Advisory Board
 602 Coal Surface Mining Reclamation Fund Advisory Board
 603 Council on Indians
 604 Council on the Status of Women
 605 Emergency Medical Services Advisory Board
 606 Falls of the James Committee
 607 Film Office Advisory Board
 608 Forensic Science Advisory Board
 609 Goose Creek Scenic River Advisory Board
 610 Governor's Council on Alcohol and Drug Abuse Problems
 611 Governor's Mined Land Reclamation Advisory Committee
 612 Hemophilia Advisory Board
 613 Human Services Information and Referral Advisory Council

614	Industrial Development Services Advisory Board
615	Interagency Coordinating Council on Housing for the Disabled
616	Interdepartmental Board of the State Department of Minority Business Enterprise
617	Laboratory Services Advisory Board
618	Local Advisory Board to the Blue Ridge Community College
619	Local Advisory Board to the Central Virginia Community College
620	Local Advisory Board to the Dabney S. Lancaster Community College
621	Local Advisory Board to the Danville Community College
622	Local Advisory Board to the Eastern Shore Community College
623	Local Advisory Board to the Germanna Community College
624	Local Advisory Board to the J. Sargeant Reynolds Community College
625	Local Advisory Board to the John Tyler Community College
626	Local Advisory Board to the Lord Fairfax Community College
627	Local Advisory Board to the Mountain Empire Community College
628	Local Advisory Board to the New River Community College
629	Local Advisory Board to the Northern Virginia Community College
630	Local Advisory Board to the Patrick Henry Community College
631	Local Advisory Board to the Paul D. Camp Community College
632	Local Advisory Board to the Piedmont Virginia Community College
633	Local Advisory Board to the Rappahannock Community College
634	Local Advisory Board to the Southwest Virginia Community College
635	Local Advisory Board to the Thomas Nelson Community College
636	Local Advisory Board to the Tidewater Community College
637	Local Advisory Board to the Virginia Highlands Community College
638	Local Advisory Board to the Virginia Western Community College
639	Local Advisory Board to the Wytheville Community College
640	Long-Term Care Council
641	Maternal and Child Health Council
642	Medical Advisory Board, Department of Motor Vehicles
643	Medical Board of the Virginia Retirement System
644	Migrant and Seasonal Farmworkers Board
645	Motor Vehicle Dealer's Advisory Board
646	Nottoway State Scenic River Advisory Board
647	Personnel Advisory Board
648	Plant Pollination Advisory Board
649	Private College Advisory Board
650	(Effective July 1, 1994) Private Enterprise Commission
651	Private Security Services Advisory Board
652	Psychiatric Advisory Board
653	Radiation Advisory Board
654	Rappahannock Scenic River Advisory Board
655	Recreational Fishing Advisory Board, Virginia
656	Reforestation Board
657	Retirement System Review Board
658	Rockfish State Scenic River Advisory Board
659	Shenandoah State Scenic River Advisory Board
660	Small Business Advisory Board
661	Small Business Environmental Compliance Advisory Board
662	St. Mary's Scenic River Advisory Committee
663	State Advisory Board on Air Pollution
664	State Advisory Board for the Virginia Employment Commission
665	State Building Code Technical Review Board
666	State Council on Local Debt
667	State Health Benefits Advisory Council
668	State Insurance Advisory Board
669	State Land Evaluation Advisory Council
670	State Networking Users Advisory Board
671	State Public Records Advisory Council
672	Staunton Scenic River Advisory Committee
673	Telecommunications Relay Service Advisory Board
674	Tourism and Travel Services Advisory Board

- 675 Toxic Substances Advisory Board
- 676 Virginia Advisory Commission on Intergovernmental Relations
- 677 Virginia Advisory Council for Adult Education and Literacy
- 678 (For effective date - See Editor's note) Virginia Board on Physical Fitness and Sports
- 679 Virginia Coal Research and Development Advisory Board
- 680 Virginia Commission for the Arts
- 681 Virginia Commission on the Bicentennial of the United States Constitution
- 682 Virginia Council on Coordinating Prevention
- 683 Virginia Equal Employment Opportunity Council
- 684 Virginia Interagency Coordinating Council
- 685 Virginia Military Advisory Council
- 686 Virginia Mine Safety Board
- 687 Virginia Public Buildings Board
- 688 Virginia Recycling Markets Development Council
- 689 Virginia Transplant Council
- 690 Virginia Water Resources Research Center, Statewide Advisory Board
- 691 Virginia Winegrowers Advisory Board.
- 692 § 9-6.25:2. Policy boards, commissions and councils.
- 693 There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the
- 694 following policy boards, commissions and councils:
- 695 Apprenticeship Council
- 696 Athletic Board
- 697 Auctioneers Board
- 698 Blue Ridge Regional Education and Training Council
- 699 Board for Accountancy
- 700 Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects
- 701 Board for Barbers
- 702 Board for Contractors
- 703 Board for Cosmetology
- 704 Board for Geology
- 705 Board for Hearing Aid Specialists
- 706 Board for Opticians
- 707 Board for Professional and Occupational Regulation
- 708 Board for Professional Soil Scientists
- 709 Board for Waterworks and Wastewater Works Operators
- 710 (Effective July 1, 1994) Board for the Visually Handicapped
- 711 Board of Agriculture and Consumer Services
- 712 Board of Audiology and Speech-Language Pathology
- 713 Board of Conservation and Recreation
- 714 Board of Correctional Education
- 715 Board of Dentistry
- 716 Board of Directors, Virginia Student Assistance Authorities
- 717 Board of Examiners in the Department of Mines, Minerals and Energy
- 718 Board of Funeral Directors and Embalmers
- 719 Board of Health Professions
- 720 Board of Historic Resources
- 721 Board of Housing and Community Development
- 722 *Board of Aging and Long-Term Care Services*
- 723 Board of Medical Assistance Services
- 724 Board of Medicine
- 725 Board of Nursing
- 726 Board of Nursing Home Administrators
- 727 Board of Optometry
- 728 Board of Pharmacy
- 729 Board of Professional Counselors
- 730 Board of Psychology
- 731 Board of Recreation Specialists
- 732 (Effective July 1, 1994) Board of Rehabilitative Services
- 733 Board of Social Services
- 734 Board of Social Work
- 735 Board of Surface Mining Review
- 736 Board of Veterinary Medicine

- 737 Board on Conservation and Development of Public Beaches
- 738 Chesapeake Bay Local Assistance Board
- 739 Child Day Care and Early Childhood Programs, Virginia Council on
- 740 Child Day-Care Council
- 741 Commission on Local Government
- 742 Commonwealth Transportation Board
- 743 Council on Human Rights
- 744 Council on Information Management
- 745 Criminal Justice Services Board
- 746 Department of Environmental Quality
- 747 Disability Services Council
- 748 Farmers Market Board, Virginia
- 749 Interdepartmental Council on Rate-setting for Children's Facilities
- 750 Library Board, the Virginia State Library and Archives
- 751 Marine Resources Commission
- 752 Milk Commission
- 753 Pesticide Control Board
- 754 Real Estate Appraiser Board
- 755 Real Estate Board
- 756 Reciprocity Board, Department of Motor Vehicles
- 757 Safety and Health Codes Board
- 758 Seed Potato Board
- 759 Southside Virginia Marketing Council
- 760 Specialized Transportation Council
- 761 State Board of Corrections
- 762 State Board of Elections
- 763 State Board of Health
- 764 State Board of Youth and Family Services
- 765 State Health Department, Sewage Handling and Disposal Appeal Review Board
- 766 State Library Board
- 767 State Mental Health, Mental Retardation and Substance Abuse Services Board
- 768 State Water Control Board
- 769 Substance Abuse Certification Board
- 770 Treasury Board, The, Department of the Treasury
- 771 Virginia Aviation Board
- 772 Virginia Board for Asbestos Licensing
- 773 Virginia Fire Services Board
- 774 Virginia Gas and Oil Board
- 775 Virginia Health Planning Board
- 776 Virginia Health Services Cost Review Council
- 777 (For effective date - See Editor's note) Virginia Manufactured Housing Board
- 778 Virginia Parole Board
- 779 Virginia Public Telecommunications Board
- 780 Virginia Soil and Water Conservation Board
- 781 Virginia Voluntary Formulary Board
- 782 Virginia Waste Management Board
- 783 Virginia World Trade Council
- 784 Waste Management Facility Operators, Board for.
- 785 § 9-156. Definitions.
- 786 As used in this chapter:
- 787 "Consumer" means any person (i) whose occupation is other than the administration of health
- 788 activities or the provision of health services, (ii) who has no fiduciary obligation to a health care
- 789 institution or other health agency or to any organization, public or private, whose principal activity is an
- 790 adjunct to the provision of health services, or (iii) who has no material financial interest in the rendering
- 791 of health services,
- 792 "Council" means the Virginia Health Services Cost Review Council, "Health care institution" means
- 793 (i) a general hospital, ordinary hospital, *or* outpatient surgical hospital; ~~nursing home or certified nursing~~
- 794 ~~facility~~ licensed ~~or certified~~ pursuant to Chapter 5, Article 1 (§ 32.1-123 et seq.) of Title 32.1, (ii) a
- 795 mental or psychiatric hospital licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 ~~or~~, (iii) a
- 796 hospital operated by the University of Virginia or Virginia Commonwealth University, *or* (iv) a *nursing*
- 797 *facility or certified nursing facility licensed or certified pursuant to Article 2 (§ 32.1-375 et seq.) of*

798 *Chapter 13 of Title 32.1.* In no event shall such term be construed to include any physician's office,
799 nursing care facility of a religious body which depends upon prayer alone for healing, independent
800 laboratory or outpatient clinic.

801 § 9-271. Comprehensive Prevention Plan.

802 A Comprehensive Prevention Plan shall be jointly developed biennially by the following agencies:

803 ~~Department for the Aging,~~ Council on Child Day Care and Early Childhood Programs, Department
804 of Correctional Education, Department of Corrections, ~~Department of Youth and Family Services,~~
805 Department of Criminal Justice Services, Department of Education, Department of Health, ~~Department of~~
806 ~~Aging and Long-Term Care Services,~~ Department of Medical Assistance Services, Department of Mental
807 Health, Mental Retardation and Substance Abuse Services, Department for Rights of Virginians With
808 Disabilities, ~~and~~ Department of Social Services ~~and Department of Youth and Family Services.~~ The
809 Secretary of Health and Human Resources shall designate an agency to coordinate development of the
810 Plan. The Comprehensive Prevention Plan shall coordinate and integrate the planning efforts of the state
811 agencies listed above and the private sector in order to provide a broad prevention agenda for the
812 Commonwealth, enable communities to design and implement prevention programs that meet the
813 identified needs of the community and facilitate the development of interagency and broad-based
814 community involvement in the development of prevention programs. The Comprehensive Prevention
815 Plan shall identify priority prevention issues and challenges, prevention goals and objectives and public
816 and private strategies to achieve goals and objectives. For the purposes of the Plan, prevention activities,
817 issues and programs shall be those activities which promote the objective identified in subsection B of
818 § 9-270. The Plan with a cost analysis of the proposed strategies shall be submitted to the House
819 Committee on Health, Welfare and Institutions and the Senate Committees on Rehabilitation and Social
820 Services and Education and Health for the purpose of analysis, review and comment prior to
821 implementation.

822 § 9-323. Specialized Transportation Technical Advisory Committee.

823 A Specialized Transportation Technical Advisory Committee shall assist the Council. The Committee
824 shall be composed of representatives from the following agencies: the Department ~~for the Aging of~~ *Aging*
825 *and Long-Term Care Services,* the Department for the Deaf and Hard-of-Hearing, the Department of
826 Education, the Department of Medical Assistance Services, the Department of Mental Health, Mental
827 Retardation and Substance Abuse Services, the Department for Rights of Virginians with Disabilities, the
828 Department of Rehabilitative Services, the Department of Social Services, the Department of
829 Transportation's Directorate of Rail and Public Transportation or its successor agency and the
830 Department for the Visually Handicapped and three representatives of public transportation providers or
831 transportation district commissions to be appointed by the Council.

832 § 19.2-389. Dissemination of criminal history record information.

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

835 1. Authorized officers or employees of criminal justice agencies, as defined by § 9-169, for purposes
836 of the administration of criminal justice and the screening of an employment application or review of
837 employment by a criminal justice agency with respect to its own employees or applicants, and
838 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all
839 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,
840 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every thirty days;

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

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

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

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

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

7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for public 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;

8. Public or private agencies when and as required by federal or state law or interstate compact to investigate applicants for foster or adoptive parenthood 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;

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 § 9-169 at his cost, except that criminal history record information shall be supplied to a person who has applied to be a volunteer with a Virginia affiliate of Big Brothers/Big Sisters of America at no charge;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.1-195 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.1-198 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 § 63.1-198.1, 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 divisions of the Commonwealth for the purpose of screening individuals who accept public school employment;

14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery Law (§ 58.1-4000 et seq.);

15. Licensed nursing home facility and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes facilities pursuant to § 32.1-126.01-32.1-379 and home care organizations pursuant to § 32.1-162.9-1 32.1-416, subject to the limitations set out in subsection E;

16. Licensed homes for adults adult care residences, 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 adult care residences pursuant to § 63.1-173.2 32.1-397, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed adult day care centers pursuant to § 63.1-194.13 32.1-435, subject to the limitations set out in subsection F; and

17. 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

921 where time is of the essence and the normal response time of the Exchange would exceed the necessary
922 time period. A criminal justice agency to whom a request has been made for the dissemination of
923 criminal history record information that is required to be reported to the Central Criminal Records
924 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.
925 Dissemination of offenses not required to be reported to the Exchange shall be made by the criminal
926 justice agency maintaining the record as required by § 15.1-135.1.

927 E. Criminal history information provided to licensed nursing ~~homes~~ *facilities* and to home care
928 organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange
929 for any offense specified in §§ ~~32.1-126.04 and 32.1-162.9:1~~ *32.1-379 or § 32.1-416*.

930 F. Criminal history information provided to licensed ~~homes for adults~~ *adult care residences*, licensed
931 district homes for adults, and licensed adult day care centers pursuant to subdivision A 16 shall be
932 limited to the convictions on file with the Exchange for any offense specified in § ~~63.1-173.2, 32.1-397,~~
933 *§ 63.1-189.1 or § 32.1-435*.

934 § 32.1-27.1. Additional civil penalty or appointment of a receiver.

935 A. In addition to the remedies provided in § 32.1-27, the civil penalties set forth in this section may
936 be imposed by the circuit court for the city or county in which the facility is located as follows:

937 1. A civil penalty for a Class I violation shall not exceed the lesser of \$25 per licensed or certified
938 bed or \$1,000 for each day the facility is in violation, beginning on the date the facility was first
939 notified of the violation.

940 2. A civil penalty for a Class II violation shall not exceed the lesser of \$5 per licensed or certified
941 bed or \$250 per day for each day the facility is in violation, beginning on the date the facility was first
942 notified of the violation.

943 In the event federal law or regulations require a civil penalty in excess of the amounts set forth
944 above for Class I or Class II violations, then the lowest amounts required by such federal law or
945 regulations shall become the maximum civil penalties under this section. The date of notification under
946 this section shall be deemed to be the date of receipt by the facility of written notice of the alleged
947 Class I or Class II violation, which notice shall include specifics of the violation charged and which
948 notice shall be hand delivered or sent by overnight express mail or by registered or certified mail, return
949 receipt requested.

950 All civil penalties received pursuant to this subsection shall be paid into a special fund of the
951 Department for the cost of implementation of this section, to be applied to the protection of the health
952 or property of residents or patients of facilities that the Commissioner or the United States Secretary of
953 Health and Human Services finds in violation, including payment for the costs for relocation of patients,
954 maintenance of temporary management or receivership to operate a facility pending correction of a
955 violation, and for reimbursement to residents or patients of lost personal funds.

956 B. In addition to the remedies provided in ~~§ 32.1-27~~ and the civil penalties set forth in subsection A
957 of this section, the Commissioner may petition the circuit court for the jurisdiction in which any nursing
958 home or certified nursing facility as defined in ~~§ 32.1-123~~ is located for the appointment of a receiver in
959 accordance with the provisions of this subsection whenever such nursing facility or certified nursing
960 facility shall (i) receive official notice from the Commissioner that its license has been or will be
961 revoked or suspended; or that its Medicare or Medicaid certification has been or will be cancelled or
962 revoked; or (ii) receive official notice from the United States Department of Health and Human Services
963 or the Department of Medical Assistance Services that its provider agreement has been or will be
964 revoked, cancelled, terminated or not renewed; or (iii) advise the Department of its intention to close or
965 not to renew its license or Medicare or Medicaid provider agreement less than ninety days in advance;
966 or (iv) operate at any time under conditions which present a major and continuing threat to the health,
967 safety, security, rights or welfare of the patients, including the threat of imminent abandonment by the
968 owner or operator; and (v) the Department is unable to make adequate and timely arrangements for
969 relocating all patients who are receiving medical assistance under this chapter and Title XIX of the
970 Social Security Act in order to ensure their continued safety and health care.

971 Upon the filing of a petition for appointment of a receiver, the court shall hold a hearing within ten
972 days, at which time the Department and the owner or operator of the facility may participate and present
973 evidence. The court may grant the petition if it finds any one of the conditions identified in (i) through
974 (iv) above to exist in combination with the condition identified in (v) and the court further finds that
975 such conditions will not be remedied and that the patients will not be protected unless the petition is
976 granted.

977 No receivership established under this subsection shall continue in effect for more than 180 days
978 without further order of the court, nor shall the receivership continue in effect following the revocation
979 of the nursing home's license or the termination of the certified nursing facility's Medicare or Medicaid
980 provider agreement, except to enforce any post-termination duties of the provider as required by the
981 provisions of the Medicare or Medicaid provider agreement.

982 The appointed receiver shall be a person licensed as nursing home administrator in the

Commonwealth pursuant to Title 54.1 or, if not so licensed, shall employ and supervise a person so licensed to administer the day-to-day business of the nursing facility or certified nursing facility.

The receiver shall have (i) such powers and duties to manage the nursing facility or certified nursing facility as the court may grant and direct, including but not limited to the duty to accomplish the orderly relocation of all patients and the right to refuse to admit new patients during the receivership, (ii) the power to receive, conserve, protect and disburse funds, including Medicare and Medicaid payments on behalf of the owner or operator of the nursing facility or certified nursing facility, (iii) the power to execute and avoid executory contracts, (iv) the power to hire and discharge employees, and (v) the power to do all other acts, including the filing of such reports as the court may direct, subject to accounting to the court therefor and otherwise consistent with state and federal law, necessary to protect the patients from the threat or threats set forth in the original petitions, as well as such other threats arising thereafter or out of the same conditions.

The court may grant injunctive relief as it deems appropriate to the Department or to its receiver either in conjunction with or subsequent to the granting of a petition for appointment of a receiver under this section.

The court may terminate the receivership on the motion of the Department, the receiver, or the owner or operator, upon finding, after a hearing, that either (i) the conditions described in the petition have been substantially eliminated or remedied, or (ii) all patients in the nursing home or certified nursing facility have been relocated. Within thirty days after such termination, the receiver shall file a complete report of his activities with the court, including an accounting for all property of which he has taken possession and all funds collected.

All costs of administration of a receivership hereunder shall be paid by the receiver out of reimbursement to the nursing facility or certified nursing facility from Medicare, Medicaid and other patient care collections. The court, after terminating such receivership, shall enter appropriate orders to ensure such payments upon its approval of the receiver's reports.

A receiver appointed under this section shall be an officer of the court, shall not be liable for conditions at the nursing home or certified nursing facility which existed or originated prior to his appointment and shall not be personally liable, except for his own gross negligence and intentional acts which result in injuries to persons or damage to property at the nursing facility or certified nursing facility during his receivership.

The provisions of this subsection shall not be construed to relieve any owner, operator or other party of any duty imposed by law or of any civil or criminal liability incurred by reason of any act or omission of such owner, operator, or other party.

§ 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 licensed or required to be licensed by the Board, *the Board of Aging and Long-Term Care Services*, or the State Mental Health, Mental Retardation and Substance Abuse Services Board, 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, 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 facilities.
4. Intermediate care facilities.
5. Extended care facilities.
6. Mental hospitals.
7. Mental retardation facilities.
8. Psychiatric hospitals and intermediate care facilities established primarily for the medical,

1044 psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts.

1045 9. Specialized centers or clinics or that portion of a physician's office developed for the provision of
1046 outpatient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning, gamma
1047 knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron
1048 emission tomographic (PET) scanning, radiation therapy, single photon emission computed tomography
1049 (SPECT), or such other specialty services as may be designated by the Board by regulation.

1050 10. Rehabilitation hospitals.

1051 The term "medical care facility" shall not include any facility of the Department of Mental Health,
1052 Mental Retardation and Substance Abuse Services or any nonhospital substance abuse residential
1053 treatment program operated by or contracted primarily for the use of a community services board under
1054 the Department of Mental Health, Mental Retardation and Substance Abuse Services' Comprehensive
1055 Plan or physician's office, *or an adult care residence*, except that portion of a physician's office
1056 described above in subdivision 9 of the definition of "medical care facility."

1057 "Project" means:

1058 1. Establishment of a medical care facility;

1059 2. An increase in the total number of beds or operating rooms in an existing medical care facility;

1060 3. Relocation at the same site of ten beds or ten percent of the beds, whichever is less, from one
1061 existing physical facility to another in any two-year period; however, a hospital shall not be required to
1062 obtain a certificate for the use of ten percent of its beds as nursing ~~home~~ facility beds as provided in
1063 § 32.1-132;

1064 4. Introduction into an existing medical care facility of any new nursing ~~home~~ facility service, such
1065 as intermediate care facility services, extended care facility services, or skilled nursing facility services,
1066 regardless of the type of medical care facility in which those services are provided;

1067 5. Introduction into an existing medical care facility of any new cardiac catheterization, computed
1068 tomographic (CT), gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic
1069 source imaging (MSI), medical rehabilitation, neonatal special care, obstetrical, open heart surgery,
1070 positron emission tomographic (PET) scanning, ~~psychiatric~~ *psychiatric*, organ or tissue transplant service,
1071 radiation therapy, single photon emission computed tomography (SPECT), substance abuse treatment, or
1072 such other specialty clinical services as may be designated by the Board by regulation, which the facility
1073 has never provided or has not provided in the previous twelve months;

1074 6. Conversion of beds in an existing medical care facility to medical rehabilitation beds or
1075 psychiatric beds;

1076 7. The addition or replacement by an existing medical care facility of any medical equipment for the
1077 provision of cardiac catheterization, computed tomographic (CT), gamma knife surgery, lithotripsy,
1078 magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron
1079 emission tomographic (PET) scanning, radiation therapy, single photon emission computed tomography
1080 (SPECT), or other specialized service designated by the Board by regulation; notwithstanding the above,
1081 the Commissioner shall develop regulations providing for the replacement by a medical care facility of
1082 existing medical equipment, which is determined by the Commissioner to be inoperable or otherwise in
1083 need of replacement without requiring issuance of a certificate of public need; or

1084 8. Any capital expenditure of one million dollars or more, not defined as reviewable in subdivisions
1085 1 through 7 of this definition, by or in behalf of a medical care facility, except capital expenditures,
1086 registered with the Commissioner pursuant to regulations developed by the Board, of less than two
1087 million dollars that do not involve the expansion of any space in which patient care services are
1088 provided, including, but not limited to, expenditures for nurse-call systems, materials handling and
1089 management information systems, parking lots and garages, child-care centers, and laundry services.

1090 "Regional health planning agency" means the regional agency, including the regional health planning
1091 board, its staff and any component thereof, designated by the Virginia Health Planning Board to perform
1092 the health planning activities set forth in this chapter within a health planning region.

1093 "State Medical Facilities Plan" means the planning document adopted by the Board of Health which
1094 shall include, but not be limited to, (i) methodologies for projecting need for medical care facility beds
1095 and services; (ii) statistical information on the availability of medical care facilities and services; and
1096 (iii) procedures, criteria and standards for review of applications for projects for medical care facilities
1097 and services.

1098 "Virginia Health Planning Board" means the statewide health planning body established pursuant to
1099 § 32.1-122.02 which serves as the analytical and technical resource to the Secretary of Health and
1100 Human Resources in matters requiring health analysis and planning.

1101 § 32.1-102.3:1. Application for certificate not required of certain nursing facilities.

1102 An application for a certificate that there exists a public need for a proposed project shall not be
1103 required for nursing facilities ~~or nursing homes~~ affiliated with facilities which, on January 1, 1982, and
1104 thereafter, meet all of the following criteria:

1105 1. A facility which is operated as a nonprofit institution.

2. A facility which is licensed ~~jointly~~ by the Department of ~~Health~~ *Aging and Long-Term Care Services* as a nursing facility ~~or nursing home~~ and by the Department of Social Services as an adult care residence.

3. A facility which observes the following restrictions on admissions:

a. Admissions are only allowed pursuant to the terms of a "life care contract" guaranteeing that the full complement of services offered by the facility is available to the resident as and when needed;

b. Admissions to the adult care residence unit are restricted to individuals defined as ambulatory by the Department of ~~Social Services~~ *Aging and Long-Term Care Services*;

c. Admissions to the nursing facility ~~or nursing home~~ unit are restricted to those individuals who are residents of the adult care residence unit.

4. A facility in which no resident receives federal or state public assistance funds.

§ 32.1-102.3:2. Certificates of public need; moratorium; exceptions.

