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## HOUSE BILL NO. 1395

Offered January 22, 1996

A BILL to amend and reenact §§ 2.1-342, 9-6.14:4.1, 32.1-331.12, 32.1-331.13, 32.1-331.14, 32.1-331.15, and 32.1-331.17 of the Code of Virginia, relating to the Medicaid Prescription Drug Committee.

Patron—Morgan

Referred to Committee on Health, Welfare and Institutions

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

**1. That §§ 2.1-342, 9-6.14:4.1, 32.1-331.12, 32.1-331.13, 32.1-331.14, 32.1-331.15, and 32.1-331.17 of the Code of Virginia are amended and reenacted as follows:**

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

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

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

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

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

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

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

The public body may make reasonable charges for the copying, search time and computer time expended in the supplying of such records. The public body may also make a reasonable charge for preparing documents produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records or documents, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than fifty acres. Such charges for the supplying of requested records shall be estimated in advance at the request of the citizen. The public body may require the advance payment of charges which are subject to advance

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60 determination.

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

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

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

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

77 B. The following records are excluded from the provisions of this chapter but may be disclosed by  
78 the custodian in his discretion, except where such disclosure is prohibited by law:

79 1. Memoranda, correspondence, evidence and complaints related to criminal investigations; adult  
80 arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such  
81 time as the release of such photograph will no longer jeopardize the investigation; reports submitted to  
82 the state and local police, to investigators authorized pursuant to § 53.1-16 and to the campus police  
83 departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of  
84 Title 23 in confidence; portions of records of local government crime commissions that would identify  
85 individuals providing information about crimes or criminal activities under a promise of anonymity;  
86 records of local police departments relating to neighborhood watch programs that include the names,  
87 addresses, and operating schedules of individual participants in the program that are provided to such  
88 departments under a promise of confidentiality; and all records of persons imprisoned in penal  
89 institutions in the Commonwealth provided such records relate to the imprisonment. Information in the  
90 custody of law-enforcement officials relative to the identity of any individual other than a juvenile who  
91 is arrested and charged, and the status of the charge or arrest, shall not be excluded from the provisions  
92 of this chapter.

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

98 2. (Effective until July 1, 1996) Confidential records of all investigations of applications for licenses  
99 and permits, and all licensees and permittees made by or submitted to the Alcoholic Beverage Control  
100 Board, the State Lottery Department or the Virginia Racing Commission.

101 2. (Effective July 1, 1996) Confidential records of all investigations of applications for licenses and  
102 permits, and all licensees and permittees made by or submitted to the Alcoholic Beverage Control  
103 Board, the State Lottery Department, the Virginia Racing Commission, or the Charitable Gaming  
104 Commission.

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

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

121 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 (i) held by or requested from members of the General Assembly or the Division of Legislative Services or (ii) held or requested 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 apply to memoranda, studies or other papers held or requested by the mayor or other chief executive officer of any political subdivision which are specifically concerned with the evaluation of performance of the duties and functions of any locally elected official and were prepared after June 30, 1992 nor shall this exclusion apply to agenda packets prepared and distributed to public bodies for use at a meeting.

Except as provided in § 30-28.18, memoranda, working papers and correspondence of a member of the General Assembly held by the Division of Legislative Services shall not be released by the Division without the prior consent of the member.

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

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

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

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

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

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

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

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

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

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

13. Reports, documentary evidence and other information as specified in §§ 2.1-373.2 and 63.1-55.4.

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

15. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services and records, documents and

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

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

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

193 18. Financial statements not publicly available filed with applications for industrial development  
194 financings.

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

198 20. Confidential proprietary records, voluntarily provided by private business pursuant to a promise  
199 of confidentiality from the Department of Economic Development, the Virginia Economic Development  
200 Partnership, or local or regional industrial or economic development authorities or organizations, used by  
201 the Department, the Partnership, or such entities for business, trade and tourism development; and  
202 memoranda, working papers or other records related to businesses that are considering locating or  
203 expanding in Virginia, prepared by the Partnership, where competition or bargaining is involved and  
204 where, if such records are made public, the financial interest of the governmental unit would be  
205 adversely affected.

