

26104963D

INTRODUCED

HB548

1
2
3
4 **HOUSE BILL NO. 548**
5 Offered January 14, 2026
6 Prefiled January 13, 2026
7
8 *A BILL to amend and reenact §§ 8.01-413.01, 8.01-622.1, 18.2-369, 32.1-127, 32.1-127.1:03, 32.1-138.1, 32.1-162.16, 32.1-162.18, 32.1-291.21, 32.1-309.1, 32.1-325, 37.2-804.2, as it is currently effective and as it shall become effective, 37.2-805.1, 37.2-817.01, 37.2-817.1, 37.2-837, 37.2-838, 37.2-1101, 37.2-1108, 53.1-133.04, 54.1-2807.02, 54.1-2818.1, 54.1-2818.5, 54.1-2970.1, 54.1-2987.1, 54.1-2988.1, 54.1-2993.1, 54.1-2995, 63.2-501, 63.2-1605, 64.2-2000, 64.2-2002, 64.2-2003, 64.2-2009, and 64.2-2019 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 29 of Title 54.1 an article numbered 8.1, consisting of sections numbered 54.1-2993.2 through 54.1-2993.31; and to repeal §§ 54.1-2981, 54.1-2982, 54.1-2983, 54.1-2983.2 through 54.1-2987, 54.1-2988, and 54.1-2989 through 54.1-2993 of the Code of Virginia, relating to Uniform Health Care Decisions Act; civil penalty.*

13 Patron—Hope

14
15 Committee Referral Pending
1617 **Be it enacted by the General Assembly of Virginia:**

18 1. That §§ 8.01-413.01, 8.01-622.1, 18.2-369, 32.1-127, 32.1-127.1:03, 32.1-138.1, 32.1-162.16, 32.1-162.18, 32.1-291.21, 32.1-309.1, 32.1-325, 37.2-804.2, as it is currently effective and as it shall become effective, 37.2-805.1, 37.2-817.01, 37.2-817.1, 37.2-837, 37.2-838, 37.2-1101, 37.2-1108, 53.1-133.04, 54.1-2807.02, 54.1-2818.1, 54.1-2818.5, 54.1-2970.1, 54.1-2987.1, 54.1-2988.1, 54.1-2993.1, 54.1-2995, 63.2-501, 63.2-1605, 64.2-2000, 64.2-2002, 64.2-2003, 64.2-2009, and 64.2-2019 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 29 of Title 54.1 an article numbered 8.1, consisting of sections numbered 54.1-2993.2 through 54.1-2993.31 as follows:

26 **§ 8.01-413.01. Authenticity and reasonableness of medical bills; presumption.**

27 A. For the purposes of this section, "bill" means any statement of charges, an invoice, or any other form prepared by a health care provider or its agent, or third-party agent, identifying the costs of health care services provided.

28 B. In any action for personal injuries, wrongful death, or for medical expense benefits payable under a motor vehicle insurance policy issued pursuant to § 38.2-124 or § 38.2-2201, the authenticity of bills for medical services provided and the reasonableness of the charges of the health care provider shall be rebuttably presumed upon identification by the plaintiff of the original bill or a duly authenticated copy and the plaintiff's testimony (i) identifying the health care provider, (ii) describing the services rendered, and (iii) stating that the services were rendered in connection with treatment for the injuries received in the event giving rise to the action. If the court finds the plaintiff is unable to provide such testimony, the plaintiff's guardian, agent under an advance *health care* directive, or agent under a power of attorney may identify the bill or an authenticated copy and provide testimony in lieu of the plaintiff. The presumption herein shall not apply unless the opposing party or his attorney has been furnished such medical records at least 30 days prior to the trial.

29 C. Where no medical bill is rendered or specific charge made by a health care provider to the insured, an insurer, or any other person, the usual and customary fee charged for the service rendered may be established by the testimony or the affidavit of an expert having knowledge of the usual and customary fees charged for the services rendered. If the fee is to be established by affidavit, the affidavit shall be submitted to the opposing party or his attorney at least 30 days prior to trial. The testimony or the affidavit is subject to rebuttal and may be admitted in the same manner as an original bill or authenticated copy described in subsection A.

48 **§ 8.01-622.1. Injunction against assisted suicide; damages; professional sanctions.**

49 A. Any person who knowingly and intentionally, with the purpose of assisting another person to commit or attempt to commit suicide, (i) provides the physical means by which another person commits or attempts to commit suicide or (ii) participates in a physical act by which another person commits or attempts to commit suicide shall be liable for damages as provided in this section and may be enjoined from such acts.

50 B. A cause of action for injunctive relief against any person who is reasonably expected to assist or attempt to assist a suicide may be maintained by any person who is the spouse, parent, child, sibling or guardian of, or a current or former licensed health care provider of, the person who would commit suicide; by an attorney for the Commonwealth with appropriate jurisdiction; or by the Attorney General. The injunction shall prevent the person from assisting any suicide in the Commonwealth.

51 C. A spouse, parent, child or sibling of a person who commits or attempts to commit suicide may recover

59 compensatory and punitive damages in a civil action from any person who provided the physical means for
60 the suicide or attempted suicide or who participated in a physical act by which the other person committed or
61 attempted to commit suicide.

62 D. A licensed health care provider who assists or attempts to assist a suicide shall be considered to have
63 engaged in unprofessional conduct for which his certificate or license to provide health care services in the
64 Commonwealth shall be suspended or revoked by the licensing authority.

65 E. Nothing in this section shall be construed to limit or conflict with § 54.1-2971.01 or the *Uniform*
66 ~~Health Care Decisions Act (§ 54.1-2981 54.1-2993.2 et seq.)~~. This section shall not apply to a licensed health
67 care provider who (i) administers, prescribes or dispenses medications or procedures to relieve another
68 person's pain or discomfort and without intent to cause death, even if the medication or procedure may hasten
69 or increase the risk of death, or (ii) withholds or withdraws ~~life-prolonging procedures as defined in~~
70 ~~§ 54.1-2982 care in accordance with an advance health care directive prepared pursuant to the Uniform~~
71 ~~Health Care Decisions Act (§ 54.1-2993.2 et seq.)~~. This section shall not apply to any person who properly
72 administers a legally prescribed medication without intent to cause death, even if the medication may hasten
73 or increase the risk of death.

74 F. For purposes of this section:

75 "Licensed health care provider" means a physician, surgeon, podiatrist, osteopath, osteopathic physician
76 and surgeon, physician assistant, nurse, dentist or pharmacist licensed under the laws of this Commonwealth.

77 "Suicide" means the act or instance of taking one's own life voluntarily and intentionally.

78 **§ 18.2-369. Abuse and neglect of vulnerable adults; penalties.**

79 A. It is unlawful for any responsible person to abuse or neglect any vulnerable adult. Any responsible
80 person who abuses or neglects a vulnerable adult in violation of this section and the abuse or neglect does not
81 result in serious bodily injury or disease to the vulnerable adult is guilty of a Class 1 misdemeanor. Any
82 responsible person who is convicted of a second or subsequent offense under this subsection is guilty of a
83 Class 6 felony.

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

88 C. For purposes of this section:

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

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

95 "Responsible person" means a person who has responsibility for the care, custody, or control of a
96 vulnerable adult by operation of law or who has assumed such responsibility voluntarily by contract or in
97 fact.

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

101 "Vulnerable adult" means any person 18 years of age or older who is impaired by reason of mental illness,
102 intellectual or developmental disability, physical illness or disability, or other causes, including age, to the
103 extent the adult lacks sufficient understanding or capacity to make, communicate, or carry out reasonable
104 decisions concerning his well-being or has one or more limitations that substantially impair the adult's ability
105 to independently provide for his daily needs or safeguard his person, property, or legal interests.

106 D. No responsible person shall be in violation of this section whose conduct was (i) in accordance with
107 the informed consent of the vulnerable adult that was given when he was not vulnerable or a person
108 authorized to consent on his behalf; (ii) in accordance with a declaration by the vulnerable adult under the
109 *Uniform Health Care Decisions Act (§ 54.1-2981 54.1-2993.2 et seq.)* that was given when he was not
110 vulnerable or with the provisions of a valid medical power of attorney; (iii) in accordance with the wishes of
111 the vulnerable adult that were made known when he was not vulnerable or a person authorized to consent on
112 behalf of the vulnerable adult and in accord with the tenets and practices of a church or religious
113 denomination; (iv) incident to necessary movement of, placement of, or protection from harm to the
114 vulnerable adult; or (v) a bona fide, recognized, or approved practice to provide medical care.

115 **§ 32.1-127. Regulations.**

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

121 B. Such regulations:

122 1. Shall include minimum standards for (i) the construction and maintenance of hospitals, nursing homes
 123 and certified nursing facilities to ensure the environmental protection and the life safety of its patients,
 124 employees, and the public; (ii) the operation, staffing and equipping of hospitals, nursing homes and certified
 125 nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes and certified nursing
 126 facilities, except those professionals licensed or certified by the Department of Health Professions; (iv)
 127 conditions under which a hospital or nursing home may provide medical and nursing services to patients in
 128 their places of residence; and (v) policies related to infection prevention, disaster preparedness, and facility
 129 security of hospitals, nursing homes, and certified nursing facilities;

130 2. Shall provide that at least one physician who is licensed to practice medicine in the Commonwealth and
 131 is primarily responsible for the emergency department shall be on duty and physically present at all times at
 132 each hospital that operates or holds itself out as operating an emergency service;

133 3. May classify hospitals and nursing homes by type of specialty or service and may provide for licensing
 134 hospitals and nursing homes by bed capacity and by type of specialty or service;

135 4. Shall also require that each hospital establish a protocol for organ donation, in compliance with federal
 136 law and the regulations of the Centers for Medicare and Medicaid Services (CMS), particularly 42 C.F.R. §
 137 482.45. Each hospital shall have an agreement with an organ procurement organization designated in CMS
 138 regulations for routine contact, whereby the provider's designated organ procurement organization certified
 139 by CMS (i) is notified in a timely manner of all deaths or imminent deaths of patients in the hospital and (ii)
 140 is authorized to determine the suitability of the decedent or patient for organ donation and, in the absence of a
 141 similar arrangement with any eye bank or tissue bank in Virginia certified by the Eye Bank Association of
 142 America or the American Association of Tissue Banks, the suitability for tissue and eye donation. The
 143 hospital shall also have an agreement with at least one tissue bank and at least one eye bank to cooperate in
 144 the retrieval, processing, preservation, storage, and distribution of tissues and eyes to ensure that all usable
 145 tissues and eyes are obtained from potential donors and to avoid interference with organ procurement. The
 146 protocol shall ensure that the hospital collaborates with the designated organ procurement organization to
 147 inform the family of each potential donor of the option to donate organs, tissues, or eyes or to decline to
 148 donate. The individual making contact with the family shall have completed a course in the methodology for
 149 approaching potential donor families and requesting organ or tissue donation that (a) is offered or approved
 150 by the organ procurement organization and designed in conjunction with the tissue and eye bank community
 151 and (b) encourages discretion and sensitivity according to the specific circumstances, views, and beliefs of
 152 the relevant family. In addition, the hospital shall work cooperatively with the designated organ procurement
 153 organization in educating the staff responsible for contacting the organ procurement organization's personnel
 154 on donation issues, the proper review of death records to improve identification of potential donors, and the
 155 proper procedures for maintaining potential donors while necessary testing and placement of potential
 156 donated organs, tissues, and eyes takes place. This process shall be followed, without exception, unless the
 157 family of the relevant decedent or patient has expressed opposition to organ donation, the chief administrative
 158 officer of the hospital or his designee knows of such opposition, and no donor card or other relevant
 159 document, such as an advance *health care* directive, can be found;