The Commissioner of Health shall not approve, authorize or accept applications for the issuance of any certificate of public need pursuant to this article for any project which would result in an increase in the number of beds in which nursing facility or extended care services are provided through June 30, 1995. However, the Commissioner may approve or authorize:

1. The issuance of a certificate of public need for a project for the (i) renovation or replacement on site of an existing facility or any part thereof or (ii) replacement off-site of an existing facility at a location within the same city or county and within reasonable proximity to the current site when replacement on the current site is proven infeasible, in accordance with the law, when a capital expenditure is required to comply with life safety codes, licensure, certification or accreditation standards. Under no circumstances shall the State Health Commissioner approve, authorize, or accept an application for the issuance of a certificate for any project which would result in the continued use of the facility replaced as a nursing facility.

2. The issuance of a certificate of public need for any project for the conversion on site of existing licensed beds to beds certified for skilled nursing services (SNF) when (i) the total number of beds to be converted does not exceed the lesser of twenty beds or ten percent of the beds in the facility; (ii) the facility has demonstrated that the SNF beds are needed specifically to serve a specialty heavy care patient population, such as ventilator-dependent and AIDS patients and that such patients otherwise will not have reasonable access to such services in existing or approved facilities; and (iii) the facility further commits to admit such patients on a priority basis once the SNF unit is certified and operational.

3. The issuance of a certificate of public need for any project for the conversion on site of existing beds in an adult care residence licensed ~~pursuant to Chapter 9 (§ 63.1-172 et seq.) of Title 63.1~~ *as such* as of March 1, 1990, to beds certified as nursing facility beds when (i) the total number of beds to be converted does not exceed the lesser of thirty beds or twenty-five percent of the beds in the adult care residence; (ii) the adult care residence has demonstrated that nursing facility beds are needed specifically to serve a patient population of AIDS, or ventilator-dependent, or head and spinal cord injured patients, or any combination of the three, and that such patients otherwise will not have reasonable access to such services in existing or approved nursing facilities; (iii) the adult care residence further commits to admit such patients once the nursing facility beds are certified and operational; and (iv) the ~~licensed~~ adult care residence otherwise meets the standards for nursing facility beds as set forth in the regulations of the Board of ~~Health~~ *Aging and Long-Term Care Services*. Notwithstanding the conditions required by this exception related to serving specific patient populations, an adult care residence which has obtained by January 1, 1991, a certificate of public need for a project for conversion on site of existing beds in its facility licensed ~~pursuant to Chapter 9 of Title 63.1~~ *as an adult care residence* as of March 1, 1990, to beds certified as nursing facility beds may use the beds converted to nursing facility beds pursuant to this exception for patient populations requiring specialized care of at least the same intensity which meet the criteria for the establishment of a specialized care nursing facility contract with the Department of Medical Assistance Services *or the Department of Aging and Long-Term Care Services*.

4. The issuance of a certificate of public need for a project in an existing nursing facility owned and operated by the governing body of a county when (i) the total number of new beds to be added by construction does not exceed the lesser of thirty beds or twenty-five percent of the existing nursing facility beds in the facility; (ii) the facility has demonstrated that the nursing facility beds are needed specifically to serve a specialty heavy care patient population, such as dementia, ventilator-dependent, and AIDS patients; and (iii) the facility has executed an agreement with a state-supported medical college to provide training in geriatric nursing.

5. The issuance of a certificate of public need for a nursing facility project located in the City of Staunton when (i) the total number of new beds to be constructed does not exceed thirty beds; (ii) the facility is owned by and will be operated as a nonprofit entity; and (iii) the project is proposed as part of a retirement community that is a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2.

1167 6. The issuance of a certificate of public need for any project for an increase in the number of beds
1168 in which nursing ~~home~~ facility or extended care services are provided, or the creation of new beds in
1169 which such services are to be provided, by any continuing care provider registered with the State
1170 Corporation Commission pursuant to Chapter 49 of Title 38.2, if (i) the total number of new or
1171 additional nursing ~~home~~ facility beds plus any existing nursing ~~home~~ facility beds operated by the
1172 provider does not exceed twenty percent of the continuing care provider's total existing or planned
1173 independent living and adult care residence population when the beds are to be added by new
1174 construction, or twenty-five beds when the beds are to be added by conversion on site of existing beds
1175 in ~~an a licensed~~ adult care residence ~~licensed pursuant to Chapter 9 of Title 63-1;~~ (ii) such beds are
1176 necessary to meet existing or reasonably anticipated obligations to provide care to present or prospective
1177 residents of the continuing care facility pursuant to continuing care contracts meeting the requirements
1178 of § 38.2-4905; (iii) the provider agrees in writing not to seek certification for the use of such new or
1179 additional beds by persons eligible to receive medical assistance services pursuant to Title XIX of the
1180 United States Social Security Act; (iv) the provider agrees in writing to obtain, prior to admission of
1181 every resident of the continuing care facility, the resident's written acknowledgement that the provider
1182 does not serve recipients of medical assistance services and that, in the event such resident becomes a
1183 medical assistance services recipient who is eligible for nursing facility placement, such resident shall
1184 not be eligible for placement in the provider's nursing facility unit; and (v) the provider agrees in
1185 writing that only continuing care contract holders will be admitted to the nursing ~~home~~ facility beds
1186 after the first three years of operation.

1187 Further, if a certificate is approved pursuant to this subdivision, admissions to such new or additional
1188 beds shall be restricted for the first three years of operation to patients for whose care, pursuant to an
1189 agreement between the facility and the individual financially responsible for the patient, private payment
1190 will be made or persons who have entered into an agreement with the facility for continuing care
1191 contracts meeting the requirements of § 38.2-4905.

1192 7. The issuance of a certificate of public need for a nursing facility project associated with a
1193 continuing care provider which did not operate a nursing ~~home~~ facility on January 1, 1993, and was
1194 registered as of January 1, 1993, with the State Corporation Commission pursuant to Chapter 49 of Title
1195 38.2, if (i) the total number of new beds to be constructed does not exceed sixty beds; (ii) the facility is
1196 owned by and will be operated as a nonprofit entity; (iii) after the first three years of operation, the
1197 facility will admit only retired officers of the United States uniformed forces and their surviving
1198 spouses; (iv) the provider agrees in writing not to seek certification for the use of such beds by persons
1199 eligible to receive medical assistance services pursuant to Title XIX of the United States Social Security
1200 Act; and (v) the provider agrees in writing to obtain, prior to admission of every resident of the
1201 continuing care facility, the written acknowledgement that the provider does not serve recipients of
1202 medical assistance services and that, in the event such resident becomes a medical assistance services
1203 recipient who is eligible for nursing facility placement, such resident shall not be eligible for placement
1204 in the provider's nursing facility unit. Further, if a certificate is approved, pursuant to this subdivision,
1205 admissions to such beds shall be restricted to persons for whose care, pursuant to an agreement with the
1206 facility, private payment will be made or persons who have entered into an agreement with the facility
1207 for continuing care contracts meeting the requirements of § 38.2-4905.

1208 8. The issuance of a certificate of public need for a nursing facility project located in the City of
1209 Norfolk if (i) the total number of beds to be constructed does not exceed 120 beds; (ii) the facility will
1210 replace an existing facility in the City of Chesapeake; (iii) the construction of the facility has been
1211 delayed by environmental contamination caused by leaking underground storage tanks; and (iv) the total
1212 capital costs of the facility will not exceed \$4,387,000.

1213 Notwithstanding the foregoing and other provisions of Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4
1214 of this title, the state home for aged and infirm veterans authorized by Chapter 668, 1989 Acts of
1215 Assembly, shall be exempt from all ~~The the~~ 1993 certificates of public need review requirements as a
1216 medical care facility.

1217 § 32.1-102.3:2.1. Commissioner authorized to issue certain certificates of public need.

1218 Notwithstanding the moratorium established pursuant to § 32.1-102.3:2, the Commissioner of Health
1219 may accept, approve, or authorize applications for the issuance of a certificate of public need for any
1220 project for an increase in the number of beds in which nursing facility ~~or nursing home~~ or extended care
1221 services are provided, or the creation of new beds in which such services are to be provided, by any
1222 continuing care provider registered as of January 15, 1991, with the State Corporation Commission
1223 pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2, if (i) the total number of new or additional
1224 nursing facility ~~or nursing home~~ beds does not exceed thirty-two when the beds are to be added by new
1225 construction, or twenty-five when the beds are to be added by conversion on site of existing beds in an
1226 adult care residence licensed pursuant to Chapter 9 (~~§ 63-1-172 et seq.~~) of Title 63-1 ~~as such as of~~
1227 January 15, 1991, and (ii) such beds are necessary to meet existing or reasonably anticipated obligations
1228 to provide care to present or prospective residents of the continuing care facility pursuant to continuing

care contracts meeting the requirements of § 38.2-4905. No application for a certificate of public need for the creation or addition of nursing facility ~~or nursing home~~ beds pursuant to this section shall be accepted from a provider who, as of January 15, 1991, had an existing complement of beds, unless such provider agrees in writing not to seek certification for the use of such new or additional beds by persons eligible to receive medical assistance services pursuant to Title XIX of the United States Social Security Act. Further, if a certificate is approved, pursuant to this section, to increase the number of nursing facility ~~or nursing home~~ beds for a provider who has an existing complement of such beds, admissions to such beds shall thereafter be restricted to persons who have entered into continuing care contracts meeting the requirements of § 38.2-4905.

§ 32.1-102.6. Administrative procedures.

A. To obtain a certificate for a project, the applicant shall file a completed application for a certificate with the Department and the appropriate health systems agency. At least thirty days before any person is contractually obligated to acquire an existing medical care facility, the cost of which is \$600,000 or more, that person shall notify the Commissioner and the appropriate health systems agency of the intent, the services to be offered in the facility, the bed capacity in the facility and the projected impact that the cost of the acquisition will have upon the charges for services to be provided. If clinical services or beds are proposed to be added as a result of the acquisition, the Commissioner may require the proposed new owner to obtain a certificate prior to the acquisition.

B. The appropriate health systems agency shall begin to review each complete application for a certificate within such time as the Board may prescribe by regulation. The health systems agency shall hold one public hearing on each application in a location in the county or city in which the project is proposed or a contiguous county or city. The health systems agency shall cause notice of the public hearing to be published in a newspaper of general circulation in the county or city where a project is proposed to be located at least nine days prior to the public hearing. In no case shall a health systems agency hold more than two meetings on any application, one of which shall be a public hearing conducted by the board of the health systems agency or a subcommittee of the board. The applicant shall be given the opportunity, prior to the vote, to respond to any comments made about the project by the health systems agency staff, any information in a staff report, or comments by those voting. The health systems agency shall submit its recommendations on each application and its reasons therefor to the Department within such time as may be prescribed by the Board by regulation.

C. After commencement of a public hearing and before a decision is made there shall be no ex parte contacts concerning the subject certificate or its application between (i) any person acting on behalf of the applicant or holder of a certificate or any person opposed to the issuance or in favor of revocation of a certificate of public need, and (ii) any person in the Department who has authority to make a determination respecting the issuance or revocation of a certificate of public need, unless the Department has provided advance notice to all parties referred to in (i) of the time and place of such proposed contact.

D. A determination whether a public need exists for a project shall be made by the Commissioner within 120 days of the receipt of a completed application. Such determination shall be made in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) except that the parties to the case shall include only the applicant, any person showing good cause, any third-party payor providing health care insurance or prepaid coverage to five percent or more of the patients in the applicant's service area, or the health systems agency if its recommendation was to deny the application. For purposes of this subsection, "good cause" shall mean that (i) there is significant relevant information not previously presented at and not available at the time of the public hearing, (ii) there have been significant changes in factors or circumstances relating to the application subsequent to the public hearing, or (iii) there is a substantial material mistake of fact or law in the Department staff's report on the application or in the report submitted by the health systems agency. *In determining public need for nursing facility beds, the Department of Aging and Long-Term Care Services shall participate in the review process.*

E. The project review procedures shall provide for separation of the project review manager functions from the hearing officer functions. No person serving in the role of project review manager shall serve as a hearing officer.

§ 32.1-122.02. Virginia Health Planning Board created; membership; terms; duties and responsibilities.

A. There is hereby created in the executive branch of the state government, in the secretariat of Health and Human Resources, the Virginia Health Planning Board, hereinafter referred to as the "Planning Board." The Planning Board shall be appointed by the Governor and shall consist of nineteen members who are domiciliaries of the Commonwealth to be appointed as follows: eight members shall be consumers with each regional health planning board being represented by at least one such consumer; four members shall be providers, one of whom shall represent the hospital industry and one of whom

shall represent the nursing home industry; the Commissioner of Health; the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services; the ~~Commissioner~~ *Director* of the Department for the ~~Aging of Aging and Long-Term Care Services~~; the Director of the Department of Medical Assistance Services; the Commissioner of the Department of Social Services; the Executive Director of the Virginia Health Services Cost Review Council and the Secretary of Health and Human Resources, who shall serve as the chairman. The initial appointments to the Planning Board shall be as follows: of the eight members who are consumers, three shall be appointed for terms of two years, three shall be appointed for terms of three years and two shall be appointed for terms of four years. Of the four members who are providers, one shall be appointed for a term of two years, one shall be appointed for a term of three years and two shall be appointed for terms of four years. Thereafter, all members shall serve terms of four years. Members shall serve at the pleasure of the Governor and may serve for two consecutive terms. The Planning Board shall meet at least four times a year at such times and in such locations as shall be designated by the chairman.

B. The Planning Board shall have the following duties and responsibilities:

1. To supervise and provide leadership for the statewide health planning system.

2. To provide technical expertise in the development of state health policy.

3. To receive data and information from the regional health planning agencies and consider regional health planning interests in its deliberations.

4. To review and assess critical health care issues.

5. To make recommendations to the Secretary, the Governor and the General Assembly concerning health policy, legislation and resource allocation.

6. To supervise the development of a health data system in order to provide necessary information to support health policy recommendations.

7. To promote the delivery of high quality and cost-effective health care throughout the Commonwealth.

8. To promote the development and maintenance of a coordinated and integrated health planning system on the state and local levels.

9. To perform such other duties relating to health planning as may be requested by the Secretary.

10. To adopt and revise as necessary bylaws for its operation.

11. To make recommendations to the Secretary, the Governor, and the General Assembly concerning statewide data collection systems for health care manpower distribution and for mortality and morbidity rates for citizens of the Commonwealth.

C. In addition to the duties and responsibilities enumerated in subsection B, the Planning Board shall promulgate such regulations as may be necessary to effectuate the purposes of this article including, but not limited to: (i) the designation of health planning regions, (ii) the designation of the regional health planning agencies, and (iii) the composition and method of appointment of members of the regional health planning boards.

D. Personnel of the Department shall serve as staff to the Planning Board. Other agencies of the Commonwealth within the Secretary's office shall cooperate and provide assistance as directed by the chairman of the Planning Board.

§ 32.1-123. Definitions.

As used in this article unless a different meaning or construction is clearly required by the context or otherwise:

"Certified nursing facility" means any skilled nursing facility, skilled care facility, intermediate care facility, nursing or nursing care facility, or nursing home, whether freestanding or a portion of a freestanding medical care facility, that is certified as a Medicare or Medicaid provider, or both, pursuant to § 32.1-137.

"Class I violation" means failure of a nursing home or certified nursing facility to comply with one or more requirements of state or federal law or regulations which creates a situation that presents an immediate and serious threat to patient health or safety.

"Class II violation" means a pattern of noncompliance by a nursing home or certified nursing facility with one or more federal conditions of participation which indicates delivery of substandard quality of care but does not necessarily create an immediate and serious threat to patient health and safety. Regardless of whether the facility participates in Medicare or Medicaid, the federal conditions of participation shall be the standards for Class II violations.

"Hospital" means any facility licensed pursuant to this article in which the primary function is the provision of diagnosis, of treatment, and of medical and nursing services, surgical or nonsurgical, for two or more nonrelated individuals, including hospitals known by varying nomenclature or designation such as sanatoriums, sanitariums and general, acute, rehabilitation, chronic disease, short-term, long-term, outpatient surgical, and inpatient or outpatient maternity hospitals.

"Immediate and serious threat" means a situation or condition having a high probability that serious harm or injury to patients could occur at any time, or already has occurred, and may occur again, if

patients are not protected effectively from the harm, or the threat is not removed.

"Inspection" means all surveys, inspections, investigations and other procedures necessary for the Department of Health to perform in order to carry out various obligations imposed on the Board or Commissioner by applicable state and federal laws and regulations.

"Nursing home" means any facility or any identifiable component of any facility licensed pursuant to this article in which the primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two or more nonrelated individuals, including facilities known by varying nomenclature or designation such as convalescent homes, skilled nursing facilities or skilled care facilities, intermediate care facilities, extended care facilities and nursing or nursing care facilities.

"Nonrelated" means not related by blood or marriage, ascending or descending or first degree full or half collateral.

"Substandard quality of care" means deficiencies in practices of patient care, preservation of patient rights, environmental sanitation, physical plant maintenance, or life safety which, if not corrected, will have a significant harmful effect on patient health and safety.

§ 32.1-124. Exemptions.

The provisions of §§ 32.1-123 through 32.1-136 shall not be applicable to: (i) a dispensary or first-aid facility maintained by any commercial or industrial plant, educational institution or convent; (ii) an institution licensed by the State Mental Health, Mental Retardation and Substance Abuse Services Board; (iii) an institution or portion thereof licensed by the *State Board of Social Services Board of Aging and Long-Term Care Services*; (iv) a hospital or nursing home owned or operated by an agency of the United States government; (v) an office of one or more physicians or surgeons unless such office is used principally for performing surgery; and (vi) a hospital or nursing home, as defined in § 32.1-123, owned or operated by an agency of the Commonwealth unless such hospital or nursing home or portion thereof is certified as a nursing facility pursuant to § 32.1-137.

§ 32.1-125. Establishment or operation of hospitals prohibited without license; licenses not transferable.

A. No person shall own, establish, conduct, maintain, manage or operate in this Commonwealth any hospital or nursing home unless such hospital or nursing home is licensed or certified as provided in this article.

B. No license issued hereunder shall be assignable or transferable.

§ 32.1-126. Commissioner to issue licenses to, and to inspect hospitals; notice of denial of license; consultative advice and assistance.

A. Pursuant to this article, the Commissioner shall issue a license for a hospital or nursing home, issue a certification to a hospital, nursing home, or nursing facility, or issue a certification to a facility owned or operated by an agency of the Commonwealth as defined in subdivision (vi) of § 32.1-124, which after inspection is found to be in compliance with the provisions of this article and with all applicable state and federal regulations. The Commissioner shall notify by certified mail or by overnight express mail any applicant denied a license or certification of the reasons for such denial.

B. The Commissioner shall cause each and every hospital, nursing home, and certified nursing facility to be inspected periodically, but not less often than annually, in accordance with the provisions of this article and regulations of the Board.

C. The Commissioner may, in accordance with regulations of the Board, provide for consultative advice and assistance, with such limitations and restrictions as he deems proper, to any person who intends to apply for a hospital or nursing home license or nursing facility certification.

§ 32.1-127. Regulations.

The regulations promulgated by the Board to carry out the provisions of this article shall be in substantial conformity to the standards of health, hygiene, sanitation, construction and safety as established and recognized by medical and health care professionals and by specialists in matters of public health and safety, including health and safety standards established under provisions of Title XVIII and Title XIX of the Social Security Act, and to the provisions of Article 2 (§ 32.1-138 et seq.) of this chapter.

Such regulations shall include minimum standards for (i) the construction and maintenance of hospitals, nursing homes and certified nursing facilities to assure the environmental protection and the life safety of its patients and employees and the public; (ii) the operation, staffing and equipping of hospitals, nursing homes and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes and certified nursing facilities, except those professionals licensed or certified by the Department of Health Professions; and (iv) conditions under which a hospital or nursing home may provide medical and nursing services to patients in their places of residence.

Such regulations shall provide that at least one physician who is licensed to practice medicine in this Commonwealth shall be on call at all times, though not necessarily physically present on the premises,

1413 at each hospital which operates or holds itself out as operating an emergency service.

1414 In its regulations, the Board may classify hospitals ~~and nursing homes~~ by type of specialty or service
1415 and may provide for licensing hospitals ~~and nursing homes~~ by bed capacity and by type of specialty or
1416 service.

1417 Further, such regulations shall also require that each hospital establish a routine contact protocol
1418 which ensures that the families of suitable organ and tissue donors are offered the opportunity by the
1419 chief administrative officer of the hospital or his designee to consider organ, tissue and eye donation.

1420 Such regulations shall require that each hospital that provides obstetrical services establish a protocol
1421 for admission or transfer of any pregnant woman who presents herself while in labor.

1422 Such regulations shall also require that each licensed hospital develop and implement a protocol
1423 requiring written discharge plans for identified, substance-abusing, postpartum women and their infants.
1424 The protocol shall require that the discharge plan be discussed with the patient and that appropriate
1425 referrals for the mother and the infant be made and documented. Appropriate referrals may include, but
1426 need not be limited to, treatment services, comprehensive early intervention services for infants and
1427 toddlers with disabilities and their families pursuant to Part H of the Individuals with Disabilities
1428 Education Act, 20 U.S.C. § 1471 et seq., and family-oriented prevention services. The discharge
1429 planning process shall involve, to the extent possible, the father of the infant and any members of the
1430 patient's extended family who may participate in the follow-up care for the mother and the infant.

1431 Such regulations shall require that each nursing home and certified nursing facility fully disclose to
1432 the applicant for admission and to the Board the home's or facility's admissions policies, including any
1433 preferences given. Nursing homes or facilities shall report to the Board on a quarterly basis the number
1434 of patients admitted by source of payment, as well as the number of beds certified for Medicaid patients.
1435 The regulations also shall require that each nursing home or facility disclose to the Board information
1436 about its waiting list on a quarterly basis, including but not limited to aggregate information on its
1437 waiting list by payment source.

1438 Such regulations shall require that each licensed hospital establish a protocol relating to the rights
1439 and responsibilities of patients which shall include a process reasonably designed to inform patients of
1440 such rights and responsibilities. Such rights and responsibilities of patients, a copy of which shall be
1441 given to patients on admission, shall be based on Joint Commission on Accreditation of Healthcare
1442 Organizations' standards.

1443 In addition, the Board shall establish standards and maintain a process for designation of levels or
1444 categories of care in neonatal services according to an applicable national or state-developed evaluation
1445 system. Such standards may be differentiated for various levels or categories of care and may include,
1446 but need not be limited to, requirements for staffing credentials, staff/patient ratios, equipment, and
1447 medical protocols.

1448 § 32.1-128. Applicability to hospitals for practice of religious tenets.

1449 Nothing in this article shall be construed to authorize or require the interference with or prevention
1450 of the establishment or operation of a hospital ~~or nursing home~~ for the practice of religious tenets of any
1451 recognized church or denomination in the ministration to the sick and suffering by mental or spiritual
1452 means without the use of any drug or material remedy, whether gratuitously or for compensation,
1453 provided the statutes and regulations on environmental protection and life safety are complied with.

1454 § 32.1-129. Application for license.

1455 Each application for a hospital ~~or nursing home~~ license shall be made on a form prescribed by the
1456 Board. The application shall specify the official name and the kind of hospital ~~or nursing home~~, the
1457 location thereof, the name of the person in charge and such additional relevant information as the Board
1458 requires.

1459 § 32.1-130. Service charges.

1460 A. A service charge of \$1.50 per patient bed for which the hospital ~~or nursing home~~ is licensed, but
1461 not less than \$75 nor more than \$500, shall be paid for each license upon issuance and renewal. The
1462 service charge for a license for a hospital ~~or nursing home~~ which does not provide overnight inpatient
1463 care shall be \$75.

1464 B. All service charges received under the provisions of this article shall be paid into a special fund
1465 of the Department and are appropriated to the Department for the operation of the hospital ~~and nursing~~
1466 ~~home~~ licensure and inspection program.

1467 § 32.1-132. Alterations or additions to hospitals ; when new license required; use of inpatient hospital
1468 beds for furnishing skilled care services.

1469 A. Any person who desires to make any substantial alteration or addition to or any material change
1470 in any hospital ~~or nursing home~~ shall, before making such change, alteration or addition, submit the
1471 proposal therefor to the Commissioner for his approval. The Commissioner shall review the proposal to
1472 determine compliance with applicable statutes and regulations of the Board and as soon thereafter as
1473 reasonably practicable notify the person that the proposal is or is not approved.

1474 B. If any such alteration, addition or change has the effect of changing the bed capacity or

classification of the hospital ~~or nursing home~~, the licensee shall obtain a new license for the remainder of the license year before beginning operation of additional beds or in the new classification.

C. Notwithstanding any provision of state law to the contrary, any hospital, after sending such written notice as may be required by the Commissioner, may utilize, for a period not to exceed thirty days for any one patient, a maximum of ten percent of its inpatient hospital beds as swing beds for the furnishing of services of the type which, if furnished by a nursing ~~home~~ facility or certified nursing facility, would constitute skilled care services without complying with nursing ~~home~~ facility licensure requirements or retaining the services of a licensed nursing home administrator. Such hospital shall amend its plan of care and implement its plan as amended to ensure the overall well-being of patients occupying such beds. Only those hospitals which qualify under § 1883 of Title XVIII and § 1913 of Title XIX of the Social Security Act and are certified as skilled nursing facilities may be reimbursed for such services for Medicare and Medicaid patients.

§ 32.1-133. Display of license.