206 21. Information which was filed as confidential under the Toxic Substances Information Act  
207 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

208 22. Documents as specified in § 58.1-3.

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

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

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

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

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

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

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

229 30. Investigative notes and other correspondence and information furnished in confidence with  
230 respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice  
231 under the Virginia Human Rights Act (§ 2.1-714 et seq.); however, nothing in this section shall prohibit  
232 the distribution of information taken from inactive reports in a form which does not reveal the identity  
233 of the parties involved or other persons supplying information.

234 31. Investigative notes; proprietary information not published, copyrighted or patented; information  
235 obtained from employee personnel records; personally identifiable information regarding residents,  
236 clients or other recipients of services; and other correspondence and information furnished in confidence  
237 to the Department of Social Services in connection with an active investigation of an applicant or  
238 licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1; however,  
239 nothing in this section shall prohibit disclosure of information from the records of completed  
240 investigations in a form that does not reveal the identity of complainants, persons supplying information,  
241 or other individuals involved in the investigation.

242 32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings or other  
243 information or materials of the Virginia Board of Corrections, the Virginia Department of Corrections or  
244 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

306 evasions of such provisions, or (v) use of the lottery as a subterfuge for organized crime and illegal  
307 gambling where such official records have not been publicly released, published or copyrighted. All  
308 studies and investigations referred to under subdivisions (iii), (iv) and (v) shall be subject to public  
309 disclosure under this chapter upon completion of the study or investigation.

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

316 40. [Repealed.]

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

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

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

323 44. [Repealed.]

324 45. Investigative notes; correspondence and information furnished in confidence with respect to an  
325 investigation; and official records otherwise exempted by this chapter or any Virginia statute, provided  
326 to or produced by or for the Auditor of Public Accounts and the Joint Legislative Audit and Review  
327 Commission; or investigative notes, correspondence, documentation and information furnished and  
328 provided to or produced by or for the Department of the State Internal Auditor with respect to an  
329 investigation initiated through the State Employee Fraud, Waste and Abuse Hotline. Nothing in this  
330 chapter shall prohibit disclosure of information from the records of completed investigations in a form  
331 that does not reveal the identity of complainants, persons supplying information or other individuals  
332 involved in the investigation; however, disclosure, unless such disclosure is prohibited by this section, of  
333 information from the records of completed investigations shall include, but is not limited to, the agency  
334 involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and  
335 the actions taken to resolve the complaint. In the event an investigation does not lead to corrective  
336 action, the identity of the person who is the subject of the complaint may be released only with the  
337 consent of the subject person.

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

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

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

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

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

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

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

365 53. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and  
366 cost projections provided by a private transportation business to the Virginia Department of  
367 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 Railroad 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.

55. Reports, documents, memoranda or other information or materials which describe any aspect of security used by the Virginia Museum of Fine Arts to the extent that disclosure or public dissemination of such materials would jeopardize the security of the Museum or any warehouse controlled by the Museum, as follows:

a. Operational, procedural or tactical planning documents, including any training manuals to the extent they discuss security measures;

b. Surveillance techniques;

c. Installation, operation, or utilization of any alarm technology;

d. Engineering and architectural drawings of the Museum or any warehouse;

e. Transportation of the Museum's collections, including routes and schedules; or

f. Operation of the Museum or any warehouse used by the Museum involving the:

(1) Number of employees, including security guards, present at any time; or

(2) Busiest hours, with the maximum number of visitors in the Museum.