160 5. Shall require that each hospital that provides obstetrical services establish a protocol for admission or
 161 transfer of any pregnant woman who presents herself while in labor;

162 6. Shall also require that each licensed hospital develop and implement a protocol requiring written
 163 discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall
 164 require that the discharge plan be discussed with the patient and that appropriate referrals for the mother and
 165 the infant be made and documented. Appropriate referrals may include, but need not be limited to, treatment
 166 services, comprehensive early intervention services for infants and toddlers with disabilities and their families
 167 pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C. § 1471 et seq., and
 168 family-oriented prevention services. The discharge planning process shall involve, to the extent possible, the
 169 other parent of the infant and any members of the patient's extended family who may participate in the
 170 follow-up care for the mother and the infant. Immediately upon identification, pursuant to § 54.1-2403.1, of
 171 any substance-abusing, postpartum woman, the hospital shall notify, subject to federal law restrictions, the
 172 community services board of the jurisdiction in which the woman resides to appoint a discharge plan
 173 manager. The community services board shall implement and manage the discharge plan;

174 7. Shall require that each nursing home and certified nursing facility fully disclose to the applicant for
 175 admission the home's or facility's admissions policies, including any preferences given;

176 8. Shall require that each licensed hospital establish a protocol relating to the rights and responsibilities of
 177 patients which shall include a process reasonably designed to inform patients of such rights and
 178 responsibilities. Such rights and responsibilities of patients, a copy of which shall be given to patients on
 179 admission, shall be consistent with applicable federal law and regulations of the Centers for Medicare and
 180 Medicaid Services;

181 9. Shall establish standards and maintain a process for designation of levels or categories of care in
 182 neonatal services according to an applicable national or state-developed evaluation system. Such standards

183 may be differentiated for various levels or categories of care and may include, but need not be limited to,
184 requirements for staffing credentials, staff/patient ratios, equipment, and medical protocols;

185 10. Shall require that each nursing home and certified nursing facility train all employees who are
186 mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting procedures
187 and the consequences for failing to make a required report;

188 11. Shall permit hospital personnel, as designated in medical staff bylaws, rules and regulations, or
189 hospital policies and procedures, to accept emergency telephone and other verbal orders for medication or
190 treatment for hospital patients from physicians, and other persons lawfully authorized by state statute to give
191 patient orders, subject to a requirement that such verbal order be signed, within a reasonable period of time
192 not to exceed 72 hours as specified in the hospital's medical staff bylaws, rules and regulations or hospital
193 policies and procedures, by the person giving the order, or, when such person is not available within the
194 period of time specified, co-signed by another physician or other person authorized to give the order;

195 12. Shall require, unless the vaccination is medically contraindicated or the resident declines the offer of
196 the vaccination, that each certified nursing facility and nursing home provide or arrange for the
197 administration to its residents of (i) an annual vaccination against influenza and (ii) a pneumococcal
198 vaccination, in accordance with the most recent recommendations of the Advisory Committee on
199 Immunization Practices of the Centers for Disease Control and Prevention;

200 13. Shall require that each nursing home and certified nursing facility register with the Department of
201 State Police to receive notice of the registration, reregistration, or verification of registration information of
202 any person required to register with the Sex Offender and Crimes Against Minors Registry pursuant to
203 Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 within the same or a contiguous zip code area in which the home or
204 facility is located, pursuant to § 9.1-914;

205 14. Shall require that each nursing home and certified nursing facility ascertain, prior to admission,
206 whether a potential patient is required to register with the Sex Offender and Crimes Against Minors Registry
207 pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, if the home or facility anticipates the potential patient
208 will have a length of stay greater than three days or in fact stays longer than three days;

209 15. Shall require that each licensed hospital include in its visitation policy a provision allowing each adult
210 patient to receive visits from any individual from whom the patient desires to receive visits, subject to other
211 restrictions contained in the visitation policy including, but not limited to, those related to the patient's
212 medical condition and the number of visitors permitted in the patient's room simultaneously;

213 16. Shall require that each nursing home and certified nursing facility shall, upon the request of the
214 facility's family council, send notices and information about the family council mutually developed by the
215 family council and the administration of the nursing home or certified nursing facility, and provided to the
216 facility for such purpose, to the listed responsible party or a contact person of the resident's choice up to six
217 times per year. Such notices may be included together with a monthly billing statement or other regular
218 communication. Notices and information shall also be posted in a designated location within the nursing
219 home or certified nursing facility. No family member of a resident or other resident representative shall be
220 restricted from participating in meetings in the facility with the families or resident representatives of other
221 residents in the facility;

222 17. Shall require that each nursing home and certified nursing facility maintain, per facility, non-eroding
223 general liability insurance coverage in a minimum amount of \$1 million per occurrence, and professional
224 liability coverage in an amount at least equal to the recovery limit set forth in § 8.01-581.15 per patient
225 occurrence, to compensate patients or individuals for injuries and losses resulting from the negligent acts of
226 the facility. Failure to maintain such minimum insurance limits under this section shall result in revocation of
227 the facility's license. Each nursing home and certified nursing facility shall provide at licensure renewal or
228 have available to the Board proof of the insurance coverages as required by this section;

229 18. Shall require each hospital that provides obstetrical services to establish policies to follow when a
230 stillbirth, as defined in § 32.1-69.1, occurs that meet the guidelines pertaining to counseling patients and their
231 families and other aspects of managing stillbirths as may be specified by the Board in its regulations;

232 19. Shall require each nursing home to provide a full refund of any unexpended patient funds on deposit
233 with the facility following the discharge or death of a patient, other than entrance-related fees paid to a
234 continuing care provider as defined in § 38.2-4900, within 30 days of a written request for such funds by the
235 discharged patient or, in the case of the death of a patient, the person administering the person's estate in
236 accordance with the Virginia Small Estates Act (§ 64.2-600 et seq.);

237 20. Shall require that each hospital that provides inpatient psychiatric services establish a protocol that
238 requires, for any refusal to admit (i) a medically stable patient referred to its psychiatric unit, direct verbal
239 communication between the on-call physician in the psychiatric unit and the referring physician, if requested
240 by such referring physician, and prohibits on-call physicians or other hospital staff from refusing a request for
241 such direct verbal communication by a referring physician and (ii) a patient for whom there is a question
242 regarding the medical stability or medical appropriateness of admission for inpatient psychiatric services due
243 to a situation involving results of a toxicology screening, the on-call physician in the psychiatric unit to which
244 the patient is sought to be transferred to participate in direct verbal communication, either in person or via

245 telephone, with a clinical toxicologist or other person who is a Certified Specialist in Poison Information
 246 employed by a poison control center that is accredited by the American Association of Poison Control
 247 Centers to review the results of the toxicology screen and determine whether a medical reason for refusing
 248 admission to the psychiatric unit related to the results of the toxicology screen exists, if requested by the
 249 referring physician;

250 21. Shall require that each hospital that is equipped to provide life-sustaining treatment shall develop a
 251 policy governing determination of the medical and ethical appropriateness of proposed medical care, which
 252 shall include (i) a process for obtaining a second opinion regarding the medical and ethical appropriateness of
 253 proposed medical care in cases in which a physician has determined proposed care to be medically or
 254 ethically inappropriate; (ii) provisions for review of the determination that proposed medical care is
 255 medically or ethically inappropriate by an interdisciplinary medical review committee and a determination by
 256 the interdisciplinary medical review committee regarding the medical and ethical appropriateness of the
 257 proposed health care; and (iii) requirements for a written explanation of the decision reached by the
 258 interdisciplinary medical review committee, which shall be included in the patient's medical record. Such
 259 policy shall ensure that the patient, his agent, or the person authorized to make ~~medical~~ *health care* decisions
 260 pursuant to § 54.1-2986 54.1-2993.13 (a) are informed of the patient's right to obtain his medical record and
 261 to obtain an independent medical opinion and (b) afforded reasonable opportunity to participate in the
 262 medical review committee meeting. Nothing in such policy shall prevent the patient, his agent, or the person
 263 authorized to make ~~medical~~ *health care* decisions pursuant to § 54.1-2986 54.1-2993.13 from obtaining legal
 264 counsel to represent the patient or from seeking other remedies available at law, including seeking court
 265 review, provided that the patient, his agent, or the person authorized to make ~~medical~~ *health care* decisions
 266 pursuant to § 54.1-2986 54.1-2993.13, or legal counsel provides written notice to the chief executive officer
 267 of the hospital within 14 days of the date on which the physician's determination that proposed medical
 268 treatment is medically or ethically inappropriate is documented in the patient's medical record;

269 22. Shall require every hospital with an emergency department to establish a security plan. Such security
 270 plan shall be developed using standards established by the International Association for Healthcare Security
 271 and Safety or other industry standard and shall be based on the results of a security risk assessment of each
 272 emergency department location of the hospital and shall include the presence of at least one off-duty
 273 law-enforcement officer or trained security personnel who is present in the emergency department at all times
 274 as indicated to be necessary and appropriate by the security risk assessment. Such security plan shall be based
 275 on identified risks for the emergency department, including trauma level designation, overall volume, volume
 276 of psychiatric and forensic patients, incidents of violence against staff, and level of injuries sustained from
 277 such violence, and prevalence of crime in the community, in consultation with the emergency department
 278 medical director and nurse director. The security plan shall also outline training requirements for security
 279 personnel in the potential use of and response to weapons, defensive tactics, de-escalation techniques,
 280 appropriate physical restraint and seclusion techniques, crisis intervention, and trauma-informed approaches.
 281 Such training shall also include instruction on safely addressing situations involving patients, family
 282 members, or other persons who pose a risk of harm to themselves or others due to mental illness or substance
 283 abuse or who are experiencing a mental health crisis. Such training requirements may be satisfied through
 284 completion of the Department of Criminal Justice Services minimum training standards for auxiliary police
 285 officers as required by § 15.2-1731. The Commissioner shall provide a waiver from the requirement that at
 286 least one off-duty law-enforcement officer or trained security personnel be present at all times in the
 287 emergency department if the hospital demonstrates that a different level of security is necessary and
 288 appropriate for any of its emergency departments based upon findings in the security risk assessment;

289 23. Shall require that each hospital establish a protocol requiring that, before a health care provider
 290 arranges for air medical transportation services for a patient who does not have an emergency medical
 291 condition as defined in 42 U.S.C. § 1395dd(e)(1), the hospital shall provide the patient or his authorized
 292 representative with written or electronic notice that the patient (i) may have a choice of transportation by an
 293 air medical transportation provider or medically appropriate ground transportation by an emergency medical
 294 services provider and (ii) will be responsible for charges incurred for such transportation in the event that the
 295 provider is not a contracted network provider of the patient's health insurance carrier or such charges are not
 296 otherwise covered in full or in part by the patient's health insurance plan;

297 24. Shall establish an exemption from the requirement to obtain a license to add temporary beds in an
 298 existing hospital or nursing home, including beds located in a temporary structure or satellite location
 299 operated by the hospital or nursing home, provided that the ability remains to safely staff services across the
 300 existing hospital or nursing home, (i) for a period of no more than the duration of the Commissioner's
 301 determination plus 30 days when the Commissioner has determined that a natural or man-made disaster has
 302 caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a
 303 shortage of hospital or nursing home beds or (ii) for a period of no more than the duration of the emergency
 304 order entered pursuant to § 32.1-13 or 32.1-20 plus 30 days when the Board, pursuant to § 32.1-13, or the
 305 Commissioner, pursuant to § 32.1-20, has entered an emergency order for the purpose of suppressing a
 306 nuisance dangerous to public health or a communicable, contagious, or infectious disease or other danger to

307 the public life and health;