The current license shall at all times be posted in each hospital ~~or nursing home~~ in a place readily visible and accessible to the public.

§ 32.1-134.1. When denial, etc., to duly licensed physician of staff membership or professional privileges improper.

It shall be an improper practice for the governing body of a hospital which has twenty-five beds or more and which is required by state law to be licensed to refuse or fail to act within sixty days of a completed application for staff membership or professional privileges or deny or withhold from a duly licensed physician staff membership or professional privileges in such hospital, or to exclude or expel a physician from staff membership in such hospital or curtail, terminate or diminish in any way a physician's professional privileges in such hospital, without stating in writing the reason or reasons therefor, a copy of which shall be provided to the physician. If the reason or reasons stated are unrelated to standards of patient care, patient welfare, violation of the rules and regulations of the institution or staff, the objectives or efficient operations of the institution, or the character or competency of the applicant, or misconduct in any hospital, it shall be deemed an improper practice.

Any physician licensed in this Commonwealth to practice medicine who is aggrieved by any violation of this section shall have the right to seek an injunction from the circuit court of the city or county in which the hospital alleged to have violated this section is located prohibiting any such further violation. The provisions of this section shall not be deemed to impair or affect any other right or remedy; provided that a violation of this section shall not constitute a violation of the provisions of this article for the purposes of § ~~32.1-135~~ 32.1-389.

§ 32.1-134.4. Right of podiatrists or nurse practitioners to injunction.

Any licensed podiatrist or certified nurse midwife licensed as a nurse practitioner in Virginia who is aggrieved by any violation of § 32.1-134.2 or § 32.1-134.3 shall have the right to seek an injunction from the circuit court of the city or county in which the hospital alleged to have committed the violation is located, prohibiting any further such violation. The provisions of this section shall not be deemed to impair or affect any other right or remedy. A violation of this section, however, shall not constitute a violation of the provisions of this article for the purposes of § ~~32.1-135~~ 32.1-389.

§ 32.1-136. Violation; penalties.

Any person owning, establishing, conducting, maintaining, managing or operating a hospital ~~or nursing home~~ which is not licensed as required by this article shall be guilty of a Class 6 felony.

§ 32.1-162.5. Regulations.

The Board shall prescribe such regulations governing the activities and services provided by hospices as may be necessary to protect the public health, safety and welfare. Such regulations shall include, but not be limited to, the requirements for: the qualifications and supervision of licensed and nonlicensed personnel; the provision and coordination of inpatient care and home treatment and services; the management, operation, staffing and equipping of the hospice program; clinical and business records kept by the hospice; procedures for the review of utilization and quality of care. To avoid duplication in regulations, the Board shall incorporate regulations applicable to facilities licensed as hospitals *under Article 1 (§§ 32.1-123 et seq.) of Chapter 5 of this title* or nursing homes *under § 32.1-123 et seq. facilities under Article 2 (§ 32.1-375 et seq.) of Chapter 13 of this title* and to organizations licensed as home health agencies *under Article 7.1 (§ 32.1-162.7 et seq.) of Chapter 5 of this title Article 4 (§ 32.1-413 et seq.) of Chapter 13 of this title* which are also applicable to hospice programs in the regulations to govern hospices. A person who seeks a license to establish or operate a hospice and who has a preexisting valid license to operate a hospital, nursing ~~home~~ facility or home health agency shall be considered in compliance with those regulations which are applicable to both a hospice and the facility for which it has a license.

§ 32.1-313. Liability for excess benefits or payments obtained without intent to violate chapter.

Any person, agency or institution, but not including an individual medical assistance recipient of

health care, that, without intent to violate this chapter, obtains benefits or payments under medical assistance to which such person, agency or institution is not entitled, or in a greater amount than that to which entitled, shall be liable for (i) any excess benefits or payments received, and (ii) interest on the amount of the excess benefits or payments at the judgment rate as defined in § 6.1-330.54 from the date upon which such person, agency, or institution knew or reasonably should have known that it had received excess benefits or payments to the date upon which repayment is made to the Commonwealth. No person, agency or institution shall be liable for payment of interest, however, when excess benefits or payments were obtained as a result of errors made solely by the Department of Medical Assistance Services or the Department of Aging and Long-Term Care Services. Whenever a penalty or interest is due under this section or § 32.1-312, such penalty or interest shall not be reimbursable by the Commonwealth as an allowable cost under any of the provisions of this chapter.

§ 32.1-317. Collecting excess payment for services; charging, soliciting, accepting or receiving certain consideration as precondition for admittance to facility or requirement for continued stay; penalty.

When the cost of services provided in a facility or by an individual to a patient is paid for, in whole or in part, under medical assistance, any person who knowingly and willfully:

1. Collects from a patient for any service provided under medical assistance, money or other consideration at a rate in excess of entitlements established by the Department of Medical Assistance Services or the Department of Aging and Long-Term Care Services; or

2. Charges, solicits, accepts or receives, in addition to any amount otherwise required to be paid under medical assistance any gift, money, donation or other consideration, other than a charitable, religious or philanthropic contribution from an organization or from a person unrelated to the patient:

a. As a precondition of admitting a patient to a hospital, skilled nursing facility or intermediate care facility; or

b. As a requirement for the patient's continued stay in such facility;
shall be guilty of a Class 6 felony. In addition thereto, a fine may be imposed in an amount not to exceed \$25,000.

§ 32.1-319. Written verification of application, statement or form; penalty for false or misleading information.

The State Board of Medical Assistance Services and the Board of Aging and Long-Term Care Services may require in its Plan for Medical Assistance that any application, statement, or form filled out by suppliers of medical care under medical assistance shall contain or be verified by a written statement that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each such paper shall in such event so state. Any person who knowingly and willfully makes or subscribes any such papers or forms containing any false or misleading information shall be guilty of a Class 4 misdemeanor.

§ 32.1-320. Duties of Attorney General; medical services providers audit and investigation unit.

A. There shall be established within the Office of the Attorney General a unit to audit and investigate providers of services furnished under the State Medical Assistance Plan. The Department of Medical Assistance Services and the Department of Aging and Long-Term Care Services shall cooperate with the Office of the Attorney General in conducting such audits and investigations and shall provide such information for these purposes as may be requested by the Attorney General or his authorized representative.

B. The Attorney General or his authorized representative shall have the authority to:

1. Conduct audits and investigations of providers of medical and other services furnished under medical assistance. The relevant board within the Department of Health Professions shall serve in an advisory capacity to the Attorney General in the conduct of audits or investigations of health care providers licensed by the respective regulatory boards. In the conduct of such audits or investigations, the Attorney General may examine only those records or portions thereof, including patient records, for which services were rendered by a health care provider and reimbursed by the Department of Medical Assistance Services or the Department of Aging and Long-Term Care Services under the Plan for Medical Assistance, notwithstanding the provisions of Chapter 26 (§ 2.1-377 et seq.) of Title 2.1 or of any other statute which may make or purport to make such records privileged or confidential. No original patient records shall be removed from the premises of the health care provider, except in accordance with Rule 4:9 of the Rules of the Supreme Court of Virginia. The disclosure of any records or information by the Attorney General is prohibited, unless such disclosure is directly connected to the official purpose for which the records or information was obtained. The disclosure of patient information as required under this section shall not subject any physician or other health services provider to any liability for breach of any confidential relationship between the provider and the patient, but no evidence resulting from such disclosure may be used in any civil, administrative or criminal proceeding against the patient unless a waiver of the applicable evidentiary privilege is obtained. The Attorney General shall cause all copies of patient medical records in his possession or that of his designee to be destroyed upon completion of the audit, investigation or proceedings, including appeals;

2. Issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within and without the Commonwealth as now provided by law, and compel the production of pertinent books, payrolls, accounts, papers, records, documents and testimony relevant to such investigation. If a person in attendance before the Attorney General or his authorized representative refuses, without reasonable cause, to be examined or to answer a legal and pertinent question, or to produce a book or paper or other evidence when ordered to do so by the Attorney General or his authorized representative, the Attorney General or his authorized representative may apply to the judge of the circuit court of the jurisdiction where such person is in attendance, upon affidavit, for an order returnable in not less than two nor more than five days, directing such person to show cause why he should not produce such records. Upon the hearing of such order, if the court shall determine that such person, without reasonable cause, has refused to be examined or to answer a legal or pertinent question, or to produce a book or paper which he was ordered to bring or produce, he may forthwith assess all costs and reasonable attorney's fees against such person. If the motion for an order is granted and the person thereafter fails to comply with the order, the court may make such orders as are provided for in the Rules of the Supreme Court of Virginia. Subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the circuit courts of this Commonwealth.

§ 32.1-321.1. Powers and duties of departments.

The Department of Medical Assistance Services *and the Department of Aging and Long-Term Care Services* shall have the following powers and duties:

1. To investigate and refer for prosecution violations of applicable state and federal laws and regulations pertaining to the application for and receipt of services or benefits;

2. To investigate and refer for civil recovery any debts owed to the medical assistance program or funds paid for services or benefits as a result of violations of applicable state and federal laws and regulations pertaining to the application for and receipt of services or benefits; and

3. To cooperate with the federal government, other state agencies and the State Attorney General's Office in the detection and deterrence of fraud by recipients of medical assistance or their agents.

§ 32.1-321.2. Liability for excess benefits or payments obtained without intent to violate this article; recovery of Medical Assistance erroneously paid.

Any person who, without intent to violate this article, obtains benefits or payments under medical assistance to which he is not entitled shall be liable for any excess benefits or payments received. If the recipient knew or reasonably should have known that he was not entitled to the excess benefits, he may also be liable for interest on the amount of the excess benefits or payments at the judgment rate as defined in § 6.1-330.54 from the date upon which such person knew or reasonably should have known that he had received excess benefits or payments to the date on which repayment is made to the Commonwealth. No person shall be liable for payment of interest, however, when excess benefits or payments were obtained as a result of errors made solely by the Department of Medical Assistance Services *or the Department of Aging and Long-Term Care Services, whichever is applicable.*

Any payment erroneously made on behalf of a recipient or former recipient of medical assistance may be recovered by the Department of Medical Assistance Services *or the Department of Aging and Long-Term Care Services* from the recipient or the recipient's income, assets or estate unless such property is otherwise exempted by state or federal law or regulation.

§ 32.1-321.4. False statement or representation in applications for eligibility or for use in determining rights to benefits; concealment of facts; criminal penalty.

A. Any person who engages in the following activities, on behalf of himself or another, shall be guilty of larceny and, in addition to the penalties provided in §§ 18.2-95 and 18.2-96 as applicable, may be fined an amount not to exceed \$10,000:

1. Knowingly and willfully making or causing to be made any false statement or misrepresentation of a material fact in an application for eligibility, benefits or payments under medical assistance;

2. Knowingly and willfully falsifying, concealing or covering up by any trick, scheme, or device a material fact in connection with an application for eligibility, benefits or payments;

3. Knowingly and willfully concealing or failing to disclose any event affecting the initial or continued right of any individual to any benefits or payment with an intent to secure fraudulently such benefits or payment in a greater amount or quantity than is authorized or when no such benefit or payment is authorized;

4. Knowingly and willfully converting any benefits or payment received pursuant to an application for another person and receipt of benefits or payment on behalf of such other person to use other than for the health and welfare of the other person; or

5. Knowingly and willfully failing to notify the local department of welfare or social services, through whom medical assistance benefits were obtained, of changes in the circumstances of any recipient or applicant which could result in the reduction or termination of medical assistance services.

B. It shall be the duty of the Director of Medical Assistance Services *and the Director of the*

1659 *Department of Aging and Long-Term Care Services* or ~~his designee~~ *their designees* to enforce the
1660 provisions of this section. A warrant or summons may be issued for violations of which ~~the Director a~~
1661 *director* or his designee has knowledge. Trial for violation of this section shall be held in the county or
1662 city in which the application for medical assistance was made or obtained.

1663 § 32.1-325.2. Payor of last resort.

1664 A. Medical insurance carriers are prohibited from including any clause in health care insurance
1665 contracts which would exclude payment for health care to individuals eligible for medical assistance.

1666 B. The Department of Medical Assistance Services *or the Department of Aging and Long-Term Care*
1667 *Services* will be the payor of last resort to any health care insurance carrier which contracts to pay
1668 health care costs for persons eligible for medical assistance in the Commonwealth.

1669 § 32.1-325.3. Disclosure or use of information for purpose not connected with medical assistance
1670 program; departments not subject to certain disclosure.

1671 The Board of Medical Assistance Services *and the Board of Aging and Long-Term Care Services*
1672 shall *each* promulgate regulations consistent with federal law to provide safeguards against the use or
1673 disclosure of information concerning applicants for and recipients of medical assistance services for any
1674 purpose which is not directly connected with the administration of the state plan for medical assistance
1675 services.

1676 Information in the possession or control of the Department of Medical Assistance Services *or the*
1677 *Department of Aging and Long-Term Care Services* concerning applicants for and recipients of medical
1678 assistance services shall not be subject to disclosure through discovery in litigation to which the
1679 ~~Department~~ *appropriate department* is not a necessary party, unless the appropriate circuit court, for
1680 good cause shown, shall order such disclosure.

1681 § 32.1-328. Advisory Committee on Medicare and Medicaid continued as Advisory Board on
1682 Medicare and Medicaid.

1683 The Advisory Committee on Medicare and Medicaid is continued and shall hereafter be known as
1684 the Advisory Board on Medicare and Medicaid. The Board shall serve the purpose of advising the
1685 Governor on responsibilities of the Commonwealth under Titles XVIII and XIX of the United States
1686 Social Security Act, as amended, and of assisting the Board and the Director of Medical Assistance
1687 Services *and the Board and Director of Aging and Long-Term Care Services* in developing the plan and
1688 method of administration for the medical assistance services program. The Advisory Board on Medicare
1689 and Medicaid shall consist of twenty-one members, appointed by the Governor, which shall include
1690 representatives of those providers receiving third-party payments from Medicare and Medicaid,
1691 representatives of other third-party payors, and members of consumer groups and organizations,
1692 including medical assistance recipients. The State Health Commissioner, the Commissioner of Mental
1693 Health, Mental Retardation and Substances Abuse Services, the Commissioner of Social Services, *the*
1694 *Director of the Department of Aging and Long-Term Care Services* and the Director of Medical
1695 Assistance Services shall serve as ex officio members.

1696 Appointments may be made from nominations submitted by organizations representing such
1697 providers, third-party payors, and consumer groups and organizations, including, but not limited to, the
1698 Medical Society of Virginia, the Old Dominion Medical Society, the Virginia State Dental Association,
1699 the Virginia Chapter of the American Academy of Pediatrics, the Virginia Health Care Association, the
1700 Virginia Hospital Association, the Virginia Nurses Association, the Virginia Academy of Family
1701 Practice, private insurance carriers, the medical schools of the Commonwealth, the Virginia
1702 Pharmaceutical Association, the Virginia Optometric Association, the Virginia Psychological Association,
1703 the Virginia Society of Podiatry, and the Virginia State Chapter of the National Association of Social
1704 Workers. Members shall be appointed for terms of four years except as necessary to stagger the
1705 expiration of terms. ~~Members of the Advisory Board on Medicare and Medicaid on October 1, 1979,~~
1706 ~~shall remain in office until the expiration of the terms for which they were appointed.~~ No person shall
1707 be appointed more than once to succeed himself as a member of the Advisory Board on Medicare and
1708 Medicaid; however, appointments made to fill vacancies shall not be considered in determining
1709 eligibility hereunder. The Advisory Board on Medicare and Medicaid shall elect its own chairman.

1710 CHAPTER 13.

1711 Article 1.

1712 General Provisions.

1713 § 32.1-360. Definitions.

1714 As used in this chapter, unless the context requires otherwise:

1715 "Aging" means those residents of the Commonwealth whose age qualifies them for coverage under
1716 the Older Americans Act (42 U.S.C. § 3001 et seq.) or any law amendatory or supplemental thereto of
1717 the Congress of the United States.

1718 "Board" means the Board of Aging and Long-Term Care Services.

1719 "Department" means the Department of Aging and Long-Term Care Services.

1720 "Department of Health and Human Services" means the Department of Health and Human Services

of the United States government or any department or agency thereof which may hereafter be designated as the agency to administer the federal Social Security Act.

"Director" means the Director of the Department of Aging and Long-Term Care Services.

"Long-term care" means the system of policies and programs that provide social, health and related supportive services to individuals of any age who are limited in their ability to function over an extended period of time.

§ 32.1-361. Board of Aging and Long-Term Care Services.

A. There shall be a State Board of Aging and Long-Term Care Services consisting of eleven residents of the Commonwealth to be appointed by the Governor, five of whom shall be providers of long-term care or aging services and six of whom are not providers of long-term care or aging services. At least one member shall be a consumer representative and one shall be a person over the age of sixty years. Any vacancy on the Board, other than by expiration of term, shall be filled by the Governor for the unexpired portion of the term. No person shall be eligible to serve on the Board for more than two full consecutive terms.

Initial appointments to the Board shall be as follows: two appointments for a term of one year, three appointments for a term of two years, three appointments for a term of three years and three appointments for a term of four years. Subsequent appointments shall be for terms of four years each, except that appointments to fill vacancies shall be for the unexpired term.

B. The Board shall elect from its membership a chairman who shall perform the usual duties of such office. The Board shall meet at such times and places as it shall determine and shall submit an annual written report to the Governor and the General Assembly.

C. The Board shall have the authority to promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) to implement the provisions of this chapter and shall have the authority to compel action relevant to the programs and responsibilities in its jurisdiction.

D. The Director shall be the executive officer of the Board but shall not be a member thereof. The Director shall be vested with all of the authority of the Board when it is not in session, subject to regulations promulgated by the Board.

§ 32.1-362. Appointment and powers of Director.

The Governor shall appoint a Director of the Department subject to confirmation by the General Assembly. The Director shall be responsible for the supervision and management of the Department.

§ 32.1-363. Department created; policy; general powers.

A. There is hereby created a Department of Aging and Long-Term Care Services which shall be under the supervision and direction of the Secretary of Health and Human Resources. The Department shall be responsible for the administration of services and programs which provide maximum independence for the aging and for disabled adults, allow individual choice in the provision of services, and support families and other informal caregivers. The Department shall consolidate the administration, planning, management, regulation and funding of state aging and long-term care services and programs and shall coordinate state programs, services and related functions.

B. The Department shall have the power to:

1. Employ such personnel as may be required to carry out the purposes of this chapter.
2. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, agencies and governmental subdivisions of Virginia. These contracts and agreements may provide for the maintenance of funding as provided for the activities described in this chapter.

3. Accept grants from the United States government and agencies and instrumentalities thereof and any other source and comply with such conditions and execute such agreements as may be necessary, convenient, or desirable relating to the acceptance of such grants.

4. Conduct planning and research for program development, including facilitating the development of appropriate manpower.

5. Evaluate the effectiveness of programs, including the impact on consumers.

6. Finance programs and services, including managing payment systems, providing reimbursement, and budgeting.

7. Provide training and staff development for staff and training and technical assistance for providers.

8. Request and receive from all departments, boards, bureaus or other agencies of the Commonwealth and other states such information as is necessary to carry out the provisions and programs of this chapter.

9. Convene consumer and provider advisory groups to assist in carrying out its duties.

10. Do all acts necessary or convenient to carry out the purposes of this chapter.

C. The Department's duties shall include, but not be limited to the following:

1782 1. Development of standards, policies and guidelines for the development and implementation of a
1783 continuum of a statewide array of consumer- and family-focused affordable, high quality home-based,
1784 community-based and residential services;

1785 2. Development of a state long-term care plan to guide the coordination and delivery of services;

1786 3. Identification of programmatic resources and statewide distribution of such resources;

1787 4. Administration of service programs, including in-home and adult day care services,
1788 home-delivered and congregate meals, adult care residences, nursing facilities, respite care, elder rights,
1789 and the long-term care ombudsman program and all home and community-based care services under
1790 waivers approved by the Secretary of the Department of Health and Human Services pursuant to § 1915
1791 (c) of the Social Security Act;

1792 5. Licensure and certification of nursing facilities, adult care residences, adult day care centers,
1793 home health organizations, and personal care providers, including the development of uniform licensing
1794 procedures when appropriate;

1795 6. Rate setting, audit, cost settlement, and quality care assurance. Quality care assurance shall
1796 include home- and community-based care waiver administration; home health utilization review; nursing
1797 facility patient class validation and utilization review; long-term care service pre-authorization; and
1798 nursing facility pre-admission screening;

1799 7. Development of appropriate fiscal and administrative controls for publicly funded long-term care
1800 services;

1801 8. Encouragement of appropriate relationships between public and private sectors in the
1802 development, funding, regulation and provision of residential and community and home-based care;

1803 9. Provision of public information regarding the continuum of aging and long-term care services for
1804 providers and consumers; and

1805 10. Administration of the long-term care portion of the state medical assistance plan.

1806 § 32.1-364. Powers and duties of Department regarding aging persons and area agencies on aging;
1807 local appropriations.

1808 A. The Department's powers and duties regarding aging persons and area agencies on aging shall
1809 include but not be limited to the following:

1810 1. Determining the economic, physical, employment, medical, educational, recreational and housing
1811 needs of the aging.

1812 2. Identifying all services and facilities available to the aging and recommending to the appropriate
1813 persons any changes which would make the services more beneficial and more responsive to the aging.

1814 3. Serving as the single state agency under the Older Americans Act (42 U.S.C. § 3001 et seq.) and
1815 as the sole agency for administering or supervising the administration of any plans that may be adopted
1816 in accordance with such law. The Department shall have the authority to prepare, submit and implement
1817 state plans and shall be the agency primarily responsible for coordinating state programs and activities
1818 related to the purposes of, or undertaken under, such plans or laws.

1819 4. Holding hearings and conducting investigations as necessary to pass upon applications for
1820 project approval under such plans and laws and reporting to the Secretary of the Department of Health
1821 and Human Services if required.

1822 5. Designating area agencies on aging pursuant to the Older Americans Act (42 U.S.C. § 3001 et
1823 seq.).

1824 B. All agencies of the Commonwealth shall assist the Department in performing its functions as the
1825 single state agency as set out in subsection A.

1826 C. The governing body of any county, city or town may appropriate funds for support of area
1827 agencies on aging.

1828 § 32.1-365. Contracts between area agency and Campbell County.

1829 Notwithstanding any contrary provision of law, Campbell County may, under contract with the area
1830 agency on aging designated to serve Campbell County, provide directly any and all services specified in
1831 the Older Americans Act (42 U.S.C. § 3001 et seq.).

1832 § 32.1-366. Access to residents, facilities and patients' records by Office of State Long-Term Care
1833 Ombudsman.

1834 The Department shall designate personnel to operate the programs of the Office of the State
1835 Long-Term Care Ombudsman pursuant to the Older Americans Act (42 U.S.C. § 3001 et seq.), who
1836 shall, in the investigation of complaints referred to the program, have the same access (i) to residents,
1837 facilities and patients' records of licensed adult care residences as is provided for in § 32.1-405 and (ii)
1838 to patients, facilities and patients' records of nursing facilities as is provided for in 32.1-370 and shall
1839 have access to the patients, residents and patients' records of state hospitals operated by the Department
1840 of Mental Health, Mental Retardation and Substance Abuse Services. However, if a patient is unable to
1841 consent to the review of his medical and social records and has no legal guardian, such representatives
1842 shall have appropriate access to such records in accordance with the provisions above. Notwithstanding
1843 the provisions of § 32.1-125.1, the personnel 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 state hospitals as herein provided. Access to residents, facilities and patients' records shall be during normal working hours except in emergency situations.

§ 32.1-367. Confidentiality of records of Office of the State Long-Term Care Ombudsman.

All documentary and other evidence received or maintained by the Department or its agents in connection with specific complaints or investigations under any program of the Office of the State Long-Term Care Ombudsman conducted by or under the authority of the Director shall be confidential and not subject to the Virginia Freedom of Information Act (§ 2.1-340 et seq.), except that such information may be released on a confidential basis in compliance with Board regulations and with the requirements of the Older Americans Act (42 U.S.C. § 3001 et seq.). The Director 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 resident of a long-term care facility unless (i) such complainant or resident or his legal representative consents in writing to such disclosure, or (ii) such disclosure is required by court order. The Director shall establish procedures to notify long-term care facilities of the nature of complaints and the findings thereof.

§ 32.1-368. Civil immunity for representatives of the Office of the State Long-Term Care Ombudsman.

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

§ 32.1-369. Responsibility of Department for complaints regarding long-term care services.

The Department, or its designee, shall investigate complaints regarding community services which are designed to provide long-term care to the elderly and are rendered by the Department of Health, the Department of Social Services, the Department of Mental Health, Mental Retardation and Substance Abuse Services, the area agencies on aging or any private nonprofit or proprietary agency.

Nothing in this section shall affect the services provided by local departments of social services pursuant to § 63.1-55.1.

§ 32.1-370. Right of entry to inspect, etc.; warrants.

Upon presentation of appropriate credentials and upon consent of the owner or custodian, the Director or his designee shall have the right to enter at any reasonable time onto any property to inspect, investigate, evaluate, conduct tests or take samples for testing as he reasonably deems necessary in order to determine whether the provisions of any law administered by the Board, Director or Department, any Board regulations, any order of the Board or Director or any conditions in a permit, license or certificate issued by the Board or Director are being complied with. If the Director or his designee is denied entry, he may apply to an appropriate circuit court for an inspection warrant authorizing such investigation, evaluation, inspection, testing or taking of samples for testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.