56. Reports, documents, memoranda or other information or materials which describe any aspect of security used by the Virginia Department of Alcoholic Beverage Control to the extent that disclosure or public dissemination of such materials would jeopardize the security of any government store as defined in Title 4.1, or warehouse controlled by the Department of Alcoholic Beverage Control, as follows:

(i) Operational, procedural or tactical planning documents, including any training manuals to the extent they discuss security measures;

(ii) Surveillance techniques;

(iii) The installation, operation, or utilization of any alarm technology;

(iv) Engineering and architectural drawings of such government stores or warehouses;

(v) The transportation of merchandise, including routes and schedules; and

(vi) The operation of any government store or the central warehouse used by the Department of Alcoholic Beverage Control involving the:

a. Number of employees present during each shift;

b. Busiest hours, with the maximum number of customers in such government store; and

c. Banking system used, including time and place of deposits.

57. Information required to be provided pursuant to § 54.1-2506.1.

58. Confidential information designated as provided in subsection D of § 11-52 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 11-46.

59. All information and records acquired during a review of any child death by the State Child Fatality Review Team established pursuant to § 32.1-283.1.

60. Investigative notes, correspondence, documentation and information provided to or produced by or for the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.1-765.2. Nothing in this section shall prohibit disclosure of information from the records of completed investigations or audits in a form that does not reveal the identity of complainants or persons supplying information.

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

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 the 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

429 official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

430 § 9-6.14:4.1. Exemptions and exclusions.

431 A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the  
432 following agencies are exempted from the provisions of this chapter, except to the extent that they are  
433 specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

434 1. The General Assembly.

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

437 3. The Department of Game and Inland Fisheries in promulgating regulations regarding the  
438 management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2  
439 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7  
440 (§ 29.1-700 et seq.) of Title 29.1.

441 4. The Virginia Housing Development Authority.

442 5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created  
443 under this Code, including those with federal authorities, except for those created under Chapter 27  
444 (§ 15.1-1228 et seq.) of Title 15.1.

445 6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22,  
446 such educational institutions shall be exempt from the publication requirements only with respect to  
447 regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and  
448 disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and  
449 disciplining of students.

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

453 8. The Virginia Resources Authority.

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

455 10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments  
456 to the Formulary pursuant to § 32.1-81.

457 11. The Council on Information Management.

458 12. The Department of General Services in promulgating standards for the inspection of buildings for  
459 asbestos pursuant to § 2.1-526.14.

460 13, 14. [Repealed.]

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

463 16. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to  
464 subsection B of § 3.1-726.

465 17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and  
466 Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4,  
467 subsection B of § 3.1-126.12:1, § 3.1-271.1, subsections B and C of § 3.1-828.4, and subsection A of  
468 § 3.1-884.21:1.

469 18. The Board of Medicine when specifying therapeutic pharmaceutical agents for the treatment of  
470 certain conditions of the human eye and its adnexa by certified optometrists pursuant to § 54.1-2957.2.

471 19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating  
472 amendments to the Physician's Assistant Formulary established pursuant to § 54.1-2952.1.

473 20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner  
474 Formulary established pursuant to § 54.1-2957.01.

475 21. The Virginia War Memorial Foundation.

476 22. The Virginia Medicaid ~~Prior Authorization~~ Prescription Drug Advisory Committee in making  
477 recommendations to the Board of Medical Assistance Services regarding (i) prior authorization for  
478 prescription drug coverage and (ii), *for the purposes of any contract with a benefit manager to*  
479 *administer the Virginia Medicaid Program's prescribed drug coverage, drugs to be included on the list*  
480 *of preferred drugs to be covered by the State Plan for Medical Assistance based upon an evaluation of*  
481 *the cost effectiveness and therapeutic efficacy of each drug* pursuant to Article 4 (§ 32.1-331.12 et seq.)  
482 of Chapter 10 of Title 32.1.

483 23. The State Board of Education, in developing, issuing, and revising guidelines pursuant to  
484 § 22.1-280.3.

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

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

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

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

489 4. Grants of state or federal funds or property.

490 5. The chartering of corporations.