308 25. Shall establish protocols to ensure that any patient scheduled to receive an elective surgical procedure
309 for which the patient can reasonably be expected to require outpatient physical therapy as a follow-up
310 treatment after discharge is informed that he (i) is expected to require outpatient physical therapy as a follow-
311 up treatment and (ii) will be required to select a physical therapy provider prior to being discharged from the
312 hospital;

313 26. Shall permit nursing home staff members who are authorized to possess, distribute, or administer
314 medications to residents to store, dispense, or administer cannabis oil to a resident who has been issued a
315 valid written certification for the use of cannabis oil in accordance with § 4.1-1601;

316 27. Shall require each hospital with an emergency department to establish a protocol for the treatment and
317 discharge of individuals experiencing a substance use-related emergency, which shall include provisions for
318 (i) appropriate screening and assessment of individuals experiencing substance use-related emergencies to
319 identify medical interventions necessary for the treatment of the individual in the emergency department and
320 (ii) recommendations for follow-up care following discharge for any patient identified as having a substance
321 use disorder, depression, or mental health disorder, as appropriate, which may include, for patients who have
322 been treated for substance use-related emergencies, including opioid overdose, or other high-risk patients, (a)
323 the dispensing of naloxone or other opioid antagonist used for overdose reversal pursuant to subsection Y of
324 § 54.1-3408 at discharge or (b) issuance of a prescription for and information about accessing naloxone or other
325 opioid antagonist used for overdose reversal, including information about accessing naloxone or other
326 opioid antagonist used for overdose reversal at a community pharmacy, including any outpatient pharmacy
327 operated by the hospital, or through a community organization or pharmacy that may dispense naloxone or other
328 opioid antagonist used for overdose reversal without a prescription pursuant to a statewide standing
329 order. Such protocols may also provide for referrals of individuals experiencing a substance use-related
330 emergency to peer recovery specialists and community-based providers of behavioral health services, or to
331 providers of pharmacotherapy for the treatment of drug or alcohol dependence or mental health diagnoses;

332 28. During a public health emergency related to COVID-19, shall require each nursing home and certified
333 nursing facility to establish a protocol to allow each patient to receive visits, consistent with guidance from
334 the Centers for Disease Control and Prevention and as directed by the Centers for Medicare and Medicaid
335 Services and the Board. Such protocol shall include provisions describing (i) the conditions, including
336 conditions related to the presence of COVID-19 in the nursing home, certified nursing facility, and
337 community, under which in-person visits will be allowed and under which in-person visits will not be
338 allowed and visits will be required to be virtual; (ii) the requirements with which in-person visitors will be
339 required to comply to protect the health and safety of the patients and staff of the nursing home or certified
340 nursing facility; (iii) the types of technology, including interactive audio or video technology, and the staff
341 support necessary to ensure visits are provided as required by this subdivision; and (iv) the steps the nursing
342 home or certified nursing facility will take in the event of a technology failure, service interruption, or
343 documented emergency that prevents visits from occurring as required by this subdivision. Such protocol
344 shall also include (a) a statement of the frequency with which visits, including virtual and in-person, where
345 appropriate, will be allowed, which shall be at least once every 10 calendar days for each patient; (b) a
346 provision authorizing a patient or the patient's personal representative to waive or limit visitation, provided
347 that such waiver or limitation is included in the patient's health record; and (c) a requirement that each
348 nursing home and certified nursing facility publish on its website or communicate to each patient or the
349 patient's authorized representative, in writing or via electronic means, the nursing home's or certified nursing
350 facility's plan for providing visits to patients as required by this subdivision;

351 29. Shall require each hospital, nursing home, and certified nursing facility to establish and implement
352 policies to ensure the permissible access to and use of an intelligent personal assistant provided by a patient,
353 in accordance with such regulations, while receiving inpatient services. Such policies shall ensure protection
354 of health information in accordance with the requirements of the federal Health Insurance Portability and
355 Accountability Act of 1996, 42 U.S.C. § 1320d et seq., as amended. For the purposes of this subdivision,
356 "intelligent personal assistant" means a combination of an electronic device and a specialized software
357 application designed to assist users with basic tasks using a combination of natural language processing and
358 artificial intelligence, including such combinations known as "digital assistants" or "virtual assistants";

359 30. During a declared public health emergency related to a communicable disease of public health threat,
360 shall require each hospital, nursing home, and certified nursing facility to establish a protocol to allow
361 patients to receive visits from a rabbi, priest, minister, or clergy of any religious denomination or sect
362 consistent with guidance from the Centers for Disease Control and Prevention and the Centers for Medicare
363 and Medicaid Services and subject to compliance with any executive order, order of public health,
364 Department guidance, or any other applicable federal or state guidance having the effect of limiting visitation.
365 Such protocol may restrict the frequency and duration of visits and may require visits to be conducted
366 virtually using interactive audio or video technology. Any such protocol may require the person visiting a
367 patient pursuant to this subdivision to comply with all reasonable requirements of the hospital, nursing home,
368 or certified nursing facility adopted to protect the health and safety of the person, patients, and staff of the

369 hospital, nursing home, or certified nursing facility;

370 31. Shall require that every hospital that makes health records, as defined in § 32.1-127.1:03, of patients
 371 who are minors available to such patients through a secure website shall make such health records available
 372 to such patient's parent or guardian through such secure website, unless the hospital cannot make such health
 373 record available in a manner that prevents disclosure of information, the disclosure of which has been denied
 374 pursuant to subsection F of § 32.1-127.1:03 or for which consent required in accordance with subsection E of
 375 § 54.1-2969 has not been provided;

376 32. Shall require that every hospital where surgical procedures are performed adopt a policy requiring the
 377 use of a smoke evacuation system for all planned surgical procedures that are likely to generate surgical
 378 smoke. For the purposes of this subdivision, "smoke evacuation system" means smoke evacuation equipment
 379 and technologies designed to capture, filter, and remove surgical smoke at the site of origin and to prevent
 380 surgical smoke from making ocular contact or contact with a person's respiratory tract;

381 33. Shall require every hospital with an emergency department, when conducting a urine drug screening
 382 to assist in diagnosing a patient's condition, to include testing for fentanyl in such urine drug screening; and

383 34. Shall establish fees for the issuance, change, or renewal of a hospital or nursing home license to cover
 384 the costs of operating the hospital and nursing home licensure and inspection program in a manner that
 385 ensures timely completion of inspections as set forth in § 32.1-126. In establishing such fees, the Board shall
 386 distribute the costs of operating the hospital and nursing home licensure and inspection program in an
 387 equitable manner across all hospitals or nursing homes and ensure that the amount of such fees shall change
 388 no more frequently than annually. Fee changes under this section shall only be initiated if the expenses
 389 allocated to the Hospital and Nursing Home Licensure and Inspection Program Fund established under
 390 § 32.1-130, plus any state or other funding sources appropriated for the hospital and nursing home licensure
 391 and inspection program, are shown to be more than 10 percent greater or less than the annual costs of
 392 operating the hospital and nursing home licensure and inspection program in a manner that ensures timely
 393 completion of inspections. This analysis shall be conducted separately for hospital fees and nursing home
 394 fees, and resulting fee changes shall be established such that fees are sufficient to cover unfunded expenses
 395 but not excessive.

396 C. Upon obtaining the appropriate license, if applicable, licensed hospitals, nursing homes, and certified
 397 nursing facilities may operate adult day centers.

398 D. All facilities licensed by the Board pursuant to this article which provide treatment or care for
 399 hemophiliacs and, in the course of such treatment, stock clotting factors, shall maintain records of all lot
 400 numbers or other unique identifiers for such clotting factors in order that, in the event the lot is found to be
 401 contaminated with an infectious agent, those hemophiliacs who have received units of this contaminated
 402 clotting factor may be apprised of this contamination. Facilities which have identified a lot that is known to
 403 be contaminated shall notify the recipient's attending physician and request that he notify the recipient of the
 404 contamination. If the physician is unavailable, the facility shall notify by mail, return receipt requested, each
 405 recipient who received treatment from a known contaminated lot at the individual's last known address.

406 E. Hospitals in the Commonwealth may enter into agreements with the Department of Health for the
 407 provision to uninsured patients of naloxone or other opioid antagonists used for overdose reversal.

408 F. Hospitals in the Commonwealth shall:

409 1. Establish a workplace violence incident reporting system, through which each hospital shall document,
 410 track, and analyze any incident of workplace violence reported. The results of such analysis shall be used to
 411 make improvements in preventing workplace violence, including improvements achieved through continuing
 412 education in targeted areas, including de-escalation training, risk identification, and violence prevention
 413 planning. Such reporting system shall (i) be clearly communicated to all employees, including to any new
 414 employees at the employee orientation, and (ii) include guidelines on when and how to report incidents of
 415 workplace violence to the employer, security agencies, and appropriate law-enforcement authorities;

416 2. Record all reported incidents of workplace violence as voluntarily reported by an employee; and

417 3. Adopt a policy that prohibits any person from discriminating or retaliating against any employee of the
 418 hospital for reporting to, or seeking assistance or intervention from, the employer, security agencies,
 419 law-enforcement authorities, local emergency services organizations, government agencies, or others
 420 participating in any incident investigation. Such policy shall comply with the provisions of § 40.1-27.3.

421 G. Each hospital in the Commonwealth shall maintain the record of reported incidents of workplace
 422 violence made pursuant to subsection F for at least two years and shall include in such record, at a minimum:

423 1. The date and time of the incident;

424 2. A description of the incident, including the job titles of the affected employee;

425 3. Whether the perpetrator was a patient, visitor, employee, or other person;

426 4. A description of where the incident occurred;

427 5. Information relating the type of incident, including whether the incident involved (i) a physical attack
 428 without a weapon; (ii) an attack with a weapon or object; (iii) a threat of physical force or use of a weapon or
 429 other object with the intent to cause bodily harm; (iv) sexual assault or the threat of sexual assault; or (v)
 430 anything else not listed in subdivisions (i) through (iv);

431 6. The response to and any consequences of the incident, including (i) whether security or law
432 enforcement was contacted and, if so, their response and (ii) whether the incident resulted in any change to
433 hospital policy; and

434 7. Information about the individual who completed the report, including such individual's name, job title,
435 and the date of completion.

436 H. Each hospital shall:

437 1. Report the data collected and reported pursuant to subsection G to the chief medical officer and the
438 chief nursing officer of such hospital on, at a minimum, a quarterly basis; and

439 2. Send a report to the Department on an annual basis that includes, at a minimum, the number of
440 incidents of workplace violence voluntarily reported by an employee pursuant to subsection F. Any report
441 made to the Department pursuant to this subdivision shall be aggregated to remove any personally
442 identifiable information.

443 I. As used in this section:

444 "Employee of the hospital" or "employee" means an employee of the hospital or any health care provider
445 credentialed by the hospital or engaged by the hospital to perform health care services on the premises of the
446 hospital.

447 "Workplace violence" means any act of violence or threat of violence, without regard to the intent of the
448 perpetrator, that occurs against an employee of the hospital while on the premises of such hospital and
449 engaged in the performance of his duties. "Workplace violence" includes (i) the threat or use of physical force
450 against an employee that results in, or has a high likelihood of resulting in, injury, psychological trauma, or
451 stress, regardless of whether physical injury is sustained, and (ii) any incident involving the threat of using
452 dangerous weapons or using common objects as weapons or to cause physical harm, regardless of whether
453 physical injury is sustained.

454 **§ 32.1-127.1:03. Health records privacy.**

455 A. There is hereby recognized an individual's right of privacy in the content of his health records. Health
456 records are the property of the health care entity maintaining them, and, except when permitted or required by
457 this section or by other provisions of state law, no health care entity, or other person working in a health care
458 setting, may disclose an individual's health records.