§ 32.1-371. Orders; hearing and notice.

The Board is authorized to issue orders to require any person to comply with the provisions of any law administered by it, the Director or the Department or any regulations promulgated by the Board or to comply with any case decision, as defined in § 9-6.14:4, of the Board or Director. Any such order shall be issued only after a hearing with at least thirty days' notice to the affected person of the time, place and purpose thereof. Such order shall become effective not less than fifteen days after mailing a copy thereof by certified mail to the last known address of such person.

§ 32.1-372. Penalties, injunctions, civil penalties and charges for violations.

A. Any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or Director or any provision of this chapter shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.

B. Any person violating or failing, neglecting, or refusing to obey any lawful regulation or order of the Board or Director or any provision of this chapter may be compelled in a proceeding instituted in an appropriate court by the Board or Director to obey such regulation, order or provision of this chapter and to comply therewith by injunction, mandamus, or other appropriate remedy or, pursuant to § 32.1-373, imposition of a civil penalty or appointment of a receiver.

C. Without limiting the remedies which may be obtained in subsection B of this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to subsection B shall be subject, in the discretion of the court, to a civil penalty not to exceed \$10,000 for each violation, which shall be paid to the general fund. Each day of violation shall constitute a separate offense.

D. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board or Director or any provision of this chapter, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in § 32.1-373 and subsection C of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under § 32.1-373 and subsection C of this section.

§ 32.1-373. Additional civil penalty.

A. In addition to the remedies provided in § 32.1-372, the civil penalties set forth in this section may be imposed by the circuit court for the city or county in which the facility is located as follows:

1. A civil penalty for a Class I violation shall not exceed the lesser of twenty-five dollars per licensed or certified bed or \$1,000 for each day the facility is in violation, beginning on the date the facility was first notified of the violation.

2. A civil penalty for a Class II violation shall not exceed the lesser of five dollars per licensed or certified bed or \$250 per day for each day the facility is in violation, beginning on the date the facility was first notified of the violation.

In the event federal law or regulations require a civil penalty in excess of the amounts set forth above for Class I or Class II violations, then the lowest amounts required by such federal law or regulations shall become the maximum civil penalties under this section. The date of notification under this section shall be deemed to be the date of receipt by the facility of written notice of the alleged Class I or Class II violation, which notice shall include specifics of the violation charged and which notice shall be hand delivered or sent by overnight express mail or by registered or certified mail, return receipt requested.

All civil penalties received pursuant to this subsection shall be paid into a special fund of the Department for the cost of implementation of this section, to be applied to the protection of the health or property of residents or patients of facilities that the Director or the United States Secretary of Health and Human Services finds in violation, including payment for the costs for relocation of patients, maintenance of temporary management or receivership to operate a facility pending correction of a violation, and for reimbursement to residents or patients of lost personal funds.

§ 32.1-374. Coordination of local long-term care services.

The governing body of each county or city, or a combination thereof, shall designate a lead agency and member agencies to accomplish the coordination of local long-term care services. The agencies shall establish a long-term care coordination committee composed of, but not limited to, representatives of each agency. The coordination committee shall guide the coordination and administration of public long-term care services in the locality or localities. The membership of the coordination committee shall be comprised of, but 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 and the local nursing facility pre-admission screening team. Each local jurisdiction or combination of jurisdictions shall submit to the Department a plan indicating the agency designated as lead agency to administer the long-term care coordination committee. Costs for development of the plan required by this section shall be borne by the agencies of the coordination committee and not by the local governing bodies. The plan shall include a design to attain a goal of providing a range of services within the continuum of long-term care. By July 1, 1983, a plan shall be implemented which assures the cost-effective utilization of all funds available for long-term care services in the locality. Localities are encouraged to provide a service or services within each category of service in the continuum and to allow one person to deliver multiple services, when possible.

Article 2.

Licensing of Nursing Facilities.

§ 32.1-375. Definitions.

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

"Certified nursing facility" means any skilled nursing facility, skilled care facility, intermediate care facility, nursing or nursing care facility, or nursing home, whether freestanding or a portion of a freestanding medical care facility, that is certified as a Medicare or Medicaid provider, or both, pursuant to § 32.1-137.

"Class I violation" means failure of a nursing facility or certified nursing facility to comply with one or more requirements of state or federal law or regulations which creates a situation that presents an immediate and serious threat to patient health or safety.

"Class II violation" means a pattern of noncompliance by a nursing facility or certified nursing facility with one or more federal conditions of participation which indicates delivery of substandard quality of care but does not necessarily create an immediate and serious threat to patient health and safety. Regardless of whether the facility participates in Medicare or Medicaid, the federal conditions of participation shall be the standards for Class II violations.

"Immediate and serious threat" means a situation or condition having a high probability that serious

1967 harm or injury to patients could occur at any time, or already has occurred, and may occur again, if
 1968 patients are not protected effectively from the harm, or the threat is not removed.

1969 "Inspection" means all surveys, inspections, investigations and other procedures necessary for the
 1970 Department to perform in order to carry out various obligations imposed on the Board or Director by
 1971 applicable state and federal laws and regulations.

1972 "Nursing facility" means any facility or any identifiable component of any facility licensed pursuant
 1973 to this article in which the primary function is the provision, on a continuing basis, of nursing services
 1974 and health-related services for the treatment and inpatient care of two or more nonrelated individuals,
 1975 including facilities known by varying nomenclature or designation such as convalescent homes, skilled
 1976 nursing facilities or skilled care facilities, intermediate care facilities, extended care facilities and
 1977 nursing or nursing care facilities.

1978 "Nonrelated" means not related by blood or marriage, ascending or descending or first degree full
 1979 or half collateral.

1980 "Substandard quality of care" means deficiencies in practices of patient care, preservation of patient
 1981 rights, environmental sanitation, physical plant maintenance, or life safety which, if not corrected, will
 1982 have a significant harmful effect on patient health and safety.

1983 § 32.1-376. Exemptions.

1984 The provisions of this article shall not be applicable to: (i) a dispensary or first-aid facility
 1985 maintained by any commercial or industrial plant, educational institution or convent; (ii) an institution
 1986 licensed by the State Mental Health, Mental Retardation and Substance Abuse Services Board; (iii) an
 1987 institution or portion thereof licensed as an adult care residence; (iv) a nursing facility owned or
 1988 operated by an agency of the United States government; (v) an office of one or more physicians or
 1989 surgeons unless such office is used principally for performing surgery; and (vi) a nursing facility owned
 1990 or operated by an agency of the Commonwealth unless such nursing facility or portion thereof is
 1991 certified as a nursing facility pursuant to § 32.1-137.

1992 § 32.1-377. Establishment or operation of nursing facility prohibited without license or certification;
 1993 licenses not transferable.

1994 A. No person shall own, establish, conduct, maintain, manage or operate in this Commonwealth any
 1995 nursing facility unless such nursing facility is licensed or certified as provided in this article.

1996 B. No license issued hereunder shall be assignable or transferable.

1997 § 32.1-378. Director to issue licenses or certifications; inspections; notice of denial of license or
 1998 certifications; consultative advice and assistance.

1999 A. Pursuant to this article, the Director shall issue a license to a nursing facility, issue a
 2000 certification to a nursing facility, or issue a certification to a nursing facility owned or operated by an
 2001 agency of the Commonwealth as defined in subdivision (vi) of § 32.1-376, which after inspection is
 2002 found to be in compliance with the provisions of this article and with all applicable state and federal
 2003 regulations. The Director shall notify by certified mail or by overnight express mail any applicant
 2004 denied a license or certification of the reasons for such denial.

2005 B. The Director shall cause each and every nursing facility and certified nursing facility to be
 2006 inspected periodically, but not less often than annually, in accordance with the provisions of this article
 2007 and Board regulations.

2008 C. The Director may, in accordance with Board regulations, provide for consultative advice and
 2009 assistance, with such limitations and restrictions as he deems proper, to any person who intends to
 2010 apply for a nursing facility license or nursing facility certification.

2011 § 32.1-379. Employment for compensation of persons convicted of certain offenses prohibited;
 2012 criminal records check required; suspension or revocation of license.

2013 A. A licensed nursing facility shall not hire for compensated employment persons who have been
 2014 convicted of murder, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily
 2015 woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in
 2016 § 18.2-58, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as
 2017 set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, pandering as set out in § 18.2-355,
 2018 crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children
 2019 as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure
 2020 to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in
 2021 § 18.2-374.1 or § 18.2-379, or abuse or neglect of an incapacitated adult as set out in § 18.2-369.
 2022 However, a licensed nursing facility may hire an applicant who has been convicted of one misdemeanor
 2023 specified in this section not involving abuse or neglect or moral turpitude, provided five years have
 2024 elapsed following the conviction.

2025 Any person desiring to work at a licensed nursing facility shall provide the hiring facility with a
 2026 sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges,
 2027 whether within or without the Commonwealth. Any person making a materially false statement when

2028 providing such sworn statement or affirmation regarding any such offense shall be guilty upon
2029 conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this
2030 section is prohibited other than to a federal or state authority or court as may be required to comply
2031 with an express requirement of law for such further dissemination.

2032 A nursing facility shall, within thirty days of employment, obtain for any compensated employees an
2033 original criminal record clearance with respect to convictions for offenses specified in this section or an
2034 original criminal history record from the Central Criminal Records Exchange. The provisions of this
2035 section shall be enforced by the Director. If an applicant is denied employment because of convictions
2036 appearing on his criminal history record, the nursing facility shall provide a copy of the information
2037 obtained from the Central Criminal Records Exchange to the applicant.

2038 The provisions of this section shall not apply to volunteers who work with the permission or under
2039 the supervision of a person who has received a clearance pursuant to this section.

2040 B. A person who complies in good faith with the provisions of this section shall not be liable for any
2041 civil damages for any act or omission in the performance of duties under this section unless the act or
2042 omission was the result of gross negligence or willful misconduct.

2043 § 32.1-380. Fire suppression systems required in nursing facilities.

2044 The Director shall not issue a license to or renew the license of any nursing facility, regardless of
2045 when such institution was constructed, unless the nursing facility is equipped with a fire suppression
2046 system which complies with the regulations of the Board of Housing and Community Development.

2047 Units consisting of certified long-term care beds described in this section and § 36-99.9 located on
2048 the ground floor of general hospitals shall be exempt from the requirements of this section.

2049 § 32.1-381. Regulations.

2050 The regulations promulgated by the Board to carry out the provisions of this article shall be in
2051 substantial conformity to the standards of health, hygiene, sanitation, construction and safety as
2052 established and recognized by medical and health care professionals and by specialists in matters of
2053 public health and safety, including health and safety standards established under provisions of Title
2054 XVIII and Title XIX of the Social Security Act, and to the provisions of this article.

2055 Such regulations shall include minimum standards for (i) the construction and maintenance of
2056 nursing facilities and certified nursing facilities to assure the environmental protection and the life
2057 safety of its patients and employees and the public; (ii) the operation, staffing and equipping of nursing
2058 facilities and certified nursing facilities; (iii) qualifications and training of staff of nursing facilities and
2059 certified nursing facilities, except those professionals licensed or certified by the Department of Health
2060 Professions; and (iv) conditions under which a nursing facility may provide medical and nursing
2061 services to patients in their places of residence.

2062 In its regulations, the Board may classify nursing facilities by type of specialty or service and may
2063 provide for licensing nursing facilities by bed capacity and by type of specialty or service.

2064 Such regulations shall require that each nursing facility and certified nursing facility fully disclose to
2065 the applicant for admission and to the Board the facility's admissions policies, including any preferences
2066 given. Nursing facilities shall report to the Board on a quarterly basis the number of patients admitted
2067 by source of payment, as well as the number of beds certified for Medicaid patients. The regulations
2068 also shall require that each nursing facility disclose to the Board information about its waiting list on a
2069 quarterly basis, including but not limited to aggregate information on its waiting list by payment source.

2070 § 32.1-382. Regulations to authorize certain sanctions and guidelines.

2071 The Board shall promulgate regulations authorizing the Director to initiate court proceedings against
2072 nursing facilities and certified nursing facilities, except for facilities or units certified as facilities for the
2073 mentally retarded. Such proceedings may be initiated by themselves or in conjunction with the
2074 administrative sanctions provided in this article.

2075 The Board shall promulgate regulations for the Director to use to determine when the imposition of
2076 administrative sanctions or initiation of court proceedings as specified in § 32.1-373, or both, are
2077 appropriate in order to ensure prompt correction of violations involving noncompliance with
2078 requirements of state or federal law or regulation as discovered on any inspection conducted by the
2079 Department pursuant to the provisions of this article or the provisions of Title XVIII or Title XIX of the
2080 Social Security Act.

2081 § 32.1-383. Applicability to nursing facilities for practice of religious tenets.

2082 Nothing in this article shall be construed to authorize or require the interference with or prevention
2083 of the establishment or operation of a nursing facility for the practice of religious tenets of any
2084 recognized church or denomination in the ministration to the sick and suffering by mental or spiritual
2085 means without the use of any drug or material remedy, whether gratuitously or for compensation,
2086 provided the statutes and regulations on environmental protection and life safety are complied with.

2087 § 32.1-384. Application for license.

2088 Each application for a nursing facility license shall be made on a form prescribed by the Board. The
2089 application shall specify the official name and the kind of nursing facility, the location thereof, the name

of the person in charge and such additional relevant information as the Board requires.

§ 32.1-385. Service charges.

A. A service charge of \$1.50 per patient bed for which the nursing facility is licensed, but not less than seventy-five dollars nor more than \$500, shall be paid for each license upon issuance and renewal. The service charge for a license for a nursing facility which does not provide overnight inpatient care shall be seventy-five dollars.

B. All service charges received under the provisions of this article shall be paid into a special fund of the Department and appropriated to the Department for the operation of the nursing facility licensure and inspection program.

§ 32.1-386. Expiration and renewal of licenses.

All licenses shall expire at midnight, December 31 of the year issued, or as otherwise specified, and shall be renewed annually.

§ 32.1-387. Alterations or additions to nursing facilities; when new license required.

A. Any person who desires to make any substantial alteration or addition to or any material change in any nursing facility shall, before making such change, alteration or addition, submit the proposal therefor to the Director for his approval. The Director shall review, in consultation with the State Health Commissioner, the proposal to determine compliance with applicable statutes and regulations of the Board and as soon thereafter as reasonably practicable notify the person that the proposal is or is not approved.

B. If any such alteration, addition or change has the effect of changing the bed capacity or classification of the nursing facility, the licensee shall obtain a new license for the remainder of the license year before beginning operation of additional beds or in the new classification.

§ 32.1-388. Display of license.

The current license shall at all times be posted in each nursing facility in a place readily visible and accessible to the public.

§ 32.1-389. Revocation or suspension of license or certification; restriction or prohibition of new admissions to nursing facility.

A. In accordance with applicable regulations of the Board, the Director (i) may restrict or prohibit new admissions to any nursing facility or certified nursing facility, or (ii) may petition the court to impose a civil penalty against any nursing facility or certified nursing facility or to appoint a receiver for such nursing facility or certified nursing facility, or both, or (iii) may revoke the certification or may revoke or suspend the license of a nursing facility or the certification of any certified nursing facility for violation of any provision of this article or of any applicable regulation or for permitting, aiding, or abetting the commission of any illegal act in the nursing facility.

All appeals from notice of imposition of administrative sanctions shall be received in writing within fifteen days of the date of receipt of such notice. The provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) shall be applicable to such appeals.

B. If a license or certification is revoked as herein provided, a new license or certification may be issued by the Director after satisfactory evidence is submitted to him that the conditions upon which revocation was based have been corrected, and after proper inspection has been made and compliance with all provisions of this article and applicable state and federal law and regulations has been obtained.

C. Suspension of a license shall in all cases be for an indefinite time. The Director may completely or partially restore a suspended license or certificate when he determines that the conditions upon which suspension was based have been completely or partially corrected and that the interests of the public will not be jeopardized by resumption of operation. No additional service charges shall be required for restoring such license.

§ 32.1-390. Violation; penalties.

Any person owning, establishing, conducting, maintaining, managing or operating a nursing facility which is not licensed as required by this article shall be guilty of a Class 6 felony.

§ 32.1-391 Appointment of receiver.

In addition to the remedies provided in § 32.1-372 and the civil penalties set forth in 32.1-373, the Director may petition the circuit court for the jurisdiction in which any nursing facility or certified nursing facility is located for the appointment of a receiver in accordance with the provisions of this section whenever such nursing facility or certified nursing facility (i) receives official notice from the Director that its license has been or will be revoked or suspended, or that its Medicare or Medicaid certification has been or will be canceled or revoked; or (ii) receives official notice from the Department of Health and Human Services or the Director that its provider agreement has been or will be revoked, canceled, terminated or not renewed; or (iii) advises the Department of its intention to close or not to renew its license or Medicare or Medicaid provider agreement less than ninety days in advance; or (iv) operates at any time under conditions which present a major and continuing threat to

2151 the health, safety, security, rights or welfare of the patients, including the threat of imminent
2152 abandonment by the owner or operator; and (v) the Department is unable to make adequate and timely
2153 arrangements for relocating all patients who are receiving medical assistance under this chapter and
2154 Title XIX of the Social Security Act in order to ensure their continued safety and health care.

2155 Upon the filing of a petition for appointment of a receiver, the court shall hold a hearing within ten
2156 days, at which time the Department and the owner or operator of the facility may participate and
2157 present evidence. The court may grant the petition if it finds any one of the conditions identified in (i)
2158 through (iv) above to exist in combination with the condition identified in (v) and the court further finds
2159 that such conditions will not be remedied and that the patients will not be protected unless the petition
2160 is granted.

2161 No receivership established under this section shall continue in effect for more than 180 days without
2162 further order of the court, nor shall the receivership continue in effect following the revocation of the
2163 nursing facility's license or the termination of the certified nursing facility's Medicare or Medicaid
2164 provider agreement, except to enforce any post-termination duties of the provider as required by the
2165 provisions of the Medicare or Medicaid provider agreement.

2166 The appointed receiver shall be a licensed nursing home administrator in the Commonwealth
2167 pursuant to Title 54.1 or, if not so licensed, shall employ and supervise a person so licensed to
2168 administer the day-to-day business of the nursing facility or certified nursing facility.

2169 The receiver shall have (i) such powers and duties to manage the nursing facility or certified nursing
2170 facility as the court may grant and direct, including but not limited to the duty to accomplish the
2171 orderly relocation of all patients and the right to refuse to admit new patients during the receivership;
2172 (ii) the power to receive, conserve, protect and disburse funds, including Medicare and Medicaid
2173 payments on behalf of the owner or operator of the nursing facility or certified nursing facility; (iii) the
2174 power to execute and avoid executory contracts; (iv) the power to hire and discharge employees; and
2175 (v) the power to do all other acts, including the filing of such reports as the court may direct, subject to
2176 accounting to the court therefor and otherwise consistent with state and federal law, necessary to
2177 protect the patients from the threat or threats set forth in the original petitions, as well as such other
2178 threats arising thereafter or out of the same conditions.

2179 The court may grant injunctive relief as it deems appropriate to the Department or to its receiver
2180 either in conjunction with or subsequent to the granting of a petition for appointment of a receiver
2181 under this section.

2182 The court may terminate the receivership on the motion of the Department, the receiver, or the
2183 owner or operator, upon finding, after a hearing, that either (i) the conditions described in the petition
2184 have been substantially eliminated or remedied or (ii) all patients in the nursing facility or certified
2185 nursing facility have been relocated. Within thirty days after such termination, the receiver shall file a
2186 complete report of his activities with the court, including an accounting for all property of which he has
2187 taken possession and all funds collected.

2188 All costs of administration of a receivership hereunder shall be paid by the receiver out of
2189 reimbursement to the nursing facility or certified nursing facility from Medicare, Medicaid and other
2190 patient care collections. The court, after terminating such receivership, shall enter appropriate orders to
2191 ensure such payments upon its approval of the receiver's reports.

2192 A receiver appointed under this section shall be an officer of the court, shall not be liable for
2193 conditions at the nursing facility or certified nursing facility which existed or originated prior to his
2194 appointment and shall not be personally liable, except for his own gross negligence and intentional acts
2195 which result in injuries to persons or damage to property at the nursing facility or certified nursing
2196 facility during his receivership.

2197 The provisions of this section shall not be construed to relieve any owner, operator or other party of
2198 any duty imposed by law or of any civil or criminal liability incurred by reason of any act or omission
2199 of such owner, operator, or other party.

2200 § 32.1-392. Enumeration of rights and responsibilities of patients in nursing facilities; posting of
2201 policies; staff training; responsibilities devolving on guardians, etc.; exceptions; certification of
2202 compliance.

2203 A. The governing body of a nursing facility required to be licensed under this article, through the
2204 administrator of such facility, shall promulgate policies and procedures to ensure that, at the minimum,
2205 each patient admitted to such facility:

2206 1. Is fully informed, as evidenced by the patient's written acknowledgment, prior to or at the time of
2207 admission and during his stay, of his rights and of all rules and regulations governing patient conduct
2208 and responsibilities;

2209 2. Is fully informed, prior to or at the time of admission and during his stay, of services available in
2210 the facility and of related charges, including any charges for services not covered under Titles XVIII or
2211 XIX of the United States Social Security Act or not covered by the facility's basic per diem rate;

2212 3. Is fully informed by a physician of his medical condition unless medically contraindicated as

documented by a physician in his medical record, and is afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research;

4. Is transferred or discharged only for medical reasons, or for his welfare or that of other patients, or for nonpayment for his stay except as prohibited by Titles XVIII or XIX of the United States Social Security Act, and is given reasonable advance notice as provided in § 32.1-393 to ensure orderly transfer or discharge, and such actions are documented in his medical record;

5. Is encouraged and assisted, throughout the period of his stay, to exercise his rights as a patient and as a citizen and to this end may voice grievances and recommend changes in policies and services to facility staff and to outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;

6. May manage his personal financial affairs, or may have access to records of financial transactions made on his behalf at least once a month and is given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility to the facility for any period of time in conformance with state law;

7. Is free from mental and physical abuse and free from chemical and, except in emergencies, physical restraints except as authorized in writing by a physician for a specified and limited period of time or when necessary to protect the patient from injury to himself or to others;

8. Is assured confidential treatment of his personal and medical records and may approve or refuse their release to any individual outside the facility, except in case of his transfer to another health care institution or as required by law or third-party payment contract;

9. Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;

10. Is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care;

11. May associate and communicate privately with persons of his choice and send and receive his personal mail unopened, unless medically contraindicated as documented by his physician in his medical record;

12. May meet with and participate in activities of social, religious and community groups at his discretion, unless medically contraindicated as documented by his physician in his medical record;

13. May retain and use his personal clothing and possessions as space permits, unless to do so would infringe upon rights of other patients and unless medically contraindicated as documented by his physician in his medical record; and

14. If married, is assured privacy for visits by his or her spouse and, if both are inpatients in the facility, is permitted to share a room with such spouse, unless medically contraindicated as documented by the attending physician in the medical record.

B. All established policies and procedures regarding the rights and responsibilities of patients shall be printed in at least twelve-point type and posted conspicuously in a public place in all nursing facilities required to be licensed under this article. These policies and procedures shall include the name and telephone number of the Department of Aging and Long-Term Care Services as well as the toll-free number for the Virginia Long-Term Care Ombudsman Program and any local ombudsman program serving the area. Copies of such policies and procedures shall be given to patients upon admittance to the facility and made available to patients currently in residence; to any guardians, next of kin, or sponsoring agency or agencies; and to the public.

C. The provisions of this section shall not be construed to restrict any right which any patient in residence has under law.

D. Each facility shall provide appropriate staff training to implement each patient's rights included in subsection A hereof.

E. All rights and responsibilities specified in subsection A hereof and § 32.1-393 as they pertain to (i) a patient adjudicated incompetent in accordance with state law; (ii) a patient who is found, by his physician, to be medically incapable of understanding these rights; or (iii) a patient who is unable to communicate with others shall devolve to such patient's guardian, next of kin, sponsoring agency or agencies, or representative payee, except when the facility itself is representative payee, selected pursuant to section 205(j) of Title II of the United States Social Security Act.

F. Nothing in this section shall be construed to prescribe, regulate, or control the remedial care and treatment or nursing service provided to any patient in a nursing institution to which the provisions of § 32.1-383 are applicable.

G. It shall be the responsibility of the Director to ensure that the provisions of this section and the provisions of § 32.1-393 are observed and implemented by nursing facilities. Each nursing facility to which this section and § 32.1-393 are applicable shall certify to the Director that it is in compliance with the provisions of each section as a condition to the issuance or renewal of a license.

§ 32.1-393. Implementation of transfer and discharge policies.

A. To implement and conform with the provisions of subdivision A 4 of § 32.1-392, a facility may discharge the patient, or transfer the patient, including transfer within the facility, only:

1. If appropriate to meet that patient's documented medical needs;

2. If appropriate to safeguard that patient or one or more other patients from physical or emotional injury;

3. On account of nonpayment for his stay except as prohibited by Titles XVIII or XIX of the United States Social Security Act and the state plan for medical assistance services; or

4. With the informed voluntary consent of the patient, or if incapable of providing consent, with the informed voluntary consent of the patient's authorized decision maker pursuant to § 54.1-2986 acting in the best interest of the patient, following reasonable advance written notice.