6. Customary military, naval or police functions.
  7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.
  8. The conduct of elections or eligibility to vote.
  9. Inmates of prisons or other such facilities or parolees therefrom.
  10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.
  11. Traffic signs, markers or control devices.
  12. Instructions for application or renewal of a license, certificate, or registration required by law.
  13. Content of, or rules for the conduct of, any examination required by law.
  14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter 14 of Title 2.1.
  15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the State Lottery Board, and provided that such regulations are published and posted.
  16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8, Title 28.2.
  17. Any operating procedures for review of child deaths developed by the State Child Fatality Review Team pursuant to § 32.1-283.1.
- C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:
1. Agency orders or regulations fixing rates or prices.
  2. Regulations which establish or prescribe agency organization, internal practice or procedures, including delegations of authority.
  3. Regulations which consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.
  4. Regulations which:
    - (a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved;
    - (b) Are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or
    - (c) Are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing; notice of the proposed adoption of these regulations and the Registrar's above determination shall be published in the Virginia Register not less than thirty days prior to the effective date thereof.
  5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation shall be effective in 280 days or less from enactment of the law or the appropriation act or the effective date of the federal regulation, and the regulation is not exempt under the provisions of subdivision C 4 of this section. In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt such regulations with the prior approval of the Governor. Such regulations shall be limited to no more than twelve months in duration. During the twelve-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the twelve-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be published within sixty days of the effective date of the emergency regulation, and the proposed replacement regulation shall be published within 180 days after the effective date of the emergency regulation.
  6. [Repealed.]
  7. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to subsection C of § 10.1-1322.2.
  8. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board

meetings and one public hearing.

Whenever regulations are adopted under this subsection C, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall become effective as provided in subsection A of § 9-6.14:9.

D. The following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 (§ 9-6.14:11 et seq.) of this chapter:

1. The assessment of taxes or penalties under the tax laws.
2. The award or denial of claims for workers' compensation.
3. The grant or denial of public assistance.
4. Temporary injunctive or summary orders authorized by law.
5. The determination of claims for unemployment compensation or special unemployment.
6. The award or denial of individual student loans by the Virginia Education Loan Authority.
7. The determination of applications for guaranty of individual student loans or the determination of default claims by the State Education Assistance Authority.

E. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act, is excluded from the operation of subsection C of this section and of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter; however, the authorization for any general permit or guidelines for activity undertaken pursuant to Title 62.1 by the Marine Resources Commission shall be in accordance with the provisions of this chapter.

F. A regulation for which an exemption is claimed under this section and which is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

G. The Joint Legislative Audit and Review Commission shall conduct a review periodically of exemptions and exclusions authorized by this section. The purpose of this review shall be to assess whether there are any exemptions or exclusions which should be discontinued or modified.

H. Minor changes to regulations being published in the Virginia Administrative Code under the Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.

§ 32.1-331.12. Definitions.

As used in this article:

"Board" means the Board of Medical Assistance Services.

"Committee" means the Medicaid ~~Prior Authorization~~ Prescription Drug Advisory Committee established pursuant to this article.

"Department" means the Department of Medical Assistance Services.

"Director" means the Director of Medical Assistance Services.

"Drug" shall have the same meaning, unless the context otherwise dictates or the Board otherwise provides by regulation, as provided in the Drug Control Act (§ 54.1-3400 et seq.).

§ 32.1-331.13. Medicaid Prescription Drug Advisory Committee; membership.

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

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

§ 32.1-331.14. Duties of the Committee.