459 Pursuant to this subsection:

460 1. Health care entities shall disclose health records to the individual who is the subject of the health
461 record, including an audit trail of any additions, deletions, or revisions to the health record, if specifically
462 requested, except as provided in subsections E and F and subsection B of § 8.01-413.

463 2. Health records shall not be removed from the premises where they are maintained without the approval
464 of the health care entity that maintains such health records, except in accordance with a court order or
465 subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with the
466 regulations relating to change of ownership of health records promulgated by a health regulatory board
467 established in Title 54.1.

468 3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health records
469 of an individual, beyond the purpose for which such disclosure was made, without first obtaining the
470 individual's specific authorization to such redisclosure. This redisclosure prohibition shall not, however,
471 prevent (i) any health care entity that receives health records from another health care entity from making
472 subsequent disclosures as permitted under this section and the federal Department of Health and Human
473 Services regulations relating to privacy of the electronic transmission of data and protected health
474 information promulgated by the United States Department of Health and Human Services as required by the
475 Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. § 1320d et seq.) or (ii) any health
476 care entity from furnishing health records and aggregate or other data, from which individually identifying
477 prescription information has been removed, encoded or encrypted, to qualified researchers, including, but not
478 limited to, pharmaceutical manufacturers and their agents or contractors, for purposes of clinical, pharmaco-
479 epidemiological, pharmaco-economic, or other health services research.

480 4. Health care entities shall, upon the request of the individual who is the subject of the health record,
481 disclose health records to other health care entities, in any available format of the requester's choosing, as
482 provided in subsection E.

483 B. As used in this section:

484 "Agent" means a person who has been appointed as an individual's agent under a ~~power of attorney for~~
485 ~~health care or~~ an advance *health care* directive under the *Uniform Health Care Decisions Act* (§ 54.1-2981
486 54.1-2993.2 et seq.).

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

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

491 "Health care clearinghouse" means, consistent with the definition set out in 45 C.F.R. § 160.103, a public
492 or private entity, such as a billing service, repricing company, community health management information

493 system or community health information system, and "value-added" networks and switches, that performs
 494 either of the following functions: (i) processes or facilitates the processing of health information received
 495 from another entity in a nonstandard format or containing nonstandard data content into standard data
 496 elements or a standard transaction; or (ii) receives a standard transaction from another entity and processes or
 497 facilitates the processing of health information into nonstandard format or nonstandard data content for the
 498 receiving entity.

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

500 "Health care provider" means those entities listed in the definition of "health care provider" in
 501 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the
 502 purposes of this section. Health care provider shall also include all persons who are licensed, certified,
 503 registered or permitted or who hold a multistate licensure privilege issued by any of the health regulatory
 504 boards within the Department of Health Professions, except persons regulated by the Board of Funeral
 505 Directors and Embalmers or the Board of Veterinary Medicine.

506 "Health plan" means an individual or group plan that provides, or pays the cost of, medical care. "Health
 507 plan" includes any entity included in such definition as set out in 45 C.F.R. § 160.103.

508 "Health record" means any written, printed or electronically recorded material maintained by a health care
 509 entity in the course of providing health services to an individual concerning the individual and the services
 510 provided. "Health record" also includes the substance of any communication made by an individual to a
 511 health care entity in confidence during or in connection with the provision of health services or information
 512 otherwise acquired by the health care entity about an individual in confidence and in connection with the
 513 provision of health services to the individual.

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

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

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

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

521 "Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a
 522 mental health professional, documenting or analyzing the contents of conversation during a private
 523 counseling session with an individual or a group, joint, or family counseling session that are separated from
 524 the rest of the individual's health record. "Psychotherapy notes" does not include annotations relating to
 525 medication and prescription monitoring, counseling session start and stop times, treatment modalities and
 526 frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis, functional status,
 527 treatment plan, or the individual's progress to date.

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

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

531 2. Except where specifically provided herein, the health records of minors;

532 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to
 533 § 16.1-248.3; or

534 4. The release of health records to a state correctional facility pursuant to § 53.1-40.10 or a local or
 535 regional correctional facility pursuant to § 53.1-133.03.

536 D. Health care entities may, and, when required by other provisions of state law, shall, disclose health
 537 records:

538 1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the case
 539 of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of minors
 540 pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment pursuant to
 541 § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an individual's written
 542 authorization, pursuant to the individual's oral authorization for a health care provider or health plan to
 543 discuss the individual's health records with a third party specified by the individual;

544 2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant or a
 545 grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a subpoena
 546 issued pursuant to subsection C of § 8.01-413. Regardless of the manner by which health records relating to
 547 an individual are compelled to be disclosed pursuant to this subdivision, nothing in this subdivision shall be
 548 construed to prohibit any staff or employee of a health care entity from providing information about such
 549 individual to a law-enforcement officer in connection with such subpoena, search warrant, or court order;

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

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

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

557 6. As required or authorized by law relating to public health activities, health oversight activities, serious

558 threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease, public

559 safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those

560 contained in §§ 16.1-248.3, 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283,

561 32.1-283.1, 32.1-320, 37.2-710, 37.2-839, 53.1-40.10, 53.1-133.03, 54.1-2400.6, 54.1-2400.7, 54.1-2400.9,

562 54.1-2403.3, 54.1-2506, 54.1-2966, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and 63.2-1606;

563 7. Where necessary in connection with the care of the individual;

564 8. In connection with the health care entity's own health care operations or the health care operations of

565 another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in

566 accordance with accepted standards of practice within the health services setting; however, the maintenance,

567 storage, and disclosure of the mass of prescription dispensing records maintained in a pharmacy registered or

568 permitted in Virginia shall only be accomplished in compliance with §§ 54.1-3410, 54.1-3411, and

569 54.1-3412;

570 9. When the individual has waived his right to the privacy of the health records;

571 10. When examination and evaluation of an individual are undertaken pursuant to judicial or

572 administrative law order, but only to the extent as required by such order;

573 11. To the guardian ad litem and any attorney representing the respondent in the course of a guardianship

574 proceeding of an adult patient who is the respondent in a proceeding under Chapter 20 (§ 64.2-2000 et seq.)

575 of Title 64.2;

576 12. To the guardian ad litem and any attorney appointed by the court to represent an individual who is or

577 has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5 (§ 37.2-814

578 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, or a judicial

579 authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of Title 37.2;

580 13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et seq.) of

581 Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health authority or a

582 designee of a community services board or behavioral health authority, or a law-enforcement officer

583 participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1,

584 § 19.2-169.6, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of the proceeding, and to

585 any health care provider evaluating or providing services to the person who is the subject of the proceeding or

586 monitoring the person's adherence to a treatment plan ordered under those provisions. Health records

587 disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the

588 person, or the public from physical injury or to address the health care needs of the person. Information

589 disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or

590 retained;

591 14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or

592 administrative proceeding, if the court or administrative hearing officer has entered an order granting the

593 attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the health

594 care entity of such order;

595 15. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health records in

596 accord with § 9.1-156;

597 16. To an agent appointed under an individual's ~~power of attorney or to an agent or decision maker~~

598 ~~designated in an individual's advance health care directive for health care or for decisions on anatomical gifts~~

599 ~~and organ, tissue or eye donation or to any other person consistent with the provisions of prepared pursuant~~

600 ~~to the Uniform Health Care Decisions Act (§ 54.1-2981 54.1-2993.2 et seq.);~~

601 17. To third-party payors and their agents for purposes of reimbursement;

602 18. As is necessary to support an application for receipt of health care benefits from a governmental

603 agency or as required by an authorized governmental agency reviewing such application or reviewing

604 benefits already provided or as necessary to the coordination of prevention and control of disease, injury, or

605 disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

606 19. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership or

607 closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

608 20. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and immediate

609 threat to cause serious bodily injury or death of an identified or readily identifiable person;

610 21. Where necessary in connection with the implementation of a hospital's routine contact process for

611 organ donation pursuant to subdivision B 4 of § 32.1-127;

612 22. In the case of substance abuse records, when permitted by and in conformity with requirements of

613 federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;

614 23. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the

615 adequacy or quality of professional services or the competency and qualifications for professional staff

616 privileges;

617 24. If the health records are those of a deceased or mentally incapacitated individual to the personal
 618 representative or executor of the deceased individual or the legal guardian or committee of the incompetent or
 619 incapacitated individual or if there is no personal representative, executor, legal guardian or committee
 620 appointed, to the following persons in the following order of priority: a spouse, an adult son or daughter,
 621 either parent, an adult brother or sister, or any other relative of the deceased individual in order of blood
 622 relationship;

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

629 26. To the Office of the State Inspector General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title 2.2;

630 27. To an entity participating in the activities of a local health partnership authority established pursuant
 631 to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4, pursuant to subdivision 1;

632 28. To law-enforcement officials by each licensed emergency medical services agency, (i) when the
 633 individual is the victim of a crime or (ii) when the individual has been arrested and has received emergency
 634 medical services or has refused emergency medical services and the health records consist of the prehospital
 635 patient care report required by § 32.1-116.1;

636 29. To law-enforcement officials, in response to their request, for the purpose of identifying or locating a
 637 suspect, fugitive, person required to register pursuant to § 9.1-901 of the Sex Offender and Crimes Against
 638 Minors Registry Act, material witness, or missing person, provided that only the following information may
 639 be disclosed: (i) name and address of the person, (ii) date and place of birth of the person, (iii) social security
 640 number of the person, (iv) blood type of the person, (v) date and time of treatment received by the person,
 641 (vi) date and time of death of the person, where applicable, (vii) description of distinguishing physical
 642 characteristics of the person, and (viii) type of injury sustained by the person;

643 30. To law-enforcement officials regarding the death of an individual for the purpose of alerting law
 644 enforcement of the death if the health care entity has a suspicion that such death may have resulted from
 645 criminal conduct;

646 31. To law-enforcement officials if the health care entity believes in good faith that the information
 647 disclosed constitutes evidence of a crime that occurred on its premises;

648 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a person
 649 or persons who are subject to an order of quarantine or an order of isolation pursuant to Article 3.02
 650 (§ 32.1-48.05 et seq.) of Chapter 2;

651 33. To the Commissioner of the Department of Labor and Industry or his designee by each licensed
 652 emergency medical services agency when the records consist of the prehospital patient care report required
 653 by § 32.1-116.1 and the patient has suffered an injury or death on a work site while performing duties or tasks
 654 that are within the scope of his employment;

655 34. To notify a family member or personal representative of an individual who is the subject of a
 656 proceeding pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or Chapter 8 (§ 37.2-800 et
 657 seq.) of Title 37.2 of information that is directly relevant to such person's involvement with the individual's
 658 health care, which may include the individual's location and general condition, when the individual has the
 659 capacity to make health care decisions and (i) the individual has agreed to the notification, (ii) the individual
 660 has been provided an opportunity to object to the notification and does not express an objection, or (iii) the
 661 health care provider can, on the basis of his professional judgment, reasonably infer from the circumstances
 662 that the individual does not object to the notification. If the opportunity to agree or object to the notification
 663 cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the
 664 health care provider may notify a family member or personal representative of the individual of information
 665 that is directly relevant to such person's involvement with the individual's health care, which may include the
 666 individual's location and general condition if the health care provider, in the exercise of his professional
 667 judgment, determines that the notification is in the best interests of the individual. Such notification shall not
 668 be made if the provider has actual knowledge the family member or personal representative is currently
 669 prohibited by court order from contacting the individual;

670 35. To a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a public
 671 institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of higher
 672 education; and

673 36. To a regional emergency medical services council pursuant to § 32.1-116.1, for purposes limited to
 674 monitoring and improving the quality of emergency medical services pursuant to § 32.1-111.3.