B. Except in an emergency involving the patient's health or well being, no patient shall be transferred or discharged without prior consultation with the patient, the patient's family or responsible party and the patient's attending physician. If the patient's attending physician is unavailable, the facility's medical director in conjunction with the nursing director, social worker or another health professional, shall be consulted. In the case of an involuntary transfer or discharge, the attending physician of the patient or the medical director of the facility shall make a written notation in the patient's record approving the transfer or discharge after consideration of the effects of the transfer or discharge, appropriate actions to minimize the effects of the transfer or discharge, and the care and kind of service the patient needs upon transfer or discharge.

C. Except in an emergency involving the patient's health or well being, reasonable advance written notice shall be given in the following manner. In the case of a voluntary transfer or discharge, notice shall be reasonable under the circumstances. In the case of an involuntary transfer or discharge, reasonable advance written notice shall be given to the patient at least five days prior to the discharge or transfer.

D. Nothing in this section or in subdivision A 4 of § 32.1-392 shall be construed to authorize or require conditions upon a transfer within a facility that are more restrictive than Titles XVIII or XIX of the United States Social Security Act or by regulations promulgated pursuant to either title.

§ 32.1-394. Certain contract provisions prohibited.

No contract or agreement for nursing facility care shall contain any provisions which restrict or limit the ability of a resident to apply for and receive Medicaid or which require a specified period of residency prior to applying for Medicaid. The resident may be required to notify the facility when an application for Medicaid has been made. No contract or agreement may require a deposit or other prepayment from Medicaid recipients. No contract or agreement shall contain provisions authorizing the facility to refuse to accept retroactive Medicaid benefits.

§ 32.1-395. Third party guarantor prohibition.

Any facility certified under Title XVIII or XIX of the United States Social Security Act shall not require a third party guarantee of payment to the facility as a condition of admission or of expedited admission to, or continued stay in, the facility. This section shall not be construed to prevent a facility from requiring an individual who has legal access to a resident's income or resources which are available to pay for care in the facility to sign a contract without incurring personal financial liability, except for breach of the duty to provide payment from the resident's income or resources for such care.

For purposes of this section, the resident's income or resources shall include any amount deemed to be income or resources of the resident for purposes of Medicaid eligibility and any resources transferred by the resident to a third party if the transfer disqualifies the resident from Medicaid coverage for nursing facility services.

Article 3.

Licensing of Adult Care Residences.

§ 32.1-396. Definitions.

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

"Adult care residence" means any place, establishment, or institution, public or private, operated or maintained for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; and (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of eighteen and twenty-one, or twenty-two if enrolled in an educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Virginia Department of Social Services as a child-caring institution under Chapter 10 (§ 63.1-195 et seq.) of Title 63.1, but including any portion of the facility not so licensed. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults.

"Assisted living" means a level of service provided by an adult care residence for adults who may have physical or mental impairments, may be independently mobile, semimobile or nonambulatory and require at least a moderate level of assistance with activities of daily living.

"Independently mobile" means a resident of an adult care residence who is physically and mentally able to exit the residence without assistance in an emergency and who can ascend or descend stairs if present in any necessary exit path.

"Maintenance or care" means the protection, general supervision and oversight of the physical and mental well-being of the aged, infirm or disabled individual.

"Nonambulatory" means a resident of an adult care residence who by reason of physical or mental impairment is unable to exit the residence in an emergency without the assistance of another person.

"Residential living" means a level of service provided by an adult care residence for adults who may have physical or mental impairments but require only minimal assistance with the activities of daily living and who are independently mobile. This definition includes independent living facilities that voluntarily become licensed.

"Semimobile" means a resident of an adult care residence who because of physical or mental impairment requires limited assistance, such as the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command, to exit the residence in an emergency.

§ 32.1-397. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.

A. A licensed adult care residence shall not hire, for compensated employment, persons who have been convicted of murder, abduction for immoral purposes as set out in § 18.2-48, assaults 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, 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, 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 and neglect of children as set out in § 18.2-371.1, 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 or § 18.2-379, or abuse or neglect of an incapacitated adult as set out in § 18.2-369. However, an adult care residence may hire an applicant convicted of one misdemeanor specified in this section not involving abuse or neglect or moral turpitude, provided five years have elapsed following the conviction.

Any person desiring to work at a licensed adult care residence shall provide the hiring residence with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

Such hiring residences shall, within thirty days of employment, obtain for any compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. The provisions of this section shall be enforced by the Director. If an applicant is denied employment because of convictions appearing on his criminal history record, the hiring residence shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

B. 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.

§ 32.1-398. Uniform assessment instrument.

A uniform assessment instrument setting forth a resident's care needs shall be completed for all residents upon admission and at subsequent intervals as determined by Board regulation. The resident's case manager and other appropriate persons shall complete the uniform assessment instrument for public pay residents or, upon request by the private pay resident, for private pay residents. Unless a private pay resident requests the uniform assessment instrument be completed by a case manager, an independent private physician who is chosen by the resident and who has no financial interest in the adult care residence, directly or indirectly as an owner, officer, employee, or otherwise, shall complete the uniform assessment instrument for private pay residents; however, for private pay residents, social and financial information which is not relevant because of the resident's payment status shall not be required. Upon receiving the uniform assessment instrument for a resident, the adult care residence administrator shall provide written assurance that the residence has the capacity to meet the care needs

2397 of the resident.

2398 § 32.1-399. Regulations.

2399 A. The Board shall have the authority to promulgate and enforce regulations to carry out the
2400 provisions of this article and to protect the health, safety, welfare and individual rights of residents of
2401 adult care residences and to promote their highest level of functioning.

2402 B. Regulations shall include standards for staffing; staff qualifications and training; facility design,
2403 functional design and equipment; services to be provided to residents; administration of medicine;
2404 allowable medical conditions for which care can be provided; and medical procedures to be followed by
2405 staff, including provisions for physicians' services, restorative care, and specialized rehabilitative
2406 services.

2407 § 32.1-400. Admissions and discharge.

2408 A. The Board shall promulgate regulations:

2409 1. Governing admissions to adult care residences;

2410 2. Establishing a process to ensure that residents admitted or retained in an adult care residence
2411 receive the appropriate services and that, in order to determine whether a resident's needs can continue
2412 to be met by the residence and whether continued placement in the residence is in the best interests of
2413 the resident, each resident receives periodic independent reassessments and reassessments in the event of
2414 significant deterioration of the resident's condition;

2415 3. Governing appropriate discharge planning for residents whose care needs can no longer be met
2416 by the residence;

2417 4. Addressing the involuntary discharge of residents; and

2418 5. Requiring that residents are informed of their rights pursuant to § 32.1-412 at the time of
2419 admission.

2420 B. Adult care residences shall not care for individuals with any of the following conditions or care
2421 needs:

2422 1. Ventilator dependency;

2423 2. Dermal ulcers III and IV;

2424 3. Intravenous therapy or injections directly into the vein;

2425 4. Airborne infectious disease in a communicable state;

2426 5. Psychotropic medications without appropriate diagnosis and treatment plans;

2427 6. Nasogastric tubes/gastric tubes;

2428 7. Individuals presenting an imminent physical threat or danger to self or others;

2429 8. Individuals requiring continuous nursing care (seven-days-a-week, twenty-four-hours-a-day);

2430 9. Individuals whose physician certifies that placement is no longer appropriate;

2431 10. Individuals who require maximum physical assistance as documented by the uniform assessment
2432 instrument;

2433 11. Individuals whose health care needs cannot be met in the specific adult care residence;

2434 12. Such other medical and functional care needs of residents which the Board determines cannot
2435 properly be met in an adult care residence.

2436 C. In promulgating regulations pursuant to subsections A and B above, the Board shall consult with
2437 the Department of Mental Health, Mental Retardation and Substance Abuse Services.

2438 § 32.1-401. Application fees; regulations and schedules; use of fees; certain residences exempt.

2439 The Board is authorized to promulgate regulations and schedules for fees to be charged for
2440 processing applications for licenses to operate adult care residences. Such schedules shall specify
2441 minimum and maximum fees and, where appropriate, gradations based on the capacity for residents.
2442 Such fees shall be used for the development and delivery of training for operators and staff of adult
2443 care residences. Such fees shall be expended for this purpose within two fiscal years following the fiscal
2444 year in which they are collected. These fees shall not be applicable to facilities operated by federal
2445 entities.

2446 § 32.1-402. Compliance with Uniform Statewide Building Code.

2447 Buildings licensed for independently mobile residents, semimobile residents or nonambulatory
2448 residents shall be classified by and meet the specifications for the proper Use Group as required by the
2449 Virginia Uniform Statewide Building Code.

2450 § 32.1-403. Licenses required; expiration and renewal; maximum number of residents; restrictions on
2451 nomenclature.

2452 A. Every person who constitutes, or who operates or maintains, an adult care residence shall obtain
2453 the appropriate license from the Director, which may be renewed. The Director or his designated
2454 agents, upon request, shall consult with, advise, and assist any person interested in securing and
2455 maintaining any such license.

2456 B. The licenses shall be issued on forms prescribed by the Director. Any two or more licenses may
2457 be issued for concurrent operation of more than one adult care residence. Each license, and renewals
2458 thereof, may be issued for periods of up to three successive years, unless sooner revoked or

surrendered.

C. Each license shall indicate whether the residence is licensed to provide residential living or residential living and assisted living and shall stipulate the maximum number of persons who may be cared for in the adult care residence for which it is issued.

D. Any facility licensed exclusively as an adult care residence shall not use in its title the words "convalescent," "health," "hospital," "nursing," "sanitorium," or "sanitarium," nor shall such words be used to describe the facility in brochures, advertising, or other marketing material. Nothing in this subsection shall prohibit the facility from describing services available in the facility.

§ 32.1-404. Investigation on receipt of application.

Upon receipt of the application the Director shall cause an investigation to be made of the activities, services and facilities of the applicant, of the applicant's financial responsibility, and of his character and reputation or, if the applicant be an association, partnership or corporation, the character and reputation of its officers and agents.

§ 32.1-405. Inspections and interviews.

A. Applicants and licensees shall at all times afford the representatives of the Director reasonable opportunity to inspect all of their facilities, books and records, and to interview their agents and employees and any person living in such facilities.

B. The Director and his authorized agents shall have the right to inspect and investigate all adult care residences, interview their residents and have access to their records.

C. The Director or his authorized agents shall make at least two inspections of each licensed adult care residence each year, one of which shall be unannounced. The Director may authorize such other announced or unannounced inspections as he considers appropriate.

§ 32.1-406. Issuance or refusal of license; provisional and conditional licenses.

Upon completion of his investigation, the Director shall issue an appropriate license to the applicant if he determines that the applicant and his agents and employees comply, and structures proposed to be used by the applicant and his proposed manner of operation conform, with the provisions of this article. Upon completion of the investigation for the renewal of a license, the Director may issue a provisional license to any applicant if the applicant is temporarily unable to comply with all of the requirements of this article. Such provisional license may be renewed, but the issuance of a provisional license and any renewals thereof shall be for no longer a period than six successive months. The Director may issue to any applicant a provisional license and permit renewals thereof for a period no longer than twelve successive months with the approval of the appropriate fire marshal in order to permit the applicant to comply with the Fire Prevention Code.

At the discretion of the Director, a conditional license may be issued to an applicant to operate a new facility in order to permit the applicant to demonstrate compliance with the provisions of this article. Such conditional license may be renewed, but the issuance of a conditional license and any renewals thereof shall be for no longer a period than six successive months. The Director may issue to any applicant a conditional license and permit renewals thereof for a period no longer than twelve successive months with the approval of the appropriate fire marshal when such applicant is purchasing an existing facility licensed in accordance with the provisions of this article in order to permit the applicant to comply with the Fire Prevention Code.

§ 32.1-407. Interagency agreements; cooperation of Department with other departments.

The Department of Aging and Long-Term Care Services is authorized to enter into interagency agreements with other state agencies to develop and implement regulations for residential living and assisted living. Any state agency identified by the Department as appropriate to include in an interagency agreement shall participate in the development and implementation of the agreement. The Department shall assist and cooperate with other state departments in fulfilling their respective inspection responsibilities and in coordinating the regulations involving inspections. The Board may promulgate regulations allowing the Department to so assist and cooperate with other state departments.

§ 32.1-408. Enforcement and sanctions.

The Board shall promulgate regulations for the Director to use in determining when the imposition of administrative sanctions or initiation of court proceedings, severally or jointly, is appropriate in order to ensure prompt correction of violations involving noncompliance with state law or regulation as discovered through any inspection or investigation conducted by the Departments of Aging and Long-Term Care Services; Health; or Mental Health, Mental Retardation and Substance Abuse Services. The Director may impose such sanctions or take such actions as are appropriate for violation of any of the provisions of this article, § 54.1-3408, or any rule or regulation promulgated under any provision of this article which adversely impacts the health, safety or welfare of the persons cared for therein, or for permitting, aiding, or abetting the commission of any illegal act in an adult care residence. Such sanctions or actions may include (i) reducing the licensed capacity of any adult care residence, (ii) restricting or prohibiting new admissions to any adult care residence, (iii) petitioning the court to

2520 impose a civil penalty against any adult care residence or to appoint a receiver for the adult care
2521 residence, and (iv) revoking or denying renewal of the license for the adult care residence.

2522 § 32.1-409. Appeal from refusal, denial of renewal or revocation of license and other sanctions.

2523 A. Whenever the Director refuses to issue or to renew a license for an adult care residence, or
2524 whenever the Director revokes a license of an adult care residence or imposes a sanction as provided in
2525 § 32.1-408, the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) shall apply, except that
2526 all appeals from notice of imposition of administrative sanctions, pursuant to § 32.1-408, shall be
2527 received in writing from the adult care residence operator within fifteen days of the date of receipt of
2528 the notice. Judicial review of a final review agency decision shall be in accordance with the provisions
2529 of the Administrative Process Act. No stay may be granted upon appeal to the Virginia Supreme Court.

2530 B. In every appeal to a court of record, the Director shall be named defendant.

2531 C. An appeal, taken as provided in this section, shall operate to stay any criminal prosecution for
2532 operation without a license.

2533 D. When issuance or renewal of a license has been refused by the Director, the applicant shall not
2534 thereafter for a period of one year apply again for such license unless the Director in his sole
2535 discretion believes that there has been such a change in the conditions on account of which he refused
2536 the prior application as to justify considering the new application. When an appeal is taken by the
2537 applicant pursuant to subsection A above, the one-year period shall be extended until a final decision
2538 has been rendered on appeal.

2539 § 32.1-410. Enjoining operation of adult care residence without license.

2540 Any court of record, having chancery jurisdiction in the county or city where the adult care
2541 residence is located, shall, on motion of the Director, have jurisdiction to enjoin the operation of any
2542 adult care residence operated without a license required by this article.

2543 § 32.1-411. Offenses.

2544 Any person who (i) interferes with any authorized agent of the Director in the discharge of his duties
2545 under this article; (ii) makes to the Director or any authorized agent of the Director any report or
2546 statement with respect to the operation of any adult care residence which is known by such person to be
2547 false or untrue; (iii) operates or engages in the conduct of an adult care residence without first
2548 obtaining a license as required by this article, or after such license has been revoked or has expired
2549 and not been renewed; or (iv) operates or engages in the conduct of an adult care residence serving
2550 more persons than the maximum stipulated in the license; and each officer and each member of the
2551 governing board of any association or corporation which operates an adult care residence without
2552 obtaining such license or after such revocation or expiration, or which operates or engages in the
2553 conduct of an adult care residence serving more persons than the maximum stipulated in the license,
2554 shall be guilty of a Class 1 misdemeanor.

2555 It shall be the duty of the attorney for the Commonwealth of every county and city to prosecute all
2556 violations of this article.

2557 § 32.1-412. Rights and responsibilities of residents of adult care residences; certification of licensure.

2558 A. Any resident of an adult care residence has the rights and responsibilities enumerated in this
2559 section. The operator or administrator of an adult care residence shall establish written policies and
2560 procedures to ensure that, at the minimum, each person who becomes a resident of the adult care
2561 residence:

2562 1. Is fully informed, prior to or at the time of admission and during the resident's stay, of his rights
2563 and of all rules and expectations governing the resident's conduct, responsibilities, and the terms of the
2564 admission agreement; evidence of this shall be the resident's written acknowledgment of having been so
2565 informed, which shall be filed in his record;

2566 2. Is fully informed, prior to or at the time of admission and during the resident's stay, of services
2567 available in the residence and of any related charges; this shall be reflected by the resident's signature
2568 on a current resident's agreement retained in the resident's file;

2569 3. Unless a committee or guardian of such person has been appointed, is free to manage his
2570 personal finances and funds regardless of source; is entitled to access to personal account statements
2571 reflecting financial transactions made on his behalf by the residence; and is given at least a quarterly
2572 accounting of financial transactions made on his behalf when a written delegation of responsibility to
2573 manage his financial affairs is made to the residence for any period of time in conformance with state
2574 law;

2575 4. Is afforded confidential treatment of his personal affairs and records and may approve or refuse
2576 their release to any individual outside the residence except as otherwise provided in law and except in
2577 case of his transfer to another care-giving facility;

2578 5. Is transferred or discharged only when provided with a statement of reasons, or for nonpayment
2579 for his stay, and is given reasonable advance notice; upon notice of discharge or upon giving
2580 reasonable advance notice of his desire to move, shall be afforded reasonable assistance to ensure an
2581 orderly transfer or discharge; such actions shall be documented in his record;

6. In the event a medical condition should arise while he is residing in the residence, is afforded the opportunity to participate in the planning of his program of care and medical treatment at the residence and the right to refuse treatment;

7. Is not required to perform services for the residence except as voluntarily contracted pursuant to a voluntary agreement for services which states the terms of consideration or remuneration and is documented in writing and retained in his record;

8. Is free to select health care services from reasonably available resources;

9. Is free to refuse to participate in human subject experimentation or to be party to research in which his identity may be ascertained;

10. Is free from mental, emotional, physical, sexual, and economic abuse or exploitation; is free from forced isolation, threats or other degrading or demeaning acts against him; and his known needs are not neglected or ignored by personnel of the residence;

11. Is treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity;

12. Is encouraged, and informed of appropriate means as necessary throughout the period of stay, to exercise his rights as a resident and as a citizen; to this end, he is free to voice grievances and recommend changes in policies and services, free of coercion, discrimination, threats or reprisal;

13. Is permitted to retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other residents;

14. Is encouraged to function at his highest mental, emotional, physical and social potential;

15. Is free of physical or mechanical restraint except in the following situations and with appropriate safeguards:

a. As necessary for the residence to respond to unmanageable behavior in an emergency situation which threatens the immediate safety of the resident or others;

b. As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened resident;

16. Is free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician;

17. Is accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:

a. In the care of his personal needs except as assistance may be needed;

b. In any medical examination or health-related consultations the resident may have at the residence;

c. In communications, in writing or by telephone;

d. During visitations with other persons;

e. In the resident's room or portion thereof; residents shall be permitted to have guests or other residents in their rooms unless to do so would infringe upon the rights of other residents; staff may not enter a resident's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in regulations of the Board of Aging and Long-Term Care Services;

f. In visits with his spouse; if both are residents of the residence they are permitted but not required to share a room unless otherwise provided in the residents' agreements;

18. Is permitted to meet with and participate in activities of social, religious, and community groups at his discretion unless medically contraindicated as documented by his physician in his medical record.

B. If the resident is unable to fully understand and exercise the rights and responsibilities contained in this section, the residence shall require that a responsible individual, of the resident's choice when possible, designated in writing in the resident's record, be made aware of each item in this section and the decisions which affect the resident or relate to specific items in this section; a resident shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the resident's record.

C. The residence shall make available in an easily accessible place a copy of these rights and responsibilities and shall include in them the name and telephone number of the Department of Aging and Long-Term Care Services as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program, any local ombudsman program serving the area, and the toll-free number of the Department for the Rights of Virginians With Disabilities.

D. The residence shall make its policies and procedures for implementing this section available and accessible to residents, relatives, agencies, and the general public.

E. The provisions of this section shall not be construed to restrict or abridge any right which any resident has under law.

F. Each residence shall provide appropriate staff training to implement each resident's rights included in this section.

G. The Board of Aging and Long-Term Care Services shall promulgate regulations as necessary to carry out the full intent of this section.

2643 *H. It shall be the responsibility of the Director of the Department of Aging and Long-Term Care*
2644 *Services to ensure that the provisions of this section are observed and implemented by adult care*
2645 *residences as a condition to the issuance, renewal, or continuation of the license required by this*
2646 *article.*

2647 *Article 4.*

2648 *Licensing of Home Care Organizations.*

2649 *§ 32.1-413. Definitions.*

2650 *As used in this article:*

2651 *"Health care professional" means any professional who is licensed, certified or registered to practice*
2652 *by a board within the Department of Health Professions under Title 54.1 or is licensed, certified or*
2653 *registered by a nationally recognized professional organization specified in State Board of Health*
2654 *regulations.*

2655 *"Home care organization" means a public or private organization, whether operated for profit or not*
2656 *for profit, that provides, at the residence of a patient or individual in the Commonwealth of Virginia,*
2657 *one or more of the following services:*

2658 *1. Home health services, including services provided by or under the direct supervision of any health*
2659 *care professional under a medical plan of care in a patient's residence on a visit or hourly basis to*
2660 *patients who have or are at risk of injury, illness, or a disabling condition and require short-term or*
2661 *long-term interventions;*

2662 *2. Personal care services, including assistance in personal care to include activities of daily living*
2663 *provided in an individual's residence on a visit or hourly basis to individuals who have or are at risk of*
2664 *an illness, injury or disabling condition; or*

2665 *3. Pharmaceutical services, including services provided in a patient's residence, which include the*
2666 *dispensing and administration of a drug or drugs, and parenteral nutritional support, associated patient*
2667 *instruction, and such other services as identified by Board regulation.*

2668 *"Person" includes any partnership, corporation, association or other legal entity, public or private.*

2669 *"Residence" means the place where the individual or patient makes his home such as his own*
2670 *apartment or house, a relative's home or an adult care residence, but shall not include a hospital,*
2671 *nursing facility or other extended care facility.*

2672 *§ 32.1-414. Exemptions from article.*

2673 *The provisions of this article shall not be applicable to:*

2674 *1. A natural person, acting alone, who provides services to a patient or individual on an individual*
2675 *basis if such person is (i) licensed to provide such services pursuant to Title 54.1 or (ii) retained by the*
2676 *individual or by a person acting on the individual's behalf.*

2677 *2. Any organization providing only housekeeping, chore or beautician services.*

2678 *3. Any home care organization which is:*

2679 *a. Certified by the Department under provisions of Title XVIII or Title XIX of the Social Security Act*
2680 *or approved by the Department as a personal care agency;*

2681 *b. Accredited by the Joint Commission on Accreditation for Health Organizations, the National*
2682 *League of Nursing or the National Home Caring Council; or*

2683 *c. Licensed for hospice services under Article 7 (§ 32.1-162.1 et seq.) of this chapter.*

2684 *§ 32.1-415. Licenses required; renewal thereof.*

2685 *A. No person shall establish or operate a home care organization without a license issued pursuant*
2686 *to this article unless he is exempt from licensure pursuant to § 32.1-414.*

2687 *B. The Director shall issue or renew a license to establish or operate a home care organization*
2688 *upon application therefor on a form and accompanied by a fee prescribed by the Board if the Director*
2689 *finds that the home care organization is in compliance with the provisions of this article and regulations*
2690 *of the Board.*

2691 *C. Every such license shall expire on the anniversary of its issuance or renewal.*

2692 *D. The activities and services of each applicant for issuance or renewal of a home care organization*
2693 *license shall be subject to an inspection or examination by the Director to determine if the home care*
2694 *organization is in compliance with the provisions of this article and Board regulations.*

2695 *E. No license issued pursuant to this article may be transferred or assigned.*

2696 *§ 32.1-416. Employment for compensation of persons convicted of certain offenses prohibited;*
2697 *criminal records check required; suspension or revocation of license.*

2698 *A. A licensed home care organization or any home care organization exempt from licensure under*
2699 *subdivision 3 a, b, or c of § 32.1-414 or any licensed hospice as defined in § 32.1-162.1 shall not hire,*
2700 *for compensated employment, persons who have been convicted of murder, abduction for immoral*
2701 *purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et*
2702 *seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, sexual assault as set out in Article 7*
2703 *(§ 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*
2704 *5 of Title 18.2, 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 and neglect of children as set out in § 18.2-371.1, 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 or § 18.2-379, or abuse or neglect of an incapacitated adult as set out in § 18.2-369.

However, a home care organization or hospice may hire an applicant convicted of one misdemeanor specified in this section not involving abuse or neglect or moral turpitude, provided five years have elapsed since the conviction.

Any person desiring to work at a licensed home care organization or any home care organization exempt from licensure under subdivision 3 a, b, or c of § 32.1-414 or any licensed hospice as defined in § 32.1-162.1 shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

Such home care organization or hospice shall, within thirty days of employment, obtain for any compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. The provisions of this section shall be enforced by the Director. If an applicant is denied employment because of convictions appearing on his criminal history record, the home care organization or hospice shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

B. 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.

§ 32.1-417. Inspections.

The Director may cause each home care organization licensed under this article to be periodically inspected at reasonable times. Notwithstanding the foregoing or any other provision of this article, any home care organization which has obtained accreditation or has been certified as provided in subdivision 3 of § 32.1-414 may be subject to inspection so long as such accreditation or certification is maintained, but only to the extent necessary to ensure the public health and safety.

§ 32.1-418. Liability insurance and surety bond required.