A. The Committee shall make recommendations to the Board regarding (i) drugs or categories of drugs to be subject to prior authorization and prior authorization requirements for prescription drug coverage under the state plan, as well as any subsequent amendments to or revisions of such prior authorization requirements from time to time and (ii) *for the purposes of any contract with a benefit manager to administer the Virginia Medicaid Program's prescribed drug coverage, drugs to be included on the list of preferred drugs to be covered by the State Plan for Medical Assistance based upon an*

614 *evaluation of the cost effectiveness and therapeutic efficacy of each drug.* The Board may accept or  
 615 reject such recommendations in whole or in part, and may amend or add to such recommendations,  
 616 except that the Board may not add to the recommendation of drugs and categories of drugs to be subject  
 617 to prior authorization.

618 B. In formulating its recommendations to the Board, the Committee shall not be deemed to be  
 619 formulating regulations for the purposes of the Administrative Process Act (§ 9-6.14:1 et seq.). The  
 620 Committee shall, however, conduct public hearings prior to making such recommendations to the Board.  
 621 The Committee shall give thirty days' written notice by mail of the time and place of its hearings and  
 622 meetings to any manufacturer whose product is being reviewed by the Committee and to those  
 623 manufacturers who request the Committee in writing that they be informed of such hearings and  
 624 meetings. Such persons shall be afforded a reasonable opportunity to be heard and present information.  
 625 In addition, the Committee shall give thirty days' notice of such public hearings to the public by  
 626 publishing its intention to conduct hearings and meetings in the Calendar of Events of the Virginia  
 627 Register of Regulations and a newspaper of general circulation located in Richmond.

628 C. In acting on the recommendations of the Committee, the Board shall be required to conduct  
 629 further proceedings under the Administrative Process Act.

630 § 32.1-331.15. Prior authorization of prescription drug products; coverage under state plan.

631 A. The Committee shall review prescription drug products to recommend prior authorization *or*  
 632 *coverage* under the state plan in accordance with this article and regulations promulgated by the Board.  
 633 Such review may be initiated by the Director, the Committee itself, or by written request of the Board.  
 634 The Committee shall complete its recommendations to the Board within no more than six months from  
 635 receipt of any such request.

636 B. Coverage under the state plan for any drug requiring prior authorization shall not be approved  
 637 unless a prescribing physician obtains prior approval of such use in accordance with regulations  
 638 promulgated by the Board and procedures established by the Department.

639 In formulating its recommendations to the Board, the Committee shall consider the potential impact  
 640 on patient care and the potential fiscal impact of prior authorization on pharmacy, physician,  
 641 hospitalization and outpatient costs. *In addition, the Committee shall develop a procedure for*  
 642 *considering drugs that are recently approved by the federal Food and Drug Administration, including*  
 643 *the use indicated on the label of the drug and whether it has unique applications.* Any proposed  
 644 regulation making a drug or category of drugs subject to prior authorization shall be accompanied by a  
 645 statement of the estimated impact of such action on pharmacy, physician, hospitalization and outpatient  
 646 costs.

647 C. The Committee shall ~~not~~ review any drug for which it has recommended or the Board has required  
 648 prior authorization within the previous twelve months, ~~unless~~ *if* new or previously unavailable relevant  
 649 and objective information is presented, *e.g., research data published in peer-reviewed journals or*  
 650 *guidelines from the Centers for Disease Control.*

651 D. Confidential proprietary information identified as such by a manufacturer or supplier in writing in  
 652 advance and furnished to the Committee or the Board pursuant to this article shall not be subject to the  
 653 disclosure requirements of the Virginia Freedom of Information Act (§ 2.1-340 et seq.). The Board shall  
 654 establish by regulation the means by which such confidential proprietary information shall be protected.

655 § 32.1-331.17. Annual report to Joint Commission.

656 The Committee shall report annually to the Joint Commission on Health Care regarding its  
 657 recommendations for (i) prior authorization of drug products *and (ii) for the purposes of any contract*  
 658 *with a benefit manager to administer the Virginia Medicaid Program's prescribed drug coverage, drugs*  
 659 *to be included on the list of preferred drugs to be covered by the State Plan for Medical Assistance*  
 660 *based upon an evaluation of the cost effectiveness and therapeutic efficacy of each drug.*