675 Notwithstanding the provisions of subdivisions 1 through 35, a health care entity shall obtain an
 676 individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by the
 677 health care entity is (i) for its own training programs in which students, trainees, or practitioners in mental
 678 health are being taught under supervision to practice or to improve their skills in group, joint, family, or

679 individual counseling; (ii) to defend itself or its employees or staff against any accusation of wrongful
680 conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1, to take
681 precautions to protect third parties from violent behavior or other serious harm; (iv) required in the course of
682 an investigation, audit, review, or proceeding regarding a health care entity's conduct by a duly authorized
683 law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise required by law.

684 E. Health care records required to be disclosed pursuant to this section shall be made available
685 electronically only to the extent and in the manner authorized by the federal Health Information Technology
686 for Economic and Clinical Health Act (P.L. 111-5) and implementing regulations and the Health Insurance
687 Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and implementing regulations.
688 Notwithstanding any other provision to the contrary, a health care entity shall not be required to provide
689 records in an electronic format requested if (i) the electronic format is not reasonably available without
690 additional cost to the health care entity, (ii) the records would be subject to modification in the format
691 requested, or (iii) the health care entity determines that the integrity of the records could be compromised in
692 the electronic format requested. Requests for copies of or electronic access to health records shall (a) be in
693 writing, dated and signed by the requester; (b) identify the nature of the information requested; and (c)
694 include evidence of the authority of the requester to receive such copies or access such records, and
695 identification of the person to whom the information is to be disclosed; and (d) specify whether the requester
696 would like the records in electronic format, if available, or in paper format. The health care entity shall accept
697 a photocopy, facsimile, or other copy of the original signed by the requester as if it were an original. Within
698 30 days of receipt of a request for copies of or electronic access to health records, the health care entity shall
699 do one of the following: (1) furnish such copies of or allow electronic access to the requested health records
700 to any requester authorized to receive them in electronic format if so requested; (2) inform the requester if the
701 information does not exist or cannot be found; (3) if the health care entity does not maintain a record of the
702 information, so inform the requester and provide the name and address, if known, of the health care entity
703 who maintains the record; or (4) deny the request (A) under subsection F, (B) on the grounds that the
704 requester has not established his authority to receive such health records or proof of his identity, or (C) as
705 otherwise provided by law. Procedures set forth in this section shall apply only to requests for health records
706 not specifically governed by other provisions of state law.

707 F. Except as provided in subsection B of § 8.01-413, copies of or electronic access to an individual's
708 health records shall not be furnished to such individual or anyone authorized to act on the individual's behalf
709 when the individual's treating physician, clinical psychologist, clinical social worker, or licensed professional
710 counselor has made a part of the individual's record a written statement that, in the exercise of his
711 professional judgment, the furnishing to or review by the individual of such health records would be
712 reasonably likely to endanger the life or physical safety of the individual or another person, or that such
713 health record makes reference to a person other than a health care provider and the access requested would be
714 reasonably likely to cause substantial harm to such referenced person. If any health care entity denies a
715 request for copies of or electronic access to health records based on such statement, the health care entity
716 shall inform the individual of the individual's right to designate, in writing, at his own expense, another
717 reviewing physician, clinical psychologist, clinical social worker, or licensed professional counselor whose
718 licensure, training and experience relative to the individual's condition are at least equivalent to that of the
719 physician, clinical psychologist, clinical social worker, or licensed professional counselor upon whose
720 opinion the denial is based. The designated reviewing physician, clinical psychologist, clinical social worker,
721 or licensed professional counselor shall make a judgment as to whether to make the health record available to
722 the individual.

723 The health care entity denying the request shall also inform the individual of the individual's right to
724 request in writing that such health care entity designate, at its own expense, a physician, clinical psychologist,
725 clinical social worker, or licensed professional counselor, whose licensure, training, and experience relative
726 to the individual's condition are at least equivalent to that of the physician, clinical psychologist, clinical
727 social worker, or licensed professional counselor upon whose professional judgment the denial is based and
728 who did not participate in the original decision to deny the health records, who shall make a judgment as to
729 whether to make the health record available to the individual. The health care entity shall comply with the
730 judgment of the reviewing physician, clinical psychologist, clinical social worker, or licensed professional
731 counselor. The health care entity shall permit copying and examination of the health record by such other
732 physician, clinical psychologist, clinical social worker, or licensed professional counselor designated by
733 either the individual at his own expense or by the health care entity at its expense.

734 Any health record copied for review by any such designated physician, clinical psychologist, clinical
735 social worker, or licensed professional counselor shall be accompanied by a statement from the custodian of
736 the health record that the individual's treating physician, clinical psychologist, clinical social worker, or
737 licensed professional counselor determined that the individual's review of his health record would be
738 reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely to
739 cause substantial harm to a person referenced in the health record who is not a health care provider.

740 Further, nothing herein shall be construed as giving, or interpreted to bestow the right to receive copies of,

741 or otherwise obtain access to, psychotherapy notes to any individual or any person authorized to act on his
 742 behalf.

743 G. A written authorization to allow release of an individual's health records shall substantially include the
 744 following information:

745 **AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS**

746 Individual's Name _____

747 Health Care Entity's Name _____

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

750 Information or Health Records to be disclosed

751 Purpose of Disclosure or at the Request of the Individual

754 As the person signing this authorization, I understand that I am giving my permission to the above-named
 755 health care entity for disclosure of confidential health records. I understand that the health care entity may not
 756 condition treatment or payment on my willingness to sign this authorization unless the specific circumstances
 757 under which such conditioning is permitted by law are applicable and are set forth in this authorization. I also
 758 understand that I have the right to revoke this authorization at any time, but that my revocation is not
 759 effective until delivered in writing to the person who is in possession of my health records and is not effective
 760 as to health records already disclosed under this authorization. A copy of this authorization and a notation
 761 concerning the persons or agencies to whom disclosure was made shall be included with my original health
 762 records. I understand that health information disclosed under this authorization might be rediscovered by a
 763 recipient and may, as a result of such disclosure, no longer be protected to the same extent as such health
 764 information was protected by law while solely in the possession of the health care entity.

765 This authorization expires on (date) or (event) _____

766 Signature of Individual or Individual's Legal Representative if Individual is Unable to Sign

768 Relationship or Authority of Legal Representative

770 Date of Signature _____

771 H. Pursuant to this subsection:

772 1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or administrative
 773 action or proceeding shall request the issuance of a subpoena duces tecum for another party's health records
 774 or cause a subpoena duces tecum to be issued by an attorney unless a copy of the request for the subpoena or
 775 a copy of the attorney-issued subpoena is provided to the other party's counsel or to the other party if pro se,
 776 simultaneously with filing the request or issuance of the subpoena. No party to an action or proceeding shall
 777 request or cause the issuance of a subpoena duces tecum for the health records of a nonparty witness unless a
 778 copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the nonparty
 779 witness simultaneously with filing the request or issuance of the attorney-issued subpoena.

780 No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date of
 781 the subpoena except by order of a court or administrative agency for good cause shown. When a court or
 782 administrative agency directs that health records be disclosed pursuant to a subpoena duces tecum earlier than
 783 15 days from the date of the subpoena, a copy of the order shall accompany the subpoena.

784 Any party requesting a subpoena duces tecum for health records or on whose behalf the subpoena duces
 785 tecum is being issued shall have the duty to determine whether the individual whose health records are being
 786 sought is pro se or a nonparty.

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

792 **NOTICE TO INDIVIDUAL**

793 The attached document means that _____ (insert name of party requesting or causing issuance of the
 794 subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has been
 795 issued by the other party's attorney to your doctor, other health care providers _____ (names of health care
 796 providers inserted here) or other health care entity _____ (name of health care entity to be inserted here)
 797 requiring them to produce your health records. Your doctor, other health care provider or other health care
 798 entity is required to respond by providing a copy of your health records. If you believe your health records
 799 should not be disclosed and object to their disclosure, you have the right to file a motion with the clerk of the
 800 court or the administrative agency to quash the subpoena. If you elect to file a motion to quash, such motion
 801 must be filed within 15 days of the date of the request or of the attorney-issued subpoena. You may contact

802 the clerk's office or the administrative agency to determine the requirements that must be satisfied when filing
803 a motion to quash and you may elect to contact an attorney to represent your interest. If you elect to file a
804 motion to quash, you must notify your doctor, other health care provider(s), or other health care entity, that
805 you are filing the motion so that the health care provider or health care entity knows to send the health
806 records to the clerk of court or administrative agency in a sealed envelope or package for safekeeping while
807 your motion is decided.

808 2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued for an
809 individual's health records shall include a Notice in the same part of the request in which the recipient of the
810 subpoena duces tecum is directed where and when to return the health records. Such notice shall be in
811 boldface capital letters and shall include the following language:

812 NOTICE TO HEALTH CARE ENTITIES

813 A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL
814 WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT
815 INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED
816 SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION
817 WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.

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

821 NO MOTION TO QUASH WAS FILED; OR

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

824 IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE BEING
825 REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A MOTION
826 TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO THE CLERK
827 OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA OR IN WHICH
828 THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE FOLLOWING
829 PROCEDURE:

830 PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED
831 ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY
832 WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE
833 HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA. THE
834 SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER ENVELOPE
835 OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE AGENCY.

836 3. Upon receiving a valid subpoena duces tecum for health records, health care entities shall have the duty
837 to respond to the subpoena in accordance with the provisions of subdivisions 4, 5, 6, 7, and 8.

838 4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a sealed
839 envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such health records
840 until they have received a certification as set forth in subdivision 5 or 8 from the party on whose behalf the
841 subpoena duces tecum was issued.

842 If the health care entity has actual receipt of notice that a motion to quash the subpoena has been filed or if
843 the health care entity files a motion to quash the subpoena for health records, then the health care entity shall
844 produce the health records, in a securely sealed envelope, to the clerk of the court or administrative agency
845 issuing the subpoena or in whose court or administrative agency the action is pending. The court or
846 administrative agency shall place the health records under seal until a determination is made regarding the
847 motion to quash. The securely sealed envelope shall only be opened on order of the judge or administrative
848 agency. In the event the court or administrative agency grants the motion to quash, the health records shall be
849 returned to the health care entity in the same sealed envelope in which they were delivered to the court or
850 administrative agency. In the event that a judge or administrative agency orders the sealed envelope to be
851 opened to review the health records in camera, a copy of the order shall accompany any health records
852 returned to the health care entity. The health records returned to the health care entity shall be in a securely
853 sealed envelope.

854 5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued
855 subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the subpoenaed
856 health care entity that the time for filing a motion to quash has elapsed and that no motion to quash was filed.
857 Any health care entity receiving such certification shall have the duty to comply with the subpoena duces
858 tecum by returning the specified health records by either the return date on the subpoena or five days after
859 receipt of the certification, whichever is later.

860 6. In the event that the individual whose health records are being sought files a motion to quash the
861 subpoena, the court or administrative agency shall decide whether good cause has been shown by the
862 discovering party to compel disclosure of the individual's health records over the individual's objections. In

863 determining whether good cause has been shown, the court or administrative agency shall consider (i) the
 864 particular purpose for which the information was collected; (ii) the degree to which the disclosure of the
 865 records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the disclosure on
 866 the individual's future health care; (iv) the importance of the information to the lawsuit or proceeding; and (v)
 867 any other relevant factor.

868 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if subpoenaed
 869 health records have been submitted by a health care entity to the court or administrative agency in a sealed
 870 envelope, the court or administrative agency shall: (i) upon determining that no submitted health records
 871 should be disclosed, return all submitted health records to the health care entity in a sealed envelope; (ii) upon
 872 determining that all submitted health records should be disclosed, provide all the submitted health records to
 873 the party on whose behalf the subpoena was issued; or (iii) upon determining that only a portion of the
 874 submitted health records should be disclosed, provide such portion to the party on whose behalf the subpoena
 875 was issued and return the remaining health records to the health care entity in a sealed envelope.