The Board shall establish liability insurance and surety bond requirements adequate to compensate patients or individuals for injuries and losses resulting from the negligent or criminal acts of home care organizations. Every licensee shall maintain in force such liability insurance and surety bond requirements as the Board establishes. Failure to maintain these requirements shall result in revocation of the license.

§ 32.1-419. Regulations.

The Board shall promulgate such regulations governing the activities and services provided by home care organizations as may be necessary to protect the public health, safety and welfare. Such regulations shall include, but not be limited to, an informed consent contract, the qualifications and supervision of licensed and nonlicensed personnel, a complaint procedure for consumers, the provision and coordination of treatment and services provided by the organization, clinical records kept by the organization, utilization and quality control review procedures and arrangements for the continuing evaluation of the quality of care provided. Regulations shall be appropriate for the categories of service defined in § 32.1-413.

§ 32.1-420. Revocation or suspension of license.

A. The Director is authorized to revoke or suspend any license issued hereunder if the holder of the license fails to comply with the provisions of this article or with Board regulations.

B. If a license is revoked as herein provided, the Director may issue a new license upon application therefor if the conditions upon which revocation was based have been corrected and all provisions of this article and applicable regulations have been complied with.

C. Whenever a license is revoked or suspended the Director may request the Office of the Attorney General to petition the circuit court of the jurisdiction in which the home care organization is located for an injunction to cause such home care organization to cease providing services.

D. Suspension of a license shall in all cases be for an indefinite time and the suspension may be lifted and rights under the license fully or partially restored at such time as the Director determines that the rights of the licensee appear to so require and the interests of the public will not be jeopardized by

2766 *resumption of operation.*

2767 *§ 32.1-421. Home Care Services Advisory Committee created.*

2768 *There is hereby created the Home Care Services Advisory Committee, which shall advise and make*
2769 *recommendations to the Board regarding the regulations promulgated by the Board and the*
2770 *implementation and administration of this article. The Committee shall consist of ten members, all of*
2771 *whom shall be residents of the Commonwealth. The Director shall appoint all members, one of whom*
2772 *shall act as chairman. Two members shall be appointed from the Commonwealth at large. One member*
2773 *shall be appointed from each of the following state agencies: Department of Health, Department of*
2774 *Medical Assistance Services, Department of Rehabilitative Services and Department of Social Services.*
2775 *Four members shall be affiliated with home care organizations as defined in this article; two shall*
2776 *represent organizations providing home health services, one providing personal care services, and one*
2777 *providing pharmaceutical services.*

2778 *§ 32.1-422. Violation; penalties.*

2779 *Any person owning, establishing, conducting, maintaining, managing or operating a home care*
2780 *organization which is not licensed as required by this article shall be guilty of a Class 6 felony.*

2781 *Article 5.*

2782 *Licensing of Adult Day Care Centers.*

2783 *§ 32.1-423. Definitions.*

2784 *"Adult day care center" means a facility which is either operated for profit or which desires*
2785 *licensure and which provides supplementary care and protection during a part of the day only to four*
2786 *or more aged, infirm, or disabled adults who reside elsewhere, except (i) a facility or portion of a*
2787 *facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation*
2788 *and Substance Abuse Services and (ii) the home or residence of an individual who cares only for*
2789 *persons related to him by blood or marriage.*

2790 *"Independently mobile" means a participant of an adult day care center who is physically and*
2791 *mentally able to exit the center without assistance in an emergency and who can ascend or descend*
2792 *stairs if present in any necessary exit path.*

2793 *"Nonambulatory" means a participant in an adult day care center who by reason of physical or*
2794 *mental impairment is unable to exit the center in an emergency without the assistance of another*
2795 *person.*

2796 *"Semimobile" means a participant in an adult day care center who because of physical or mental*
2797 *impairment requires limited assistance, such as the assistance of a wheelchair, walker, cane, prosthetic*
2798 *device, or a single verbal command, to exit the center in an emergency.*

2799 *§ 32.1-424. Regulations.*

2800 *A. The Board shall have the authority to promulgate and enforce regulations to carry out the*
2801 *provisions of this article and to protect the health, safety, welfare, and individual rights of participants*
2802 *of adult day care centers and to promote their highest level of functioning.*

2803 *B. Regulations shall include standards for care and services to be provided to participants;*
2804 *administration of medication; staffing; staff qualifications and training; and facility design, construction,*
2805 *and equipment.*

2806 *§ 32.1-425. Application fees; regulations and schedules; use of fees; certain centers exempt.*

2807 *The Board is authorized to promulgate regulations and schedules for fees to be charged for*
2808 *processing applications for licenses to operate adult day care centers. Such schedules shall specify*
2809 *minimum and maximum fees and, where appropriate, gradations based on the capacity for participants.*
2810 *Such fees shall be used for the development and delivery of training for operators and staff of adult day*
2811 *care centers. Such fees shall be expended for this purpose within two fiscal years following the fiscal*
2812 *year in which they are collected. These fees shall not be applicable to centers operated by federal*
2813 *entities.*

2814 *§ 32.1-426. Compliance with Uniform Statewide Building Code.*

2815 *Buildings licensed for independently mobile participants, semimobile participants or nonambulatory*
2816 *participants shall be classified by and meet the specifications for the proper Use Group as required by*
2817 *the Virginia Uniform Statewide Building Code.*

2818 *§ 32.1-427. Licenses required; expiration and renewal; maximum number of participants.*

2819 *A. Every person who constitutes, or who operates or maintains, an adult day care center shall obtain*
2820 *the appropriate license from the Director, which may be renewed. The Director or his designated*
2821 *agents, upon request, shall consult with, advise, and assist any person interested in securing and*
2822 *maintaining any such license.*

2823 *B. The licenses shall be issued on forms prescribed by the Director. Any two or more licenses may*
2824 *be issued for concurrent operation of more than one adult day care center. Each license and renewal*
2825 *thereof may be issued for periods of up to three successive years.*

2826 *§ 32.1-428. Investigation on receipt of application.*

2827 *Upon receipt of the application, the Director shall cause an investigation to be made of the*

activities, services and facilities of the applicant, of the applicant's financial responsibility, and of his character and reputation, or, if the applicant is an association, partnership or corporation, of the character and reputation of its officers and agents.

§ 32.1-429. Inspection and interviews.

A. Applicants and licensees shall at all times afford the representatives of the Director reasonable opportunity to inspect all of their facilities, books and records, and to interview their agents and employees and any participant in their center.

B. The Director and his authorized agents shall have the right to inspect and investigate all adult day care centers, interview the participants, and have access to their records.

C. The Director or his authorized agents shall make at least two inspections of each licensed facility each year, one of which shall be unannounced. The Director may authorize such other announced or unannounced inspections as he considers appropriate.

§ 32.1-430. Issuance or refusal of license; provisional and conditional licenses.

Upon completion of his investigation, the Director shall issue an appropriate license to the applicant if he determines that the applicant and his agents and employees comply, and structures proposed to be used by the applicant and his proposed manner of operation conform, with the provisions of this article. Upon completion of the investigation for the renewal of a license, the Director may issue a provisional license to any applicant if the applicant is temporarily unable to comply with all of the requirements of this article. A provisional license may be renewed, but the issuance of a provisional license and any renewals thereof shall be for no longer a period than six successive months. The Director may issue to any applicant a provisional license and permit renewals thereof for a period no longer than twelve successive months with the approval of the appropriate fire marshal in order to permit the applicant to comply with the Fire Prevention Code.

At the discretion of the Director, a conditional license may be issued to an applicant to operate a new facility in order to permit the applicant to demonstrate compliance with the provisions of this article. A conditional license may be renewed, but the issuance of a conditional license and any renewals thereof shall be for no longer a period than six successive months. The Director may issue to any applicant a conditional license and permit renewals thereof for a period of more than twelve successive months with the approval of the appropriate fire marshal when such applicant is purchasing an existing facility licensed in accordance with the provisions of this article in order to permit the applicant to comply with the Fire Prevention Code.

§ 32.1-431. Enforcement and sanctions.

The Board shall promulgate regulations for the Director to use in determining when the imposition of administrative sanctions or initiation of court proceedings, severally or jointly, are appropriate in order to ensure prompt correction of violations involving noncompliance with state law or regulation as discovered through any inspection or investigation conducted by the Director or his representatives. The Director may impose such sanctions or take such actions as are appropriate for violation of any of the provisions of this article or any regulation promulgated under any provision of this article which adversely impacts the health, safety or welfare of an adult day care participant or for permitting, aiding, or abetting the commission of any illegal act in an adult day care center. Such sanctions or actions may include (i) reducing the licensed capacity of any adult day care center, (ii) restricting or prohibiting new admissions to any adult day care center, (iii) petitioning the court to impose a civil penalty against any adult day care center or to appoint a receiver for the adult day care center, and (iv) revoking or denying renewal of the license for the adult day care center.

§ 32.1-432. Appeal from refusal, denial of renewal or revocation of license and other sanctions.

A. Whenever the Director refuses to issue or to renew a license for an adult day care center or whenever the Director revokes a license of an adult day care center, or imposes a sanction as provided in § 32.1-431, the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) shall apply, except that all appeals from notice of imposition of administrative sanctions, pursuant to § 32.1-431, shall be received in writing from the adult day care center operator within fifteen days of the date of receipt of the notice. Judicial review of a final review agency decision shall be in accordance with the provisions of the Administrative Process Act. No stay may be granted upon appeal to the Virginia Supreme Court.

B. In every appeal to a court of record, the Director shall be named defendant.

C. An appeal, taken as provided in this section, shall operate to stay any criminal prosecution for operation without a license.

D. When issuance or renewal of a license has been refused by the Director, the applicant shall not thereafter for a period of one year apply again for such license unless the Director in his sole discretion believes that there has been such a change in the conditions on account of which he refused the prior application as to justify considering the new application. When an appeal is taken by the applicant pursuant to subsection A above, the one-year period shall be extended until a final decision has been rendered on appeal.

2889 § 32.1-433. *Enjoining operation of center without license.*

2890 Any court of record, having chancery jurisdiction in the county or city where the adult day care
2891 center is located, shall, on motion of the Director, have jurisdiction to enjoin the operation of any adult
2892 day care center operated without a license required by this article.

2893 § 32.1-434. *Offenses.*

2894 Any person who (i) interferes with any authorized agent of the Director in the discharge of his duties
2895 under this article; (ii) makes to the Director or any authorized agent of the Director any report or
2896 statement with respect to the operation of any adult day care center which is known by such person to
2897 be false or untrue; (iii) operates or engages in the conduct of an adult day care center without first
2898 obtaining a license as required by this article, or after such license has been revoked or expired and not
2899 been renewed; or (iv) operates or engages in the conduct of an adult day care center serving more
2900 persons than the maximum stipulated in the license; and each officer and each member of the governing
2901 board of any association or corporation which operates an adult day care center without obtaining such
2902 license or after such revocation or expiration, or which operates or engages in the conduct of an adult
2903 day care center serving more persons than the maximum stipulated in the license, shall be guilty of a
2904 Class 1 misdemeanor.

2905 It shall be the duty of the attorney for the Commonwealth of every county and city to prosecute all
2906 violations of this article.

2907 § 32.1-435. *Employment for compensation of persons convicted of certain offenses prohibited;*
2908 *criminal records check required; suspension or revocation of license.*

2909 A. A licensed adult day care center shall not hire, for compensated employment, persons who have
2910 been convicted of murder, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily
2911 woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in
2912 § 18.2-58, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as
2913 set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, pandering as set out in § 18.2-355,
2914 obscenity offenses as set out in § 18.2-374.1 or § 18.2-379, crimes against nature involving children as
2915 set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1,
2916 abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an
2917 injured child as set out in § 18.2-314, or abuse or neglect of an incapacitated adult as set out in
2918 § 18.2-369. However, an adult day care center may hire an applicant who has been convicted of one
2919 misdemeanor specified in this section not involving abuse or neglect or moral turpitude, provided five
2920 years have elapsed following the conviction.

2921 Any person desiring to work at a licensed adult day care center shall provide the hiring facility with
2922 a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges,
2923 whether within or without the Commonwealth. Any person making a materially false statement when
2924 providing such sworn statement or affirmation regarding any such offense shall be guilty upon
2925 conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this
2926 section is prohibited other than to a federal or state authority or court as may be required to comply
2927 with an express requirement of law for such further dissemination.

2928 The adult day care center shall, within thirty days of employment, obtain for any compensated
2929 employees an original criminal record clearance with respect to convictions for offenses specified in this
2930 section or an original criminal history record from the Central Criminal Records Exchange. The
2931 provisions of this section shall be enforced by the Director. If an applicant is denied employment
2932 because of convictions appearing on his criminal history record, the hiring facility shall provide a copy
2933 of the information obtained from the Central Criminal Records Exchange to the applicant.

2934 The provisions of this section shall not apply to volunteers who work with the permission or under
2935 the supervision of a person who has received a clearance pursuant to this section.

2936 B. A person who complies in good faith with the provisions of this section shall not be liable for any
2937 civil damages for any act or omission in the performance of duties under this section unless the act or
2938 omission was the result of gross negligence or willful misconduct.

2939 Article 6.

2940 Medical Assistance Services.

2941 § 32.1-436. *Authority to administer oaths, conduct hearings; obtain relevant documents and other*
2942 *information.*

2943 A. The Director or his designee is authorized in the exercise and performance of official functions,
2944 duties, and powers under the provisions of this chapter to hold and conduct hearings, to administer
2945 oaths, and to take testimony under oath. The Director is authorized to make an ex parte application to
2946 the Circuit Court for the City of Richmond for the issuance of a subpoena, in furtherance of any
2947 investigation within the jurisdiction of the Department, to request the attendance of witnesses and the
2948 production of any relevant records, memoranda, papers, and other documents. The court is authorized
2949 to issue and compel compliance with such subpoena upon a showing of good cause. The court, upon
2950 determining that good cause exists to believe that evidence may be destroyed or altered, may issue a

subpoena requiring the production of evidence forthwith.

B. In accordance with federal and state law, the Director or his designee shall conduct hearings on determinations of eligibility or continued eligibility of applicants or recipients for services under the state plan for medical assistance. In addition to the authority conferred upon the Director by subsection A of this section, the Director or his designee, in connection with any such proceedings, may issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers, and other documents.

C. Failure or refusal to comply with a subpoena issued pursuant to subsection B of this section shall be punishable as a Class 4 misdemeanor.

§ 32.1-437. Board to submit plan for medical assistance services to Secretary of Health and Human Services pursuant to federal law; administration of plan; contracts with health care providers.

A. The Board, subject to the approval of the Governor, is authorized to prepare, amend and submit to the Secretary of the United States Department of Health and Human Services a state plan for medical assistance services pursuant to Title XIX of the United States Social Security Act and any amendments thereto for medical assistance services within the jurisdiction of the Department.

In preparing the plan, the Board shall work cooperatively with the State Board of Health to ensure that quality patient care is provided. The Board shall also initiate such cost containment or other measures as are set forth in the appropriation act. The Board may promulgate and enforce such regulations as may be necessary to carry out the provisions of this article.

In order to enable the Commonwealth to continue to receive federal grants or reimbursement for medical assistance or related services, the Board, subject to the approval of the Governor, may adopt, regardless of any other provision of this chapter, such amendments to the state plan for medical assistance services as may be necessary to conform such plan with amendments to the United States Social Security Act or other relevant federal law and their implementing regulations or constructions of these laws and regulations by courts of competent jurisdiction or the United States Secretary of Health and Human Services.

In the event conforming amendments to the state plan for medical assistance services are adopted, the Board shall not be required to comply with the requirements of Article 2 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 of Title 9. However, the Board shall, pursuant to the requirements of § 9-6.14:4.1, (i) notify the Registrar of Regulations that such amendment is necessary to meet the requirements of federal law or regulations or because of the order of any state or federal court or (ii) certify to the Governor that the regulations are necessitated by an emergency situation. Any such amendments which are in conflict with the Code of Virginia shall only remain in effect until July 1 following adjournment of the next regular session of the General Assembly unless enacted into law.

B. The Director is authorized to administer such state plan and to receive and expend federal funds therefor in accordance with applicable federal and state laws and regulations; and to enter into all contracts necessary or incidental to the performance of the Department's duties and the execution of its powers as provided by law.

C. The Director is authorized to enter into agreements and contracts with medical care facilities and health care providers where necessary to carry out the provisions of such state plan. Any such agreement or contract shall terminate upon conviction of the provider of a felony. In the event such conviction is reversed upon appeal, the provider may apply to the Director for a new agreement or contract. Such provider may also apply to the Director for reconsideration of the agreement or contract termination if the conviction is not appealed, or if it is not reversed upon appeal.

The Director may refuse to enter into or renew an agreement or contract with any provider who has been convicted of a felony. In addition, the Director may refuse to enter into or renew an agreement or contract with a provider who is or has been a principal in a professional or other corporation when such corporation has been convicted of a felony.

In any case in which a Medicaid agreement or contract is denied to a provider on the basis of his interest in a convicted professional or other corporation, the Director shall, upon request, conduct a hearing in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) regarding the provider's participation in the conduct resulting in the conviction.

The Director's decision upon reconsideration shall be consistent with federal and state laws. The Director may consider the nature and extent of any adverse impact the agreement or contract denial or termination may have on the medical care provided to Medicaid recipients.

D. The Director is authorized to negotiate and enter into agreements for services rendered to eligible recipients with special needs. The Board shall promulgate regulations regarding these special needs patients, to include persons with AIDS, ventilator-dependent patients, and other recipients with special needs as defined by the Board.

Except as provided in subsection I of § 11-45, the provisions of the Virginia Public Procurement Act (§ 11-35 et seq.) shall not apply to the activities of the Director authorized by this subsection.

3012 *Agreements made pursuant to this subsection shall comply with federal law and regulation.*

3013 *§ 32.1-438. Adverse initial determination of overpayment; appeals of agency determinations.*

3014 *A. The Director shall make an initial determination as to whether an overpayment has been made to*
3015 *a provider in accordance with the state plan for medical assistance, the provisions of § 9-6.14:11 and*
3016 *applicable federal law. Once a determination of overpayment has been made, the Director shall*
3017 *undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part,*
3018 *the initial determination of overpayment. Interest charges on the unpaid balance of any overpayment*
3019 *shall accrue pursuant to § 32.1-313 from the date the Director's determination becomes final. Nothing in*
3020 *§ 32.1-313 shall be construed to require interest payments on any portion of overpayment other than the*
3021 *unpaid balance referenced herein. In any case in which an initial determination of overpayment has*
3022 *been reversed in a subsequent agency or judicial proceeding, the provider shall be reimbursed that*
3023 *portion of the payment to which he is entitled plus any applicable interest.*

3024 *B. An appeal of the Director's initial determination concerning provider reimbursement shall be*
3025 *heard in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) and the state plan for*
3026 *medical assistance. Court review of final agency determinations concerning provider reimbursement*
3027 *shall be made in accordance with the Administrative Process Act.*

3028 *§ 32.1-439. Definitions; recovery of overpayment for medical assistance services.*

3029 *A. For the purposes of this section, the following definitions shall apply:*

3030 *"Agreement" means any contract executed for the delivery of services to recipients of medical*
3031 *assistance pursuant to subsection C of § 32.1-437.*

3032 *"Successor in interest" means any person as defined in § 1-13.19 having stockholders, directors,*
3033 *officers, or partners in common with a health care provider for which an agreement has been*
3034 *terminated.*

3035 *"Termination" means (i) the cessation of operations by a provider, (ii) the sale or transfer of the*
3036 *provider, (iii) the reorganization or restructuring of the health care provider, or (iv) the termination of*
3037 *an agreement by either party.*

3038 *B. The Director shall collect by any means available to him at law any amount owed to the*
3039 *Commonwealth because of overpayment for medical assistance services. Upon making an initial*
3040 *determination that an overpayment has been made to the provider pursuant to § 32.1-438, the Director*
3041 *shall notify the provider of the amount of the overpayment. Such initial determination shall be made*
3042 *within the earlier of (i) four years or (ii) fifteen months after filing of the final cost report by the*
3043 *provider subsequent to sale of the facility or termination of the provider. The provider shall make*
3044 *arrangements satisfactory to the Director to repay the amount due. If the provider fails or refuses to*
3045 *make arrangements satisfactory to the Director for such repayment, or fails or refuses to repay the*
3046 *Commonwealth for the amount due for overpayment in a timely manner, the Director may devise a*
3047 *schedule for reducing the Medicaid reimbursement due to any successor in interest.*

3048 *C. In any case in which the Director is unable to recover the amount due for overpayment pursuant*
3049 *to subsection B, he shall not enter into another agreement with the responsible provider or any person*
3050 *who is the transferee, assignee, or successor in interest to such provider unless (i) he receives*
3051 *satisfactory assurances of repayment of all amounts due or (ii) the agreement with the provider is*
3052 *necessary in order to ensure that Medicaid recipients have access to the covered services rendered by*
3053 *the provider.*

3054 *D. The provisions of this section shall not apply to successors in interest with respect to transfer of a*
3055 *medical care facility pursuant to contracts entered into before February 1, 1990.*

3056 *§ 32.1-440. Penalty for violation.*

3057 *Any person who willfully violates or refuses, fails, or neglects to comply with any regulation or*
3058 *order of the Board or the Director promulgated pursuant to § 32.1-325.3 shall be guilty of a Class 1*
3059 *misdemeanor.*

3060 *§ 32.1-441. Director may make payments to or for eligible persons in state-owned medical facilities.*

3061 *The Director is authorized, subject to the state medical assistance plan and any other regulations of*
3062 *the Board, to make payments to or on behalf of eligible persons in state-owned mental hospitals,*
3063 *nursing or geriatric units or other state-owned medical facilities.*

3064 *§ 32.1-442. Department to operate program of estate recovery.*

3065 *In accordance with applicable federal law and regulations, including those under Title XIX of the*
3066 *Social Security Act, the Department shall operate a program of estate recovery for all persons who*
3067 *receive payments or on whose behalf payments are made for Medicaid-financed nursing facility care by*
3068 *the Department. The amount recovered from the estate of a deceased recipient shall not exceed the*
3069 *amount of total Medicaid payments made on behalf of such recipient.*

3070 *§ 32.1-443. Claim against indigent's estate for payments made.*

3071 *In accordance with applicable federal law and regulations, including those under Title XIX of the*
3072 *Social Security amendments of 1965, the Department may make claim against the estate of an indigent*
3073 *or medically indigent person for the amount of any medical assistance payments made on his behalf by*

the Department. The Department may waive its claim if it determines that enforcement of the claim would result in substantial hardship to the heirs or dependents of the individual against whose estate the claim exists.

§ 32.1-444. Repayment of reimbursable depreciation required on sale or transfer of a nursing facility
 A. Upon the sale or transfer of the real and tangible personal property comprising a licensed nursing facility certified to provide Medicaid services, the transferor or other person liable therefor shall reimburse to the Commonwealth the amount of depreciation previously allowed as a reasonable cost of providing such services and subject to recapture under the provisions of the state medical assistance plan. The amount of reimbursable depreciation shall be paid to the Commonwealth within thirty days of the sale or transfer of the real property unless an alternative form of repayment, the term of which shall not exceed one year, is approved by the Director.

B. Prior to the transfer, the transferor shall file a written request by certified or registered mail to the Director for a letter of verification that he either does not owe the Commonwealth any amount for reimbursable depreciation or that he has repaid any amount owed the Commonwealth for reimbursable depreciation, or that an alternative form of repayment has been approved by the Director. The request for a letter of verification shall state: (i) that a sale or transfer is about to be made; (ii) the location and general description of the property to be sold or transferred; (iii) the names and addresses of the transferee and transferor and all such business names and addresses of the transferor for the last three years; and (iv) whether or not there is a debt owing to the Commonwealth for the amount of depreciation charges previously allowed and reimbursed as a reasonable cost to the transferor under the medical assistance program.

Within ninety days after receipt of the request, the Director shall determine whether or not there is an amount due to the Commonwealth by the nursing facility by reason of depreciation charges previously allowed and reimbursed as a reasonable cost under the medical assistance program, and notify the transferor of such sum, if any.

The transferor shall provide a copy of this section and a copy of his request for a letter of verification to the prospective transferee via certified mail at least thirty days prior to the transfer. However, whether or not the transferor provides a copy of this section and his request for verification to the prospective transferee as required herein, the transferee shall be deemed to be notified of the requirements of this law.

After the transferor has made arrangements satisfactory to the Director to repay the amount due, or if there is no amount due, the Director shall issue a letter of verification to the transferor in recordable form stating that the transferor has complied with the provisions of this section and setting forth the terms of any alternative repayment agreement.

C. The failure of the transferor to reimburse to the Commonwealth the amount of depreciation previously allowed as a reasonable cost of providing service to the medical assistance program in a timely manner renders the transfer of the nursing facility ineffective as to the Commonwealth. Upon a finding by the Director that such sale or transfer is ineffective as to the Commonwealth, the Director may collect any sum owing by any means available by law, including devising a schedule for reducing the Medicaid reimbursement to the transferee up to the amount owed the Commonwealth for reimbursable depreciation by the transferor or other person liable therefor. Medicaid reimbursement to the transferee shall continue to be so reduced until repayment is made in full or the terms of the repayment are agreed to by the transferor or person liable therefor. In the event the transferor or other person liable therefor defaults on any such repayment agreement, the reductions of Medicaid reimbursement to the transferee may resume.