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

879 a. All filed motions to quash have been resolved by the court or administrative agency and the disclosures
 880 sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the health records
 881 previously delivered in a sealed envelope to the clerk of the court or administrative agency will not be
 882 returned to the health care entity;

883 b. All filed motions to quash have been resolved by the court or administrative agency and the disclosures
 884 sought in the subpoena duces tecum are consistent with such resolution and that, since no health records have
 885 previously been delivered to the court or administrative agency by the health care entity, the health care entity
 886 shall comply with the subpoena duces tecum by returning the health records designated in the subpoena by
 887 the return date on the subpoena or five days after receipt of certification, whichever is later;

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

892 d. All filed motions to quash have been resolved by the court or administrative agency and the disclosures
 893 sought in the subpoena duces tecum are not consistent with such resolution and that only limited disclosure
 894 has been authorized. The certification shall state that only the portion of the health records as set forth in the
 895 certification, consistent with the court or administrative agency's ruling, shall be disclosed. The certification
 896 shall also state that health records that were previously delivered to the court or administrative agency for
 897 which disclosure has been authorized will not be returned to the health care entity; however, all health
 898 records for which disclosure has not been authorized will be returned to the health care entity; or

899 e. All filed motions to quash have been resolved by the court or administrative agency and the disclosures
 900 sought in the subpoena duces tecum are not consistent with such resolution and, since no health records have
 901 previously been delivered to the court or administrative agency by the health care entity, the health care entity
 902 shall return only those health records specified in the certification, consistent with the court or administrative
 903 agency's ruling, by the return date on the subpoena or five days after receipt of the certification, whichever is
 904 later.

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

907 9. The provisions of this subsection have no application to subpoenas for health records requested under
 908 § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation, audit, review or
 909 proceedings regarding a health care entity's conduct.

910 The provisions of this subsection shall apply to subpoenas for the health records of both minors and
 911 adults.

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

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

917 I. Health care entities may testify about the health records of an individual in compliance with
 918 §§ 8.01-399 and 8.01-400.2.

919 J. Except as provided by subsection B7 of § 8.01-413, if an individual requests a copy of his health record
 920 from a health care entity, the health care entity may impose a reasonable cost-based fee, which shall include
 921 only the cost of supplies for and labor of copying the requested information, postage when the individual
 922 requests that such information be mailed, and preparation of an explanation or summary of such information
 923 as agreed to by the individual. For the purposes of this section, "individual" shall subsume a person with
 924 authority to act on behalf of the individual who is the subject of the health record in making decisions related

925 to his health care.

926 K. Nothing in this section shall prohibit a health care provider who prescribes or dispenses a controlled
927 substance required to be reported to the Prescription Monitoring Program established pursuant to Chapter
928 25.2 (§ 54.1-2519 et seq.) of Title 54.1 to a patient from disclosing information obtained from the
929 Prescription Monitoring Program and contained in a patient's health care record to another health care
930 provider when such disclosure is related to the care or treatment of the patient who is the subject of the
931 record.

932 L. An authorization for the disclosure of health records executed pursuant to this section shall remain in
933 effect until (i) the authorization is revoked in writing and delivered to the health care entity maintaining the
934 record that is subject to the authorization by the person who executed the authorization, (ii) any expiration
935 date set forth in the authorization, or (iii) the health care entity maintaining the record becomes aware of any
936 expiration event described in the authorization, whichever occurs first. However, any revocation of an
937 authorization for the disclosure of health records executed pursuant to this section shall not be effective to the
938 extent that the health care entity maintaining the record has disclosed health records prior to delivery of such
939 revocation in reliance upon the authorization or as otherwise provided pursuant to 45 C.F.R. § 164.508. A
940 statement in an authorization for the disclosure of health records pursuant to this section that the information
941 to be used or disclosed is "all health records" is a sufficient description for the disclosure of all health records
942 of the person maintained by the health care provider to whom the authorization was granted. If a health care
943 provider receives a written revocation of an authorization for the disclosure of health records in accordance
944 with this subsection, a copy of such written revocation shall be included in the person's original health record
945 maintained by the health care provider.

946 An authorization for the disclosure of health records executed pursuant to this section shall, unless
947 otherwise expressly limited in the authorization, be deemed to include authorization for the person named in
948 the authorization to assist the person who is the subject of the health record in accessing health care services,
949 including scheduling appointments for the person who is the subject of the health record and attending
950 appointments together with the person who is the subject of the health record.

951 **§ 32.1-138.1. Implementation of transfer and discharge policies.**

952 A. To implement and conform with the provisions of subdivision A 4 of § 32.1-138, a facility may
953 discharge the patient, or transfer the patient, including transfer within the facility, only:

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

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

956 3. On account of nonpayment for his stay except as prohibited by Titles XVIII or XIX of the United States

957 Social Security Act and the Virginia State Plan for Medical Assistance Services; or

958 4. With the informed voluntary consent of the patient, or if incapable of providing consent, with the
959 informed voluntary consent of the patient's ~~authorized decision maker~~ agent or default surrogate pursuant to
960 § 54.1-2986 the Uniform Health Care Decisions Act (§ 54.1-2993.2 et seq.) acting in the best interest of the
961 patient, following reasonable advance written notice.

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

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

974 D. Nothing in this section or in subdivision A 4 of § 32.1-138 shall be construed to authorize or require
975 conditions upon a transfer within a facility that are more restrictive than Titles XVIII or XIX of the United
976 States Social Security Act or by regulations promulgated pursuant to either title.

977 **§ 32.1-162.16. Definitions.**

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

979 "Human research" means any systematic investigation, including research development, testing and
980 evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge.
981 Human research shall not be deemed to include research exempt from federal research regulation pursuant to
982 45 C.F.R. § 46.101(b).

983 "Informed consent" means the knowing and voluntary agreement, without undue inducement or any
984 element of force, fraud, deceit, duress, or other form of constraint or coercion, of a person who is capable of
985 exercising free power of choice. For the purposes of human research, the basic elements of information
986 necessary to such consent shall include:

987 1. A reasonable and comprehensible explanation to the person of the proposed procedures or protocols to
 988 be followed, their purposes, including descriptions of any attendant discomforts, and risks and benefits
 989 reasonably to be expected;

990 2. A disclosure of any appropriate alternative procedures or therapies that might be advantageous for the
 991 person;

992 3. An instruction that the person may withdraw his consent and discontinue participation in the human
 993 research at any time without prejudice to him;

994 4. An explanation of any costs or compensation which may accrue to the person and, if applicable, the
 995 availability of third party reimbursement for the proposed procedures or protocols; and

996 5. An offer to answer and answers to any inquiries by the person concerning the procedures and protocols.

997 "Institution" or "agency" means any facility, program, or organization owned or operated by the
 998 Commonwealth, by any political subdivision, or by any person, firm, corporation, association, or other legal
 999 entity.

1000 "Legally authorized representative" means, in the following specified order of priority, (i) the parent or
 1001 parents having custody of a prospective subject who is a minor, (ii) the agent appointed under an advance
 1002 *health care* directive, as defined in § 54.1-2982 54.1-2993.3, executed by the prospective subject, provided
 1003 the advance *health care* directive authorizes the agent to make decisions regarding the prospective subject's
 1004 participation in human research, (iii) the legal guardian of a prospective subject, (iv) the spouse of the
 1005 prospective subject, except where a suit for divorce has been filed and the divorce decree is not yet final, (v)
 1006 an adult child of the prospective subject, (vi) a parent of the prospective subject when the subject is an adult,
 1007 (vii) an adult brother or sister of the prospective subject or (viii) any person or judicial or other body
 1008 authorized by law or regulation to consent on behalf of a prospective subject to such subject's participation in
 1009 the particular human research. For the purposes of this chapter, any person authorized by law or regulation to
 1010 consent on behalf of a prospective subject to such subject's participation in the particular human research
 1011 shall include an attorney in fact appointed under a durable power of attorney, to the extent the power grants
 1012 the authority to make such a decision. The attorney in fact shall not be employed by the person, institution, or
 1013 agency conducting the human research. No official or employee of the institution or agency conducting or
 1014 authorizing the research shall be qualified to act as a legally authorized representative.

1015 "Minimal risk" means that the risks of harm anticipated in the proposed research are not greater,
 1016 considering probability and magnitude, than those ordinarily encountered in daily life or during the
 1017 performance of routine physical or psychological examinations or tests.

1018 "Nontherapeutic research" means human research in which there is no reasonable expectation of direct
 1019 benefit to the physical or mental condition of the human subject.

1020 **§ 32.1-162.18. Informed consent.**

1021 A. In order to conduct human research in this Commonwealth, informed consent must be obtained if the
 1022 person who is to be the human subject is as follows: (i) capable of making an informed decision, then it shall
 1023 be subscribed to in writing by the person and witnessed; (ii) ~~ineapable of making an informed~~ lacking
 1024 capacity pursuant to § 54.1-2993.5 to make a *health care* decision, as defined in § 54.1-2982 54.1-2993.3, at
 1025 the time consent is required, then it shall be subscribed to in writing by the person's legally authorized
 1026 representative and witnessed; or (iii) a minor otherwise capable of rendering informed consent, then it shall
 1027 be subscribed to in writing by both the minor and his legally authorized representative. The giving of consent
 1028 by a legally authorized representative shall be subject to the provisions of subsection B of this section. If two
 1029 or more persons who qualify as legally authorized representatives and have equal decision-making priority
 1030 under this chapter inform the principal investigator or attending physician that they disagree as to
 1031 participation of the prospective subject in human research, the subject shall not be enrolled in the human
 1032 research that is the subject of the consent. No informed consent form shall include any language through
 1033 which the person who is to be the human subject waives or appears to waive any of his legal rights, including
 1034 any release of any individual, institution, or agency or any agents thereof from liability for negligence.

1035 Notwithstanding consent by a legally authorized representative, no person shall be forced to participate in
 1036 any human research if the investigator conducting the human research knows that participation in the research
 1037 is protested by the prospective subject. In the case of persons suffering from neurodegenerative diseases
 1038 causing progressive deterioration of cognition for which there is no known cure, the implementation of
 1039 experimental courses of therapeutic treatment, including non-pharmacological treatment, to which a legally
 1040 authorized representative has given informed consent shall not constitute the use of force.

1041 B. A legally authorized representative may not consent to nontherapeutic research unless it is determined
 1042 by the human research committee that such nontherapeutic research will present no more than a minor
 1043 increase over minimal risk to the human subject. A legally authorized representative may not consent to
 1044 participation in human research on behalf of a prospective subject if the legally authorized representative
 1045 knows, or upon reasonable inquiry ought to know, that any aspect of the human research protocol is contrary
 1046 to the religious beliefs or basic values of the prospective subject, whether expressed orally or in writing. A
 1047 legally authorized representative may not consent to participation in human research involving
 1048 nontherapeutic sterilization, abortion, psychosurgery or admission for research purposes to a facility or

1049 hospital as defined in § 37.2-100.

1050 C. Except as provided elsewhere in this chapter, no investigator may involve a human being as a subject
1051 in research covered by this chapter unless the investigator has obtained the legally effective informed consent
1052 of the subject or the subject's legally authorized representative. An investigator shall seek such consent only
1053 under circumstances that provide the prospective subject or the legally authorized representative sufficient
1054 opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue
1055 influence.

1056 D. The human research review committee may approve a consent procedure which omits or alters some or
1057 all of the basic elements of informed consent, or waives the requirement to obtain informed consent, if the
1058 committee finds and documents that (i) the research involves no more than minimal risk to the subjects; (ii)
1059 the omission, alteration or waiver will not adversely affect the rights and welfare of the subjects; (iii) the
1060 research could not practicably be performed without the omission, alteration or waiver; and (iv) after
1061 participation, the subjects are to be provided with additional pertinent information, whenever appropriate.

1062 E. The human research review committee may waive the requirement that the investigator obtain written
1063 informed consent for some or all subjects, if the committee finds that the only record linking the subject and
1064 the research would be the consent document and the principal risk would be potential harm resulting from a
1065 breach of confidentiality. The committee may require the investigator to provide the subjects with a written
1066 statement explaining the research. Further, each subject shall be asked whether he wants documentation
1067 linking him to the research and the subject's wishes shall govern.

1068 § 32.1-291.21. Effect of anatomical gift on advance health care directive.

1069 A. ~~In~~ As used in this section:

1070 "Advance ~~health-care~~ health care directive" means an advance directive executed by a prospective donor
1071 has the same meaning as provided in the Health Care Decisions Act (§ 54.1-2981 et seq.) § 54.1-2993.3.

1072 "Declaration" means a record signed by a prospective donor specifying the circumstances under which a
1073 life support system may be withheld or withdrawn from the prospective donor.

1074 "Health care decision" means any decision regarding the health care of the prospective donor.

1075 B. If a prospective donor has a declaration or an advance ~~health-care~~ health care directive and the terms
1076 of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict
1077 with regard to the administration of measures necessary to ensure the medical suitability of a part for
1078 transplantation or therapy, the prospective donor's attending physician and the prospective donor shall confer
1079 to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under
1080 the prospective donor's declaration or directive, or, if there is no declaration or directive, or the agent is not
1081 reasonably available, another person authorized by law other than this Act, to make health care decisions on
1082 behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict shall be resolved
1083 as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the
1084 appropriate procurement organization and any other person authorized to make an anatomical gift for the
1085 prospective donor under § 32.1-291.9. Before resolution of the conflict, measures necessary to ensure the
1086 medical suitability of an organ for transplantation or therapy may not be withheld or withdrawn from the
1087 prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate
1088 end-of-life care.

1089 § 32.1-309.1. Identification of decedent, next of kin; disposition of claimed dead body.

1090 A. As used in this chapter, unless the context requires a different meaning:

1091 "Disposition" means the burial, interment, entombment, cremation, or other authorized disposition of a
1092 dead body permitted by law.

1093 "Next of kin" has the same meaning assigned to it in § 54.1-2800.

1094 B. In the absence of a next of kin, a person designated to make arrangements for disposition of the
1095 decedent's remains pursuant to § 54.1-2825, an agent named in an advance ~~health-care~~ health care directive pursuant to §
1096 54.1-2984 54.1-2993.13, or any guardian appointed pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2
1097 who may exercise the powers conferred in the order of appointment or by § 64.2-2019, or upon the failure or
1098 refusal of such next of kin, designated person, agent, or guardian to accept responsibility for the disposition
1099 of the decedent, then any other person 18 years of age or older who is able to provide positive identification
1100 of the deceased and is willing to pay for the costs associated with the disposition of the decedent's remains
1101 shall be authorized to make arrangements for such disposition of the decedent's remains. If a funeral service
1102 establishment or funeral service licensee makes arrangements with a person other than a next of kin,
1103 designated person, agent, or guardian in accordance with this section, then the funeral service licensee or
1104 funeral service establishment shall be immune from civil liability unless such act, decision, or omission
1105 resulted from bad faith or malicious intent.

1106 C. Upon the death of any person, irrespective of the cause and manner of death, and irrespective of
1107 whether a medical examiner's investigation is required pursuant to § 32.1-283 or 32.1-285.1, the person or
1108 institution having initial custody of the dead body shall make good faith efforts to determine the identity of
1109 the decedent, if unknown, and to identify and notify the next of kin of the decedent regarding the decedent's
1110 death. If, upon notification of the death of the decedent, the next of kin of the decedent or other person

1111 authorized by law to make arrangements for disposition of the decedent's remains is willing and able to claim
 1112 the body, the body may be claimed by the next of kin or other person authorized by law to make
 1113 arrangements for disposition of the decedent's remains for disposition, and the claimant shall bear the
 1114 expenses of such disposition. If the next of kin of the decedent or other person authorized by law to make
 1115 arrangements for disposition of the decedent's remains fails or refuses to claim the body within 10 days of
 1116 receiving notice of the death of the decedent, the body shall be disposed of in accordance with § 32.1-309.2.

1117 D. If the person or institution having initial custody of the dead body is unable to determine the identity of
 1118 the decedent or to identify and notify the next of kin of the decedent regarding the decedent's death, the
 1119 person or institution shall contact the primary law-enforcement agency for the locality in which the person or
 1120 institution is located, which shall make good faith efforts to determine the identity of the decedent and to
 1121 identify and notify the next of kin of the decedent. However, in cases in which the identity of the decedent
 1122 and the county or city in which the decedent resided at the time of death are known, the person or institution
 1123 having initial custody of the dead body shall notify the primary law-enforcement agency for the county or
 1124 city in which the decedent resided regarding the decedent's death, and the law-enforcement agency for the
 1125 county or city in which the decedent resided shall make good faith efforts to identify and notify the next of
 1126 kin of the decedent.

1127 If the identity of the decedent is known to the primary law-enforcement agency or the primary law-
 1128 enforcement agency is able to identify the decedent, the primary law-enforcement agency is able to identify
 1129 and notify the next of kin of the decedent or other person authorized by law to make arrangements for
 1130 disposition of the decedent's remains, and the next of kin of the decedent or other person authorized by law to
 1131 make arrangements for disposition of the decedent's remains is willing and able to claim the body, the body
 1132 may be claimed by the next of kin or other person authorized by law to make arrangements for disposition of
 1133 the decedent's remains for disposition, and the claimant shall bear the expenses of such disposition.

1134 If the identity of the decedent is known or the primary law-enforcement agency is able to determine the
 1135 identity of the decedent but the primary law-enforcement agency is unable, despite good faith efforts, to
 1136 identify and notify the decedent's next of kin or other person authorized by law to make arrangements for
 1137 disposition of the decedent's remains within 10 days of the date of contact by the person or institution having
 1138 initial custody of the dead body, or the primary law-enforcement agency is able to identify and notify the
 1139 decedent's next of kin or other person authorized by law to make arrangements for disposition of the
 1140 decedent's remains but the next of kin or other person authorized by law to make arrangements for disposition
 1141 of the decedent's remains fails or refuses to claim the body within 10 days, the primary law-enforcement
 1142 agency shall notify the person or institution having initial custody of the dead body, and the body shall be
 1143 disposed of in accordance with § 32.1-309.2.

1144 E. In cases in which a dead body is claimed by the decedent's next of kin or other person authorized by
 1145 law to make arrangements for disposition of the decedent's remains but the next of kin or other person
 1146 authorized by law to make arrangements for disposition of the decedent's remains is unable to pay the
 1147 reasonable costs of disposition of the body and the costs are paid by the county or city in which the decedent
 1148 resided or in which the death occurred in accordance with this section, and the decedent has an estate out of
 1149 which disposition expenses may be paid, in whole or in part, such assets shall be seized for such purpose.

1150 F. No dead body that is the subject of an investigation pursuant to § 32.1-283 or autopsy pursuant to
 1151 § 32.1-285 shall be transferred for purposes of disposition until such investigation or autopsy has been
 1152 completed.

1153 G. Any sheriff or primary law-enforcement officer, county, city, health care provider, funeral service
 1154 establishment, funeral service licensee, or other person or institution that acts in accordance with the
 1155 requirements of this chapter shall be immune from civil liability for any act, decision, or omission resulting
 1156 from acceptance and disposition of the dead body in accordance with this section, unless such act, decision,
 1157 or omission resulted from bad faith or malicious intent.

1158 H. Nothing in this section shall prevent a law-enforcement agency other than the primary law-
 1159 enforcement agency from performing the duties established by this section if so requested by the primary
 1160 law-enforcement agency and agreed to by the other law-enforcement agency.

**1161 § 32.1-325. Board to submit plan for medical assistance services to U.S. Secretary of Health and
 1162 Human Services pursuant to federal law; administration of plan; contracts with health care providers.**

1163 A. The Board, subject to the approval of the Governor, is authorized to prepare, amend from time to time,
 1164 and submit to the U.S. Secretary of Health and Human Services a state plan for medical assistance services
 1165 pursuant to Title XIX of the United States Social Security Act and any amendments thereto. The Board shall
 1166 include in such plan:

1167 1. A provision for payment of medical assistance on behalf of individuals, up to the age of 21, placed in
 1168 foster homes or private institutions by private, nonprofit agencies licensed as child-placing agencies by the
 1169 Department of Social Services or placed through state and local subsidized adoptions to the extent permitted
 1170 under federal statute;

1171 2. A provision for determining eligibility for benefits for medically needy individuals which disregards
 1172 from countable resources an amount not in excess of \$3,500 for the individual and an amount not in excess of

1173 \$3,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual
1174 or his spouse. The amount disregarded shall be reduced by (i) the face value of life insurance on the life of an
1175 individual owned by the individual or his spouse if the cash surrender value of such policies has been
1176 excluded from countable resources and (ii) the amount of any other revocable or irrevocable trust, contract, or
1177 other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial
1178 expenses;

1179 3. A requirement that, in determining eligibility, a home shall be disregarded. For those medically needy
1180 persons whose eligibility for medical assistance is required by federal law to be dependent on the budget
1181 methodology for Aid to Families with Dependent Children, a home means the house and lot used as the
1182 principal residence and all contiguous property. For all other persons, a home shall mean the house and lot
1183 used as the principal residence, as well as all contiguous property, as long as the value of the land, exclusive
1184 of the lot occupied by the house, does not exceed \$5,000. In any case in which the definition of home as
1185 provided here is more restrictive than that provided in the state plan for medical assistance services in
1186 Virginia as it was in effect on January 1, 1972, then a home means the house and lot used as the principal
1187 residence and all contiguous property essential to the operation of the home regardless of value;

1188 4. A provision for payment of medical assistance on behalf of individuals up to the age of 21, who are
1189 Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission;

1190 5. A provision for deducting from an institutionalized recipient's income an amount for the maintenance
1191 of the individual's spouse at home;

1192 6. A provision for payment of medical assistance on behalf of pregnant women which provides for
1193 payment for inpatient postpartum treatment in accordance with the medical criteria outlined in the most
1194 current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American
1195 Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards for
1196 Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and Gynecologists.
1197 Payment shall be made for any postpartum home visit or visits for the mothers and the children which are
1198 within the time periods recommended by the attending physicians in accordance with and as indicated by
1199 such Guidelines or Standards. For the purposes of this subdivision, such Guidelines or Standards shall include
1200 any changes thereto within six months of the publication of such Guidelines or Standards or any official
1201 amendment thereto;

1202 7. A provision for the payment for family planning services on behalf of women who were Medicaid-
1203 eligible for prenatal care and delivery as provided in this section at the time of delivery. Such family planning
1204 services shall begin with delivery and continue for a period of 24 months, if the woman continues to meet the
1205 financial eligibility requirements for a pregnant woman under Medicaid. For the purposes of this section,
1206 family planning services shall not cover payment for abortion services and no funds shall be used to perform,
1207 assist, encourage or make direct referrals for abortions;

1208 8. A provision for payment of medical assistance for high-dose chemotherapy and bone marrow
1209 transplants on behalf of individuals over the age of 21 who have been diagnosed with lymphoma, breast
1210 cancer, myeloma, or leukemia and have been determined by the treating health care provider to have a
1211 performance status sufficient to proceed with such high-dose chemotherapy and bone marrow transplant.
1212 Appeals of these cases shall be handled in accordance with the Department's expedited appeals process;