D. An action to reduce the transferee's Medicaid reimbursement or an action for attachment or levy shall not be brought or initiated more than six months after the date on which the sale or transfer has taken place unless the sale or transfer has been concealed or a letter of verification has not been obtained by the transferor or the transferor defaults on a repayment agreement approved by the Director.

E. For the purpose of this section, "sale or transfer" shall mean any agreement between the transferor and the transferee by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and possession of the property.

F. Any lien in favor of the Commonwealth created at any time pursuant to former § 32.1-76.1 is declared void.

§ 32.1-445. Preadmission screening.

All individuals eligible for community or institutional long-term care services as defined by the Department shall be evaluated to determine their need for such services. The Department shall require a preadmission screening of all individuals who, at the time of application for admission to a long-term care service, are eligible for public funding for long-term care or will be eligible within six months following admission to the service. Preadmission screening shall be performed by any human service

3135 agency or acute care hospital that the Department contracts with for this purpose. Preadmission
3136 screening shall be performed using the assessment instrument and criteria designated by the
3137 Department.

3138 § 36-47. Consolidated housing authority.

3139 If the governing body of each of two or more municipalities (whether or not contiguous) by
3140 resolution declares that there is a need for one housing authority to be created for all of the
3141 municipalities to exercise in the municipalities the powers and other functions prescribed for a
3142 consolidated housing authority, a political subdivision of the Commonwealth to be known as a
3143 consolidated housing authority (with a corporate name it selects) shall thereupon exist for all of the
3144 municipalities and exercise its public and corporate powers and other functions within its area of
3145 operation (as herein defined), including the power to undertake projects therein. Thereupon, any housing
3146 authority created for each of the municipalities shall cease to exist except for the purpose of winding up
3147 its affairs and executing a deed of its real property to the consolidated housing authority. The creation of
3148 a consolidated housing authority and the finding of need therefor shall be subject to the same provisions
3149 and limitations of this chapter as are applicable to the creation of a regional housing authority. The
3150 provisions of this chapter applicable to regional housing authorities and the commissioners thereof shall
3151 be applicable to consolidated housing authorities and the commissioners thereof. The area of operation
3152 of a consolidated housing authority shall include all of the territory within the boundaries of each
3153 municipality joining in the creation of the authority, except that the area of operation may be changed to
3154 include or exclude any municipality or municipalities in the same manner and under the same provisions
3155 as provided in this chapter for changing the area of operation of a regional housing authority by
3156 including or excluding a county or counties. For all such purposes, the term "board of supervisors" shall
3157 be construed as meaning "governing body." The term "county" shall be construed as meaning
3158 "municipality" and the terms "county housing authority" and "regional housing authority" shall be
3159 construed as meaning "housing authority of the city" and "consolidated housing authority," respectively,
3160 unless a different meaning clearly appears from the context.

3161 The governing body of a municipality for which a housing authority has not been created shall not
3162 adopt the above resolution unless it first declares that there is a need for a consolidated housing
3163 authority to function in the municipality, which declaration shall be made in the same manner and
3164 subject to the same conditions as the declaration of the governing body of a city required by § 36-4 for
3165 the purpose of authorizing a housing authority created for a city to transact business and exercise its
3166 powers.

3167 Except as otherwise provided herein, a consolidated housing authority and the commissioners thereof
3168 shall, within the area of operation of the consolidated housing authority, have the same functions, rights,
3169 powers, duties, privileges, immunities and limitations as those provided for housing authorities created
3170 for cities, counties, or groups of counties and the commissioners of such housing authorities, in the same
3171 manner as though all the provisions of law applicable to housing authorities created for cities, counties,
3172 or groups of counties were applicable to consolidated housing authorities.

3173 The term "municipality" as used in this chapter shall mean any county, city or town in the
3174 Commonwealth.

3175 The term "residential buildings" as used in this chapter shall include, but not be limited to, any
3176 multi-family residential property in which no less than twenty percent of the units will be occupied by
3177 persons of low income and the remainder therein by persons of moderate income, both as determined by
3178 the housing authority using the criteria set forth in the definition of "persons and families of low and
3179 moderate income" in § 36-55.26, and any nursing care facility, or any nursing home as defined in
3180 § 32.1-123 facility as defined in § 32.1-375.

3181 § 36-99.5:1. Smoke detectors in adult care residences, adult day care centers and nursing facilities.

3182 A. Battery- or AC-powered smoke detector devices shall be installed in all adult care residences and
3183 adult day care centers licensed by the Department of Social Services of Aging and Long-Term Care
3184 Services, regardless of when the building was constructed. The location and installation of the smoke
3185 detectors shall be determined by the Uniform Statewide Building Code.

3186 The licensee shall obtain a certificate of compliance from the building official of the locality in
3187 which the residence or center is located, or in the case of state-owned buildings, from the Department of
3188 General Services.

3189 The licensee shall maintain the smoke detector devices in good working order.

3190 B. The Board of Housing and Community Development shall promulgate regulations in accordance
3191 with the Administrative Process Act (§ 9-6.14:1 et seq.) establishing standards for requiring smoke
3192 detectors in nursing homes and nursing facilities. All nursing homes and nursing facilities which are
3193 already equipped with sprinkler systems shall comply with these regulations.

3194 § 36-139.3. Inspection of residential care facilities operated by state agencies; enforcement of safety
3195 standards.

3196 Notwithstanding any other provisions of this chapter, the State Fire Marshal, upon presenting

appropriate credentials, is empowered to and shall make annual inspections for hazards incident to fire in all residential care facilities operated by any state agency and in all adult care residences licensed or subject to licensure pursuant to ~~Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 Article 3 (§ 32.1-396 et seq.) of Chapter 13 of Title 32.1~~. In the event that any such facility or residence is found to be nonconforming to the Statewide Fire Prevention Code (§ 27-94 et seq.), the State Fire Marshal may petition any court of competent jurisdiction for the issuance of an injunction.

§ 37.1-62.2. *Alzheimer's and Related Diseases Research Award Fund.*

There is hereby established a fund to be known as the Alzheimer's and Related Diseases Research Award Fund. This Fund shall be administered by the Virginia Center on Aging and the awards shall be made through an awards committee consisting of representatives from the scientific and medical community and the general public. The awards shall be given annually to scientists in Virginia in order to support research into the causes of Alzheimer's and related diseases, methods of treatment, ways that families can cope with the stresses of the disease, and the impact of the disease on the citizens of the Commonwealth.

§ 37.1-98. Discharge, conditional release, and convalescent status of patients.

A. The director of a state hospital may discharge any patient after the preparation of a predischarge plan formulated in cooperation with the community services board which serves the political subdivision where the patient resided prior to hospitalization or with the board located within the political subdivision the patient chooses to reside in immediately following the discharge, except one held upon an order of a court or judge for a criminal proceeding, as follows:

1. Any patient who, in his judgment, is recovered.
2. Any patient who, in his opinion, is not mentally ill.
3. Any patient who is impaired or not recovered and whose discharge, in the judgment of the director, will not be detrimental to the public welfare, or injurious to the patient.
4. Any patient who is not a proper case for treatment within the purview of this chapter.

The predischarge plan required by this paragraph shall, at a minimum, (i) specify the services required by the released patient in the community to meet the individual's needs for treatment, housing, nutrition, physical care and safety; (ii) specify any income subsidies for which the individual is eligible; (iii) identify all local and state agencies which will be involved in providing treatment and support to the individual; and (iv) specify services which would be appropriate for the individual's treatment and support in the community but which are currently unavailable. For all individuals discharged on or after January 1, 1987, the predischarge plan shall be contained in a uniform discharge document developed by the Department and used by all state hospitals. If the individual will be housed in an adult care residence, as defined in ~~§ 63.1-172~~ 32.1-396, the plan shall so state.

B. The director may grant convalescent status to a patient in accordance with rules prescribed by the Board. The state hospital granting a convalescent status to a patient shall not be liable for his expenses during such period. Such liability shall devolve upon the relative, committee, person to whose care the patient is entrusted while on convalescent status, or the appropriate local public welfare agency of the county or city of which the patient was a resident at the time of admission. The provision of social services to the patient shall be the responsibility of the appropriate local public welfare agency as determined by policy approved by the State Board of Social Services.

C. Any patient who is discharged pursuant to subdivision A 4 hereof shall, if necessary for his welfare, be received and cared for by the appropriate local public welfare agency. The provision of social services to the patient shall be the responsibility of the appropriate local public welfare agency as determined by policy approved by the State Board of Social Services. Expenses incurred by the provision of public assistance to the patient, who is receiving twenty-four-hour care while in an adult care residence licensed pursuant to ~~Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 Article 3 (§ 32.1-396 et seq.) of Chapter 13 of Title 32.1~~, shall be the responsibility of the appropriate local public welfare agency of the county or city of which the patient was a resident at the time of admission.

§ 37.1-123. Nursing facilities or other institutions; costs.

In lieu of placing a patient in a private home, the director of a state hospital may, subject to regulations adopted by the State Mental Health, Mental Retardation and Substance Abuse Services Board, place such patient in a nursing home facility or other institution licensed by either the State Board of Health, the State Board of Aging and Long-Term Care Services, the State Mental Health, Mental Retardation and Substance Abuse Services Board or the State Board of Social Services; provided, that the cost to the Commonwealth of such placement shall not exceed the maximum fixed in § 37.1-121.

§ 38.2-2800. Definitions.

As used in this chapter:

"Association" means the joint underwriting association established pursuant to the provisions of this chapter.

3258 "Incidental coverage" means any other type of liability insurance covering activities directly related
3259 to the continued and efficient delivery of health care that: (i) cannot be obtained in the voluntary market
3260 because medical malpractice insurance is being provided pursuant to this chapter; and (ii) cannot be
3261 obtained through other involuntary market mechanisms.

3262 "Liability insurance" includes the classes of insurance defined in §§ 38.2-117 through 38.2-119 and
3263 the liability portions of the insurance defined in §§ 38.2-124, 38.2-125, and 38.2-130 through 38.2-132.

3264 "Medical malpractice insurance" means insurance coverage against the legal liability of the insured
3265 and against loss, damage, or expense incident to a claim arising out of the death or injury of any person
3266 as the result of negligence in rendering or failing to render professional service by any provider of
3267 health care.

3268 "Net direct premiums written" means gross direct premiums written in this Commonwealth on all
3269 policies of liability insurance less, (i) all return premiums on the policy, (ii) dividends paid or credited
3270 to policyholders, and (iii) the unused or unabsorbed portions of premium deposits on liability insurance.

3271 "Provider of health care" means any of the following deemed by the Commission to be necessary for
3272 the delivery of health care: (i) a physician and any other individual licensed or certified pursuant to
3273 Chapter 29 of Title 54.1; (ii) a nurse, dentist, or pharmacist licensed pursuant to Title 54.1; (iii) any
3274 health facility licensed or eligible for licensure pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1,
3275 *Article 2 (§ 32.1-375 et seq.) of Chapter 13 of Title 32.1* or Chapter 8 (§ 37.1-179 et seq.) of Title 37.1;
3276 and (iv) any other group, type, or category of individual or health-related facility that the Commission
3277 finds to be necessary for the continued delivery of health care after providing notice and opportunity to
3278 be heard.

3279 § 38.2-3412.1. Coverage for mental health and substance abuse services.

3280 A. As used in this section:

3281 "Adult" means any person who is nineteen years of age or older.

3282 "Alcohol or drug rehabilitation facility" means a facility in which a state-approved program for the
3283 treatment of alcoholism or drug addiction is provided. The facility shall be either (i) licensed by the
3284 State Board of Health pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 or by the State Mental
3285 Health, Mental Retardation and Substance Abuse Services Board pursuant to Chapter 8 (§ 37.1-179 et
3286 seq.) of Title 37.1 or (ii) a state agency or institution.

3287 "Child or adolescent" means any person under the age of nineteen years.

3288 "Inpatient treatment" means mental health or substance abuse services delivered on a
3289 twenty-four-hour per day basis in a hospital, alcohol or drug rehabilitation facility, an intermediate care
3290 facility or an inpatient unit of a mental health treatment center.

3291 "Intermediate care facility" means a licensed, residential public or private facility that is not a
3292 hospital and that is operated primarily for the purpose of providing a continuous, structured
3293 twenty-four-hour per day, state-approved program of inpatient substance abuse services.

3294 "Medication management visit" means a visit no more than twenty minutes in length with a licensed
3295 physician or other licensed health care provider with prescriptive authority for the sole purpose of
3296 monitoring and adjusting medications prescribed for mental health or substance abuse treatment.

3297 "Mental health services" means treatment for mental, emotional or nervous disorders.

3298 "Mental health treatment center" means a treatment facility organized to provide care and treatment
3299 for mental illness through multiple modalities or techniques pursuant to a written plan approved and
3300 monitored by a physician, clinical psychologist, or a psychologist licensed to practice in this
3301 Commonwealth. The facility shall be (i) licensed by the Commonwealth, (ii) funded or eligible for
3302 funding under federal or state law, or (iii) affiliated with a hospital under a contractual agreement with
3303 an established system for patient referral.

3304 "Outpatient treatment" means mental health or substance abuse treatment services rendered to a
3305 person as an individual or part of a group while not confined as an inpatient. Such treatment shall not
3306 include services delivered through a partial hospitalization or intensive outpatient program as defined
3307 herein.

3308 "Partial hospitalization" means a licensed or approved day or evening treatment program that includes
3309 the major diagnostic, medical, psychiatric and psychosocial rehabilitation treatment modalities designed
3310 for patients with mental, emotional, or nervous disorders, and alcohol or other drug dependence who
3311 require coordinated, intensive, comprehensive and multi-disciplinary treatment. Such a program shall
3312 provide treatment over a period of six or more continuous hours per day to individuals or groups of
3313 individuals who are not admitted as inpatients. Such term shall also include intensive outpatient
3314 programs for the treatment of alcohol or other drug dependence which provide treatment over a period
3315 of three or more continuous hours per day to individuals or groups of individuals who are not admitted
3316 as inpatients.

3317 "Substance abuse services" means treatment for alcohol or other drug dependence.

3318 "Treatment" means services including diagnostic evaluation, medical psychiatric and psychological
3319 care, and psychotherapy for mental, emotional or nervous disorders or alcohol or other drug dependence

rendered by a hospital, alcohol or drug rehabilitation facility, intermediate care facility, mental health treatment center, a physician, psychologist, clinical psychologist, licensed clinical social worker, licensed professional counselor, or clinical nurse specialist who renders mental health services. Treatment for physiological or psychological dependence on alcohol or other drugs shall also include the services of counseling and rehabilitation as well as services rendered by a state certified alcoholism, drug, or substance abuse counselor employed by a facility or program licensed to provide such treatment.

B. Each individual and group accident and sickness insurance policy or individual and group subscription contract providing coverage on an expense-incurred basis for a family member of the insured or the subscriber shall provide coverage for inpatient and partial hospitalization mental health and substance abuse services as follows:

1. Treatment for an adult as an inpatient at a hospital, inpatient unit of a mental health treatment center, alcohol or drug rehabilitation facility or intermediate care facility for a minimum period of twenty days per policy or contract year.

2. Treatment for a child or adolescent as an inpatient at a hospital, inpatient unit of a mental health treatment center, alcohol or drug rehabilitation facility or intermediate care facility for a minimum period of twenty-five days per policy or contract year.

3. Up to ten days of the inpatient benefit set forth in subdivisions 1 and 2 of this subsection may be converted when medically necessary at the option of the person or the parent, as defined in § 16.1-336, of a child or adolescent receiving such treatment to a partial hospitalization benefit applying a formula which shall be no less favorable than an exchange of 1.5 days of partial hospitalization coverage for each inpatient day of coverage. An insurance policy or subscription contract described herein which provides inpatient benefits in excess of twenty days per policy or contract year for adults or twenty-five days per policy or contract year for a child or adolescent may provide for the conversion of such excess days on the terms set forth in this subdivision.

4. The limits of the benefits set forth in this subsection shall not be more restrictive than for any other illness, except that the benefits may be limited as set out in this subsection.

5. This subsection shall not apply to short-term travel, accident only, limited or specified disease policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

C. Each group accident and sickness insurance policy or group subscription contract providing coverage on an expense-incurred basis for a family member of the insured or the subscriber shall also provide coverage for outpatient mental health and substance abuse services as follows:

1. A minimum of twenty visits for outpatient treatment of an adult, child or adolescent shall be provided in each policy or contract year.

2. The limits of the benefits set forth in this subsection shall be no more restrictive than the limits of benefits applicable to physical illness; however, the coinsurance factor applicable to any outpatient visit beyond the first five of such visits covered in any policy or contract year shall be at least fifty percent.

3. For the purpose of this section, medication management visits shall be covered in the same manner as a medication management visit for the treatment of physical illness and shall not be counted as an outpatient treatment visit in the calculation of the benefit set forth herein.

4. This subsection shall not apply to short-term travel, accident only, limited or specified disease, or individual conversion policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

D. The requirements of this section shall apply to all insurance policies and subscription contracts delivered, issued for delivery, reissued, or extended, or at any time when any term of the policy or contract is changed or any premium adjustment made.

§ 51.5-1. Declaration of policy.

It is the policy of this Commonwealth to encourage and enable persons with disabilities to participate fully and equally in the social and economic life of the Commonwealth and to engage in remunerative employment. To these ends, the General Assembly directs the Governor, Department for Rights of Virginians with Disabilities, Department for the Aging, of Aging and Long-Term Care Services, Department for the Deaf and Hard-of-Hearing, Department of Education, Department of Health, Department of Housing and Community Development, Department of Mental Health, Mental Retardation and Substance Abuse Services, Board for Rights of Virginians with Disabilities, Department of Rehabilitative Services, Department of Social Services, Department for the Visually Handicapped, and such other agencies as the Governor deems appropriate, to provide, in a comprehensive and coordinated manner which makes the best use of available resources, those services necessary to assure equal opportunity to persons with disabilities in the Commonwealth.

The provisions of this title shall be known and may be cited as "The Virginians With Disabilities

3381 Act."

3382 § 51.5-2. Plan of cooperation.

3383 The Department for Rights of Virginians with Disabilities, Department for the Aging of Aging and
3384 Long-Term Care Services, Department for the Deaf and Hard-of-Hearing, Department of Education,
3385 Department of Health, Department of Housing and Community Development, Department of Mental
3386 Health, Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services,
3387 Department of Social Services, Department for the Visually Handicapped and such other agencies as are
3388 designated by the Governor which serve persons with disabilities shall formulate a plan of cooperation
3389 in accordance with the provisions of this title and the federal Rehabilitation Act. The goal of this plan
3390 shall be to promote the fair and efficient provision of rehabilitative and other services to persons with
3391 disabilities and to protect the rights of persons with disabilities.

3392 The plan of cooperation shall include an annual update of budgetary commitment under the plan,
3393 specifying how many persons with disabilities, by type of impairment, will be served under the plan.
3394 The plan of cooperation shall include consideration of first pay provisions for entitlement programs of a
3395 cooperating agency. If entitlement services are part of a client's individualized written rehabilitation
3396 program or equivalent plan for services, funds shall be paid from the entitlement program when
3397 possible. The plan and budgetary commitments shall be reviewed by the respective boards of the
3398 cooperating agencies, reviewed by the Virginia Board for People with Disabilities and submitted for
3399 approval to the appropriate secretaries within the Governor's Office before implementation.

3400 § 51.5-31. Board created.

3401 There shall be a Virginia Board for People with Disabilities, responsible to the Secretary of Health
3402 and Human Resources. The Board shall be composed of forty members, to include the head or a person
3403 designated by the head of the Department for the Aging of Aging and Long-Term Care Services,
3404 Department for the Deaf and Hard-of-Hearing, Department of Education, Department of Medical
3405 Assistance Services, Department of Mental Health, Mental Retardation and Substance Abuse Services,
3406 Department of Rehabilitative Services, and the Department for the Visually Handicapped; one
3407 representative of the protection and advocacy agency; one representative of the university-affiliated
3408 facility; one representative each of a higher education training facility, of a local governmental agency,
3409 of a manufacturing interest, of a retailing industry, of a real estate interest, of a public transit interest
3410 and of a nongovernmental agency or group concerned with services for persons with developmental
3411 disabilities, to be appointed by the Governor; two persons with disabilities other than developmental
3412 disabilities to be appointed by the Governor; two citizens from the Commonwealth at large to be
3413 appointed by the Governor; and twenty persons with developmental disabilities or the parents or
3414 guardians of such persons, to be appointed by the Governor. Of the last twenty persons, at least six shall
3415 be persons with developmental disabilities; at least six shall be immediate relatives or guardians of
3416 persons with mentally impairing developmental disabilities; and at least one person shall be an
3417 immediate relative or guardian of an institutionalized person with a developmental disability.

3418 Each member appointed by the Governor shall be appointed for a four-year term, except that of the
3419 members appointed in 1989, eight shall be appointed for a term of four years, eight shall be appointed
3420 for a term of three years, eight shall be appointed for a term of two years, and seven shall be appointed
3421 for a term of one year. Members so appointed shall be subject to removal at the pleasure of the
3422 Governor. Any vacancy other than by expiration of a term shall be filled for the unexpired term. No
3423 person appointed by the Governor shall serve for more than two successive terms.

3424 The Board shall elect its chairman.

3425 § 54.1-2918. Suspension or revocation for violation of facility licensing laws.

3426 Whenever the Board of Health has suspended or revoked any license granted under the provisions of
3427 Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 or the Board of Aging and Long-Term Care
3428 Services has suspended or revoked any license granted under the provisions of Article 2 (§ 32.1-375 et
3429 seq.) of Chapter 13 of Title 32.1 and such suspension or revocation resulted from a violation of any
3430 provision of this chapter, or because of illegal practice, or conduct or practices detrimental to the
3431 welfare of any patient or resident in such hospital or nursing facility, a report of such action shall be
3432 made by the Board of Health or the Board of Aging and Long-Term Care Services to the Board of
3433 Medicine. If it appears from the report, or from other evidence produced before the Board of Medicine,
3434 that the legally responsible head of such hospital or nursing facility is a practitioner of any branch of
3435 the healing arts, the Board may suspend or revoke the certificate or license of such person, or prosecute
3436 such person if unlicensed. The Board may suspend or revoke the certificate or license of or prosecute
3437 for unlicensed practice any person subject to this chapter who is practicing in or employed by such
3438 hospital or nursing facility if such practitioner or employee is guilty of, responsible for, or implicated in
3439 illegal practices for which the hospital or nursing facility license has been suspended or revoked.

3440 § 54.1-3100. Definitions.

3441 As used in this chapter, unless the context requires a different meaning:

3442 "Board" means the Board of Nursing Home Administrators.

"Nursing home" means any public or private facility required to be licensed as a nursing home under the provisions of Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 and the regulations of the Board of Health Article 2 (§ 32.1-375 et seq.) of Chapter 13 of Title 32.1 and the regulations of the Board of Aging and Long-Term Care Services.

"Nursing home administrator" means any individual charged with the general administration of a nursing home regardless of whether he has an ownership interest in the facility.

§ 54.1-3408. Professional use by practitioners.

A. A practitioner of medicine, osteopathy, podiatry, or dentistry, a licensed nurse practitioner pursuant to § 54.1-2957.01 or a licensed physician's assistant pursuant to § 54.1-2952.1 shall only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes within the course of his professional practice. The practitioner may prescribe, on a written prescription or on oral prescription as authorized by this chapter, and administer drugs and devices, or he may cause them to be administered by a nurse or intern under his direction and supervision, or a practitioner may prescribe and cause drugs and devices to be administered to patients in state-owned or state-operated hospitals or facilities licensed as hospitals by the Board of Health or psychiatric hospitals licensed by the State Mental Health, Mental Retardation and Substance Abuse Services Board by other persons who have been trained to properly administer drugs and who administer drugs only under the control and supervision of the practitioner or a pharmacist. A dentist may cause Schedule VI topical drugs to be administered under his direction and supervision by either a dental hygienist or by an authorized agent certified by the Board of Dentistry who has satisfactorily completed a training program for this purpose that is approved by the Board of Dentistry.

No written prescription order form shall include more than one prescription. This provision shall not apply, however, to the entry of any order on a patient's chart in any hospital in Virginia or to a prescription ordered through the pharmacy operated by the Department of Corrections, the central pharmacy of the Department of Health, or the central outpatient pharmacy operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

Such a prescription shall be written, dated, and signed by the person prescribing on the day when issued, and shall bear the full name and address of the patient for whom the drug is prescribed, and the full name, address, and registry number under the federal laws of the person prescribing, if he is required by those laws to be so registered.

This section shall not prevent the administration of drugs by an agent authorized in writing by the physician to administer such drugs, in accordance with such physician's instructions pertaining to dosage, frequency, and manner of administration, when the drugs administered would be normally self-administered by (i) a resident of a facility licensed or certified by the State Mental Health, Mental Retardation and Substance Abuse Services Board when the authorized agent administering the drugs has satisfactorily completed a training program for this purpose approved by the Board of Nursing; (ii) a resident of any adult care residence which is licensed by the Department of Social Services Aging and Long-Term Care Services when the authorized agent administering the drugs has satisfactorily completed a training program for this purpose approved by the Board of Nursing, which program may be conducted by the physician who will authorize the administration of the drugs; (iii) a resident of the Virginia Rehabilitation Center for the Blind; (iv) a resident of a facility approved by the Board or Department of Youth and Family Services for the placement of children in need of services or delinquent or alleged delinquent youth, when the authorized agent administering the drugs has satisfactorily completed a training program specifically designed to meet the needs of such residents and approved by the Board of Nursing; or (v) a program participant of an adult day care center licensed by the Department of Social Services Aging and Long-Term Care Services when the authorized agent administering the drugs has satisfactorily completed a training program specifically designed to meet the needs of program participants and approved by the Board of Nursing.

No physician who authorizes the administration of medication for a resident of an adult care residence under this section shall be civilly liable for the actions of the person administering the medication, but this provision shall not relieve such physician from liability for his own negligence.

This section shall not interfere with any practitioner issuing prescriptions in compliance with the provisions of this section to a Board agent for use pursuant to subsection G of § 18.2-258.1. Such prescriptions issued by such practitioner shall be deemed to be valid prescriptions. This section shall not prohibit a practitioner from using preprinted prescriptions for drugs classified in Schedule VI if all requirements concerning dates, signatures, and other information specified above are otherwise fulfilled.

B. The written prescription referred to in subsection A of this section shall be written with ink or individually typed and each prescription shall be manually signed by the practitioner. The prescription may be prepared by an agent for his signature. The prescription shall contain the name, address, telephone number, and federal controlled substances registration number assigned to the prescriber. The prescriber's information shall be either preprinted upon the prescription blank, typewritten, rubber

3504 stamped, or printed by hand.

3505 C. Pursuant to § 32.1-87, the prescription form shall include two boxes, one labelled "Voluntary
3506 Formulary Permitted" and the other labelled "Dispense As Written." A prescriber may indicate his
3507 permission for the dispensing of a drug product included in the Formulary upon signing a prescription
3508 form and marking the box labelled "Voluntary Formulary Permitted." A Voluntary Formulary product
3509 shall be dispensed if the prescriber fails to indicate his preference. If no Voluntary Formulary product is
3510 immediately available, or if the patient objects to the dispensing of a generic drug, the pharmacist may
3511 dispense a brand name drug. On and after July 1, 1993, printed prescription forms shall provide:

3512 " ☐ Dispense As Written

3513 ☐ Voluntary Formulary Permitted

3514
3515 Signature of prescriber If neither box is marked, a Voluntary Formulary product must be dispensed."

3516 § 58.1-346.4. (Expires for all taxable years beginning after December 31, 1995) Voluntary
3517 contribution to the Department of Aging and Long-Term Care Services.

3518 A. Any individual eligible to receive a tax refund pursuant to § 58.1-309 may designate at the time
3519 of filing the return a contribution of any amount of such refund to the Department ~~for the Aging of~~
3520 *Aging and Long-Term Care Services*. Such revenues shall be used for the enhancement of transportation
3521 services for the elderly and disabled.

3522 B. The Tax Commissioner shall determine annually the total amount of revenue designated for the
3523 Department ~~for the Aging of Aging and Long-Term Care Services~~ on all state income tax returns. The
3524 revenues collected pursuant to subsection A shall be deposited into the general fund of the state treasury.
3525 The Treasurer shall pay from the general fund to the Department ~~for the Aging of Aging and Long-Term~~
3526 *Care Services* all revenues voluntarily contributed for the Department ~~for the Aging of Aging and~~
3527 *Long-Term Care Services*.

3528 § 58.1-609.8. Nonprofit civic and community service exemptions.

3529 The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606
3530 shall not apply to the following:

3531 1. Tangible personal property purchased for use or consumption by or sold by a volunteer fire
3532 department or volunteer rescue squad or auxiliary of such department or squad not conducted for profit
3533 and construction materials to be incorporated into realty when sold to and used by such organization,
3534 rather than a contractor, in construction, maintenance, or repair of any property of such organization.

3535 2. Tangible personal property, except property used in any form of recording and reproducing
3536 services, purchased by churches organized not for profit and which are exempt from taxation under
3537 § 501 (c) (3) of the Internal Revenue Code, or whose real property is exempt from local taxation
3538 pursuant to the provisions of § 58.1-3606, for use (i) in religious worship services by a congregation or
3539 church membership while meeting together in a single location and (ii) in the libraries, offices, meeting
3540 or counseling rooms or other rooms in the public church buildings used in carrying out the work of the
3541 church and its related ministries, including kindergarten, elementary and secondary schools. The
3542 exemption for such churches shall also include bulletins, programs, newspapers and
3543 newsletters which do not contain paid advertising and are used in carrying out the work of the church;
3544 gifts for distribution outside the public church building; and food, disposable serving items, cleaning
3545 supplies and teaching materials used in the operation of camps or conference centers by the church or an
3546 organization composed of churches that are exempt under this subdivision and which are used in
3547 carrying out the work of the church or churches.

3548 3. Tangible personal property sold or leased for use in nonprofit nutrition programs for the elderly
3549 qualifying under 42 U.S.C. § 3030 (e) through (g), as amended, as administered by the Virginia
3550 Department ~~for the Aging of Aging and Long-Term Care Services~~, and the food and food products sold
3551 under such programs to elderly persons and the food and food products sold by such program
3552 participants to disabled or handicapped persons under the age of sixty.

3553 4. Tangible personal property bought, sold or used by Virginia Federation of Humane Societies or
3554 any chartered, not-for-profit organization incorporated under the laws of this Commonwealth and
3555 organized for the purpose of preventing cruelty to animals and promoting humane care of animals, when
3556 such property is used for the operation of such organizations or the construction or maintenance of
3557 animal shelters.

3558 5. Tangible personal property withdrawn from inventory and donated to (i) an organization exempt
3559 from taxation under § 501 (c) (3) of the Internal Revenue Code or (ii) the Commonwealth, any political
3560 subdivision of the Commonwealth, or any school, agency or instrumentality thereof.

3561 6. Tangible personal property purchased by an organization which is exempt from taxation under
3562 § 501 (c) (3) of the Internal Revenue Code and which is organized primarily to distribute, during the
3563 Christmas season, food, toys, and clothing to persons in financial need, provided such tangible personal
3564 property is distributed at no cost to financially needy persons.

3565 7. Tangible personal property, including food and food products, purchased for use or consumption

by a residential youth shelter organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, provided such organization is organized exclusively for maintaining and operating group homes for the shelter and care of abused and neglected children in the Commonwealth on a long-term or short-term basis.

8. Tangible personal property purchased for use or consumption by an organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and organized exclusively for the purpose of providing education, training, services, and assistance in independent living to foster care children and youth without families.

9. Tangible personal property for use or consumption by, sold by or donated to a food bank or organization exempt from taxation pursuant to § 501 (c) (3) of the Internal Revenue Code and organized exclusively for the distribution of foods to infants, the ill, or the needy; the exemptions shall apply to each transaction in the chain of commerce from manufacture to final disposition, provided that such food bank or organization is not conducted for profit.

10. Tangible personal property for use or consumption by a licensed nonprofit adult care residence as defined in § ~~63.1-172~~ 32.1-396 or a licensed nonprofit adult day care center as defined in § ~~63.1-194.1~~ 32.1-423.

11. From July 1, 1989, through June 30, 1994, tangible personal property purchased for use or consumption by or sold by a nonstock, nonprofit charitable organization, exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and from local real estate taxation, which is organized exclusively to foster, sponsor and promote physical education, athletic programs and contests for youths in the Commonwealth.

12. From July 1, 1989, through June 30, 1994, tangible personal property purchased for use or consumption by a shelter for homeless individuals operated by an organization exempt from taxation pursuant to § 501 (c) (3) of the Internal Revenue Code, or tangible personal property purchased for use or consumption by a § 501 (c) (3) organization that is organized exclusively for the purpose of providing food, shelter, clothing or other items to homeless persons in the Commonwealth.

13. From July 1, 1989, through June 30, 1994, tangible personal property purchased for use or consumption by an organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and organized for the purpose of preparing and publishing a free travel guide for handicapped travelers.

14. From July 1, 1989, through June 30, 1994, tangible personal property purchased for use or consumption, or to be sold at retail, by any nonsectarian youth organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code which is organized for the purposes of the character development and citizenship training of its members using the methods now in common use by Girl Scout or Boy Scout organizations in Virginia.

15. From July 1, 1990, through June 30, 1994, tangible personal property purchased for use or consumption by a nonprofit organization which under contract with a municipality operates Head Start programs, extended day care programs, and a shelter for runaways.

16. From July 1, 1990, through June 30, 1994, tangible personal property purchased for use or consumption by a nonstock, nonprofit charitable corporation exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and from local property taxes and organized and operated to offer social services, including, but not limited to, aid or assistance to travelers who, for financial or other reasons, find themselves stranded or otherwise in distress and in need of temporary assistance (traveler's aid); family life education; assistance to persons interested in the adoption of children or acting as foster care parents; counseling to persons in financial need or distress and the provision of services related thereto; counseling for individuals living with persons afflicted with mental health problems or the mentally retarded, as well as providing services directly to the mentally ill or mentally retarded; and related social welfare activities.

17. From July 1, 1990, through June 30, 1994, tangible personal property purchased for use or consumption by a nonstock, nonprofit charitable corporation exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and organized and operated to offer social services, including, but not limited to, transitional housing for homeless individuals, employment counseling, placement and referral services to persons in financial need, health-related assistance, child care for children whose parents are either employed or enrolled in job training programs, emergency assistance (including the provision of food) to persons in financial need who may face eviction or termination of utility services, and related social welfare activities.

18. From July 1, 1990, through June 30, 1994, tangible personal property purchased for use or consumption by a nonprofit organization exempt from taxation pursuant to § 501 (c) (3) of the Internal Revenue Code and which provides equipment, furniture, motor vehicles, and other types of tangible personal property to assist mentally retarded or mentally ill citizens of the Commonwealth.

19. From July 1, 1991, through June 30, 1994, tangible personal property purchased for use or consumption by a community action agency as defined in § 2.1-588.

3627 20. Effective retroactive to January 1, 1984, and through June 30, 1994, tangible personal property
3628 for use or consumption, or further distribution, or sold by an organization exempt from taxation under
3629 § 501 (c) (3) of the Internal Revenue Code and which is organized and operated exclusively for the
3630 purposes of providing education, training, certification in emergency cardiac care, research, and other
3631 related services to reduce disability and death from cardiovascular diseases and stroke.

3632 21. Effective retroactive to January 1, 1984, and through June 30, 1994, tangible personal property
3633 for use or consumption, or further distribution, or sold by an organization exempt from taxation under
3634 § 501 (c) (3) of the Internal Revenue Code and which is organized and operated exclusively for the
3635 purpose of eliminating all lung disease, including asthma, emphysema, lung cancer and pneumonia,
3636 through medical research, public education focusing on disease prevention and education, patient
3637 education including information on coping with lung disease, smoking and air pollution prevention, and
3638 professional education and training.

3639 22. Effective retroactive to January 1, 1984, and through June 30, 1994, tangible personal property
3640 for use or consumption, or further distribution, or sold by a statewide organization exempt from taxation
3641 under § 501 (c) (3) of the Internal Revenue Code and which is organized and operated exclusively for
3642 the purpose of eliminating diabetes through medical research, public education focusing on disease
3643 prevention and education, patient education including information on coping with diabetes, and
3644 professional education and training.

3645 23. Effective retroactive to January 1, 1984, and through June 30, 1994, tangible personal property
3646 for use or consumption, or further distribution, or sold by an organization exempt from taxation under
3647 § 501 (c) (3) of the Internal Revenue Code which is organized exclusively for the purpose of eliminating
3648 cancer as a major health problem by preventing cancer, saving lives from cancer, and diminishing
3649 suffering from cancer through research, education and service.

3650 24. From July 1, 1991, through June 30, 1994, tangible personal property purchased for use or
3651 consumption by a nonprofit organization exempt from taxation under § 501 (c) (3) of the Internal
3652 Revenue Code and organized exclusively for the purpose of promoting and supporting conservation and
3653 environmental issues throughout the Commonwealth by encouraging the protection and restoration of
3654 waters, wildlife and land; safeguarding the public health by eliminating pollution; nurturing and
3655 improving wildlife stocks; promoting the highest standards of sportsmanship and strengthening
3656 farmer-sportsmen understanding; and performing other environmental services.

3657 25. From July 1, 1991, through June 30, 1994, tangible personal property purchased for use or
3658 consumption by a nonprofit charitable organization which is exempt from taxation under § 501 (c) (3) of
3659 the Internal Revenue Code and which is organized exclusively to provide immediate and affordable
3660 counseling, and regularly scheduled workshops to address the psychological, educational, and
3661 professional concerns of women and their families.

3662 26. From July 1, 1991, through June 30, 1994, tangible personal property purchased for use or
3663 consumption by an organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code
3664 and which is organized exclusively to advance the moral character and to promote sportsmanship, team
3665 spirit, fair play, honesty, and patriotism among youth by providing and supervising clean and wholesome
3666 activities for the youth in Appomattox County who participate in its programs.

3667 27. From July 1, 1991, through June 30, 1994, tangible personal property purchased and sold by a
3668 nonprofit organization exempt from taxation under § 501 (c) (3) or (4) of the Internal Revenue Code,
3669 organized exclusively to provide aid and assistance to (i) the blind or visually impaired or programs
3670 devoted to the prevention of the loss of eyesight; (ii) the deaf or hearing impaired; (iii) drug abuse and
3671 drug awareness programs; (iv) diabetes and diabetes detection; and (v) cultural and educational
3672 opportunities for the musically talented boys and girls of the Commonwealth, for use in fund-raising
3673 activities, provided the net proceeds (gross receipts less expenses) from such sales are contributed
3674 directly to or used to fund the charitable purposes for which the organization is organized.

3675 28. From July 1, 1991, through June 30, 1994, tangible personal property purchased for use or
3676 consumption in the performance of emergency services by Radio Emergency Associated
3677 Communications Teams which are nonprofit organizations that operate and maintain public service
3678 communications and provide emergency services to motorists and their local communities.

3679 § 58.1-2111. Refund of tax on motor fuel.

3680 A. A refund shall be granted in accordance with the provisions of § 58.1-2112 to any person who
3681 establishes to the satisfaction of the Commissioner that he has paid the tax levied pursuant to this
3682 chapter and such tax was paid upon the single purchase of five or more gallons of any motor fuel
3683 utilized for any of the following purposes:

3684 1. Operating or propelling commercial boats and ships, stationary gas engines, or pumping or mixing
3685 equipment on motor vehicles if the motor fuel used to operate such equipment is stored in an auxiliary
3686 tank separate from the motor fuel tank used to propel the motor vehicle, and the motor vehicle is
3687 mechanically incapable of self-propulsion while motor fuel is being used from the auxiliary tank;

3688 2. Operating or propelling tractors used for agricultural purposes;

3. Operating or propelling buses owned and operated by a county or the school board thereof while being used to transport children to and from public schools;

4. Operating or propelling buses owned or solely used by a private nonprofit nonsectarian school while being used to transport children to and from such school or from such school to and from educational or athletic activities. The total refunds allowed to any applicant under this subdivision with respect to all motor fuel and special fuels as are subject to the tax under this chapter shall not, in any fiscal year, exceed the sum of \$2,000;

5. Operating or propelling the equipment of volunteer fire-fighting companies and of volunteer rescue squads within the Commonwealth actually and necessarily used for fire-fighting or rescue purposes;

6. Operating or propelling motor equipment belonging to counties, cities and towns if actually and exclusively used in public activities;

7. Operating or propelling licensed or unlicensed motor vehicles and other equipment used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or lessee of such vehicle and not operated on or over any public highway for any purpose other than for the purpose of moving it in the manner and for the purposes hereinbefore authorized. If such motor vehicle has been licensed under the provisions of Chapter 6 (§ 46.2-600 et seq.) of Title 46.2, no refund shall be granted until the license tags furnished for the vehicle have been delivered to the clerk of the circuit court in which the owner or lessee of such vehicle resides or to the nearest office issuing such licenses. The clerk or agent of such office shall issue a receipt for the tags and shall be entitled to a fee of twenty-five cents. The owner or lessee of such motor vehicle shall be entitled to a fuel tax refund as above provided on fuel used in the operation of such vehicle for such time as the tags are left with the clerk or agent. The owner or lessee may surrender the receipt to the clerk or agent at any time, who shall forthwith return the tags and notify the Commissioner;

8. Spraying purposes or for cleaning, dyeing or other commercial use, except in motor vehicles operated, or intended to be operated in whole or in part upon any of the public highways, streets or alleys of the Commonwealth;

9. Operating and propelling motor vehicles used solely for racing other motor vehicles on a race track;

10. Operation of a farm by a resident of the Commonwealth, such farm being located on any island outside the Commonwealth but within one mile of its boundaries;

11. Any private, nonprofit area agency on aging, designated by the Department for the Aging of *Aging and Long-Term Care Services*, providing transportation services to citizens in vehicles owned, leased, operated or under contract by such area agency; and

12. Operating or propelling motor vehicles owned by a nonprofit organization which provides specialized transportation to various locations for elderly or handicapped individuals to secure essential services and to participate in community life according to the individual's respective interests and abilities.

B. A refund shall be granted in accordance with § 58.1-2112 of any tax paid pursuant to this chapter upon motor fuel:

1. Purchased by a person, firm or corporation and subsequently transported and delivered by such person, firm or corporation to another state, district or country for sale or use without the Commonwealth;

2. Sold by a dealer in the Commonwealth to any corporation, partnership or other entity performing transportation under contract or lease with any transportation district created under the Transportation District Act of 1964 (§ 15.1-1342 et seq.) for use in a motor vehicle which is controlled by a transportation district and used in providing transit service by the transportation district by contract or lease. The refund provided for in this paragraph shall be paid to the corporation, partnership or other entity performing such transportation;

3. Transferred to a duly licensed dealer for bulk storage in the Commonwealth by tank car, barge, pipeline or transport truck from a point within the Commonwealth by another duly licensed dealer who has paid or assumed the payment of the tax. No dealer who is reporting the tax on a sales basis with stock loss shown as a nontaxable item shall be eligible for such a refund, nor shall any refund be paid on any fuel which is subsequently sold tax exempt or exported from the Commonwealth as subject to export refund under subdivision B 1 of this section; or

4. Proven to be lost by accident, except through personal negligence or theft.

C. Any county or city school board or any private, nonprofit, nonsectarian school contracting with a private carrier to transport children to and from public schools or any private, nonprofit, nonsectarian school shall be refunded the tax imposed by this chapter on such carrier on fuel so used. Such refund shall be paid pursuant to § 58.1-2112.

D. On any island in this Commonwealth on which no motor vehicle is operated upon any public highways, streets or alleys, the refund provided for by this section may be made, pursuant to

3750 § 58.1-2112, to the merchant selling such motor fuel to the consumer.

3751 § 58.1-2122. Refund of tax on special fuels.

3752 Any person other than a person to whom § 58.1-2124 applies, who pays the tax at the rate of sixteen
3753 cents per gallon on the purchase of any special fuel in quantities of five gallons or more at any one time
3754 shall be entitled to a refund in the amount of the tax paid if:

3755 1. Such fuel is used (i) for purposes other than to propel vehicles operated or intended to be operated
3756 on the highway, (ii) by buses owned or solely used by a private, nonprofit, nonsectarian school while
3757 being used to transport children to and from such school or from such school to and from educational or
3758 athletic activities, or (iii) by any private, nonprofit area agency on aging, designated by the Department
3759 for the *Aging of Aging and Long-Term Care Services*, providing transportation services to citizens in
3760 vehicles owned, leased, operated or under contract by such area agency;

3761 2. Such fuel has been lost by accident, except through personal negligence or theft;

3762 3. Such fuel was used by any county or city school board or any private, nonprofit nonsectarian
3763 school contracting with a private carrier to transport children to and from public schools or any private
3764 schools or any private nonsectarian school; or

3765 4. Such fuel was (i) sold to any corporation, partnership or other entity performing transportation
3766 under contract or lease with any transportation district and (ii) used in a motor vehicle controlled by a
3767 transportation district created under the Transportation District Act of 1964, which motor vehicle is used
3768 in providing transit service by the transportation district by contract or lease. The refund provided for in
3769 this paragraph shall be paid to the corporation, partnership or other entity performing such
3770 transportation.

3771 The total refunds allowed to any one applicant in all cases pursuant to clause (ii) of subdivision 1 of
3772 this section with respect to fuel which is subject to the tax imposed by this chapter shall not exceed the
3773 sum of \$2,000 in any fiscal year.

3774 Application for refund shall show the purpose for which the fuel was used, and shall be accompanied
3775 by the invoice covering the sale of the fuel to such person. In the event an assessment is rendered for
3776 failure to report and pay any tax imposed by § 58.1-2116 and such fuel has been used for nonhighway
3777 purposes by the consumer, application for refund may be filed with the Commissioner by the consumer
3778 within twelve months from the date such assessment is paid and shall be accompanied by invoices
3779 covering the sale of the fuel and the billing of the tax to such person.

3780 § 63.1-314.8. Technical Assistance Committee created; duties; membership.

3781 A. There is hereby created a Technical Assistance Committee, which shall provide technical and
3782 support services on the operations of the information and referral system as the Council may deem
3783 appropriate and shall advise the Council in performing its powers and duties.

3784 B. The membership of the Technical Assistance Committee shall include but not be limited to:

3785 1. Two directors of local departments of public welfare or social services, one serving a rural and
3786 one an urban locality, to be appointed by the Commissioner of Social Services;

3787 2. The Commissioners or Directors, or their designees, of the Department of Medical Assistance
3788 Services; Department of Health; Department of Mental Health, Mental Retardation and Substance Abuse
3789 Services; Department of Rehabilitative Services; Department for the *Aging of Aging and Long-Term*
3790 *Care Services*; Department for the Visually Handicapped; Department for Rights of Virginians With
3791 Disabilities; Department of Information Technology; Department for the Deaf and Hard-of-Hearing;
3792 Department of Health Professions; Department of Corrections; Department of Education; Department of
3793 Youth and Family Services; and the Virginia Employment Commission; and

3794 3. The Director of the Virginia Council on Child Day Care and Early Childhood Programs.

3795 § 65.2-401. "Ordinary disease of life" coverage.

3796 An ordinary disease of life to which the general public is exposed outside of the employment may be
3797 treated as an occupational disease for purposes of this title if it is established by clear and convincing
3798 evidence, to a reasonable medical certainty, that it arose out of and in the course of employment as
3799 provided in § 65.2-400 with respect to occupational diseases and did not result from causes outside of
3800 the employment, and that:

3801 1. It follows as an incident of occupational disease as defined in this title; or

3802 2. It is an infectious or contagious disease contracted in the course of one's employment in a hospital
3803 or sanitarium or laboratory or nursing home facility as defined in § ~~32.1-123~~ 32.1-375, or while
3804 otherwise engaged in the direct delivery of health care, or in the course of employment as emergency
3805 rescue personnel and those volunteer emergency rescue personnel referred to in § 65.2-101; or

3806 3. It is characteristic of the employment and was caused by conditions peculiar to such employment.

3807 2. That Chapter 24 (§§2.1-371 through 2.1-373.9) of Title 2.1, §§ 32.1-126.01, 32.1-126.2,
3808 32.1-127.01, 32.1-135, 32.1-138, 32.1-138.1, 32.1-138.2, and 32.1-138.3, Article 7.1 (§§ 32.1-162.7
3809 through 32.1-162.15) of Chapter 5 of Title 32.1, §§ 32.1-326.1 and 32.1-329, Article 1 (§§ 63.1-172
3810 through 63.1-182.1) of Chapter 9 of Title 63.1 and Article 3 (§§ 63.1-194.1 through 63.1-194.13) of
3811 Chapter 9 of Title 63.1 of the Code of Virginia are repealed.

3812 3. Regulations promulgated by the State Board of Health, Department of Medical Assistance
3813 Services and State Board of Social Services pursuant to the Administrative Process Act (§ 9-6.14:1
3814 et seq.) relating to the administrative and regulatory functions of the Department of Health,
3815 Department of Medical Assistance Services and Department of Social Services that have been
3816 granted to the Department or Board of Aging and Long-Term Care Services in this act shall apply
3817 mutatis mutandis to the Department and Board of Aging and Long-Term Care Services and shall
3818 remain in effect until the adoption of replacement regulations by the Board of Aging and
3819 Long-Term Care Services, if such regulations were in effect prior to the effective date of this act.
3820 4. That the enactment of this act shall not affect contracts between the Department of Medical
3821 Assistance Services and providers of long-term care services that are in effect on the effective date
3822 of this act; nor shall it affect contracts in effect on the effective date of this act between the
3823 Department for the Aging and area agencies on aging.
3824 5. That the Governor may transfer any employees as necessary to support the changes in
3825 organization or responsibility resulting from or required by the first enacting clause.
3826 6. That the Governor shall appoint a Director of the Department of Aging and Long-Term Care
3827 Services and the Board of Aging and Long-Term Care Services in accordance with the provisions
3828 of this act, such appointments to be effective as soon as practicable after January 1, 1995. The
3829 powers of the Director and the Board prior to July 1, 1995, shall be limited to those necessary to
3830 effect a smooth transition of powers and duties transferred in the first enacting clause from other
3831 agencies to the Department of Aging and Long-Term Care Services. Duties shall include budget
3832 preparation for the Department of Aging and Long-Term Care Services and review of operations
3833 that will be transferred to the Department of Aging and Long-Term Care Services in order to
3834 develop an effective organizational structure for the Department.
3835 7. That the Secretary of Health and Human Resources shall provide necessary administrative
3836 support services to the Department and Board of Aging and Long-Term Care Services until July
3837 1, 1995.
3838 8. That the first, second, third, fourth and fifth enacting clauses of this act shall become effective
3839 on July 1, 1995, and that the sixth and seventh enacting clauses shall become effective January 1,
3840 1995.