1213 9. A provision identifying entities approved by the Board to receive applications and to determine
1214 eligibility for medical assistance, which shall include a requirement that such entities (i) obtain accurate
1215 contact information, including the best available address and telephone number, from each applicant for
1216 medical assistance, to the extent required by federal law and regulations, and (ii) provide each applicant for
1217 medical assistance with information about advance *health care* directives pursuant to Article 8 of the Uniform
1218 *Health Care Decisions Act* (§ 54.1-2981.54.1-2993.2 et seq.) of Chapter 29 of Title 54.1, including
1219 information about the purpose and benefits of advance *health care* directives and how the applicant may
1220 make an advance *health care* directive;

1221 10. A provision for breast reconstructive surgery following the medically necessary removal of a breast
1222 for any medical reason. Breast reductions shall be covered, if prior authorization has been obtained, for all
1223 medically necessary indications. Such procedures shall be considered noncosmetic;

1224 11. A provision for payment of medical assistance for annual pap smears;

1225 12. A provision for payment of medical assistance services for prostheses following the medically
1226 necessary complete or partial removal of a breast for any medical reason;

1227 13. A provision for payment of medical assistance which provides for payment for 48 hours of inpatient
1228 treatment for a patient following a radical or modified radical mastectomy and 24 hours of inpatient care
1229 following a total mastectomy or a partial mastectomy with lymph node dissection for treatment of disease or
1230 trauma of the breast. Nothing in this subdivision shall be construed as requiring the provision of inpatient
1231 coverage where the attending physician in consultation with the patient determines that a shorter period of
1232 hospital stay is appropriate;

1233 14. A requirement that certificates of medical necessity for durable medical equipment and any supporting
1234 verifiable documentation shall be signed, dated, and returned by the physician, physician assistant, or

1235 advanced practice registered nurse and in the durable medical equipment provider's possession within 60 days
 1236 from the time the ordered durable medical equipment and supplies are first furnished by the durable medical
 1237 equipment provider;

1238 15. A provision for payment of medical assistance to (i) persons age 50 and over and (ii) persons age 40
 1239 and over who are at high risk for prostate cancer, according to the most recent published guidelines of the
 1240 American Cancer Society, for prostate cancer screening, which includes one prostate-specific antigen test in a
 1241 12-month period and digital rectal examinations;

1242 16. A provision for payment of medical assistance for low-dose screening mammograms for determining
 1243 the presence of occult breast cancer. Such coverage shall make available one screening mammogram to
 1244 persons age 35 through 39, one such mammogram biennially to persons age 40 through 49, and one such
 1245 mammogram annually to persons age 50 and over. The term "mammogram" means an X-ray examination of
 1246 the breast using equipment dedicated specifically for mammography, including but not limited to the X-ray
 1247 tube, filter, compression device, screens, film and cassettes, with an average radiation exposure of less than
 1248 one rad mid-breast, two views of each breast;

1249 17. A provision, when in compliance with federal law and regulation and approved by the Centers for
 1250 Medicare & Medicaid Services (CMS), for payment of medical assistance services delivered to
 1251 Medicaid-eligible students when such services qualify for reimbursement by the Virginia Medicaid program
 1252 and may be provided by school divisions, regardless of whether the student receiving care has an
 1253 individualized education program or whether the health care service is included in a student's individualized
 1254 education program. Such services shall include those covered under the state plan for medical assistance
 1255 services or by the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit as specified in §
 1256 1905(r) of the federal Social Security Act, and shall include a provision for payment of medical assistance for
 1257 health care services provided through telemedicine services, as defined in § 38.2-3418.16. No health care
 1258 provider who provides health care services through telemedicine shall be required to use proprietary
 1259 technology or applications in order to be reimbursed for providing telemedicine services;

1260 18. A provision for payment of medical assistance services for liver, heart and lung transplantation
 1261 procedures for individuals over the age of 21 years when (i) there is no effective alternative medical or
 1262 surgical therapy available with outcomes that are at least comparable; (ii) the transplant procedure and
 1263 application of the procedure in treatment of the specific condition have been clearly demonstrated to be
 1264 medically effective and not experimental or investigational; (iii) prior authorization by the Department of
 1265 Medical Assistance Services has been obtained; (iv) the patient selection criteria of the specific transplant
 1266 center where the surgery is proposed to be performed have been used by the transplant team or program to
 1267 determine the appropriateness of the patient for the procedure; (v) current medical therapy has failed and the
 1268 patient has failed to respond to appropriate therapeutic management; (vi) the patient is not in an irreversible
 1269 terminal state; and (vii) the transplant is likely to prolong the patient's life and restore a range of physical and
 1270 social functioning in the activities of daily living;

1271 19. A provision for payment of medical assistance for colorectal cancer screening, specifically screening
 1272 with an annual fecal occult blood test, flexible sigmoidoscopy or colonoscopy, or in appropriate
 1273 circumstances radiologic imaging, in accordance with the most recently published recommendations
 1274 established by the American College of Gastroenterology, in consultation with the American Cancer Society,
 1275 for the ages, family histories, and frequencies referenced in such recommendations;

1276 20. A provision for payment of medical assistance for custom ocular prostheses;

1277 21. A provision for payment for medical assistance for infant hearing screenings and all necessary
 1278 audiological examinations provided pursuant to § 32.1-64.1 using any technology approved by the United
 1279 States Food and Drug Administration, and as recommended by the national Joint Committee on Infant
 1280 Hearing in its most current position statement addressing early hearing detection and intervention programs.
 1281 Such provision shall include payment for medical assistance for follow-up audiological examinations as
 1282 recommended by a physician, physician assistant, advanced practice registered nurse, or audiologist and
 1283 performed by a licensed audiologist to confirm the existence or absence of hearing loss;

1284 22. A provision for payment of medical assistance, pursuant to the Breast and Cervical Cancer Prevention
 1285 and Treatment Act of 2000 (P.L. 106-354), for certain women with breast or cervical cancer when such
 1286 women (i) have been screened for breast or cervical cancer under the Centers for Disease Control and
 1287 Prevention (CDC) Breast and Cervical Cancer Early Detection Program established under Title XV of the
 1288 Public Health Service Act; (ii) need treatment for breast or cervical cancer, including treatment for a
 1289 precancerous condition of the breast or cervix; (iii) are not otherwise covered under creditable coverage, as
 1290 defined in § 2701 (c) of the Public Health Service Act; (iv) are not otherwise eligible for medical assistance
 1291 services under any mandatory categorically needy eligibility group; and (v) have not attained age 65. This
 1292 provision shall include an expedited eligibility determination for such women;

1293 23. A provision for the coordinated administration, including outreach, enrollment, re-enrollment and
 1294 services delivery, of medical assistance services provided to medically indigent children pursuant to this
 1295 chapter, which shall be called Family Access to Medical Insurance Security (FAMIS) Plus and the FAMIS
 1296 Plan program in § 32.1-351. A single application form shall be used to determine eligibility for both

1297 programs;

1298 24. A provision, when authorized by and in compliance with federal law, to establish a public-private
1299 long-term care partnership program between the Commonwealth of Virginia and private insurance companies
1300 that shall be established through the filing of an amendment to the state plan for medical assistance services
1301 by the Department of Medical Assistance Services. The purpose of the program shall be to reduce Medicaid
1302 costs for long-term care by delaying or eliminating dependence on Medicaid for such services through
1303 encouraging the purchase of private long-term care insurance policies that have been designated as qualified
1304 state long-term care insurance partnerships and may be used as the first source of benefits for the participant's
1305 long-term care. Components of the program, including the treatment of assets for Medicaid eligibility and
1306 estate recovery, shall be structured in accordance with federal law and applicable federal guidelines;

1307 25. A provision for the payment of medical assistance for otherwise eligible pregnant women during the
1308 first five years of lawful residence in the United States, pursuant to § 214 of the Children's Health Insurance
1309 Program Reauthorization Act of 2009 (P.L. 111-3);

1310 26. A provision for the payment of medical assistance for medically necessary health care services
1311 provided through telemedicine services, as defined in § 38.2-3418.16, regardless of the originating site or
1312 whether the patient is accompanied by a health care provider at the time such services are provided. No health
1313 care provider who provides health care services through telemedicine services shall be required to use
1314 proprietary technology or applications in order to be reimbursed for providing telemedicine services.

1315 For the purposes of this subdivision, a health care provider duly licensed by the Commonwealth who
1316 provides health care services exclusively through telemedicine services shall not be required to maintain a
1317 physical presence in the Commonwealth to be considered an eligible provider for enrollment as a Medicaid
1318 provider.

1319 For the purposes of this subdivision, a telemedicine services provider group with health care providers
1320 duly licensed by the Commonwealth shall not be required to have an in-state service address to be eligible to
1321 enroll as a Medicaid vendor or Medicaid provider group.

1322 For the purposes of this subdivision, "originating site" means any location where the patient is located,
1323 including any medical care facility or office of a health care provider, the home of the patient, the patient's
1324 place of employment, or any public or private primary or secondary school or postsecondary institution of
1325 higher education at which the person to whom telemedicine services are provided is located;

1326 27. A provision for the payment of medical assistance for the dispensing or furnishing of up to a 12-month
1327 supply of hormonal contraceptives at one time. Absent clinical contraindications, the Department shall not
1328 impose any utilization controls or other forms of medical management limiting the supply of hormonal
1329 contraceptives that may be dispensed or furnished to an amount less than a 12-month supply. Nothing in this
1330 subdivision shall be construed to (i) require a provider to prescribe, dispense, or furnish a 12-month supply of
1331 self-administered hormonal contraceptives at one time or (ii) exclude coverage for hormonal contraceptives
1332 as prescribed by a prescriber, acting within his scope of practice, for reasons other than contraceptive
1333 purposes. As used in this subdivision, "hormonal contraceptive" means a medication taken to prevent
1334 pregnancy by means of ingestion of hormones, including medications containing estrogen or progesterone,
1335 that is self-administered, requires a prescription, and is approved by the U.S. Food and Drug Administration
1336 for such purpose;

1337 28. A provision for payment of medical assistance for remote patient monitoring services provided via
1338 telemedicine, as defined in § 38.2-3418.16, for (i) high-risk pregnant persons; (ii) medically complex infants
1339 and children; (iii) transplant patients; (iv) patients who have undergone surgery, for up to three months
1340 following the date of such surgery; and (v) patients with a chronic or acute health condition who have had
1341 two or more hospitalizations or emergency department visits related to such health condition in the previous
1342 12 months when there is evidence that the use of remote patient monitoring is likely to prevent readmission
1343 of such patient to a hospital or emergency department. For the purposes of this subdivision, "remote patient
1344 monitoring services" means the use of digital technologies to collect medical and other forms of health data
1345 from patients in one location and electronically transmit that information securely to health care providers in
1346 a different location for analysis, interpretation, and recommendations, and management of the patient.
1347 "Remote patient monitoring services" includes monitoring of clinical patient data such as weight, blood
1348 pressure, pulse, pulse oximetry, blood glucose, and other patient physiological data, treatment adherence
1349 monitoring, and interactive videoconferencing with or without digital image upload;

1350 29. A provision for the payment of medical assistance for provider-to-provider consultations that is no
1351 more restrictive than, and is at least equal in amount, duration, and scope to, that available through the fee-
1352 for-service program;

1353 30. A provision for payment of the originating site fee to emergency medical services agencies for
1354 facilitating synchronous telehealth visits with a distant site provider delivered to a Medicaid member. As used
1355 in this subdivision, "originating site" means any location where the patient is located, including any medical
1356 care facility or office of a health care provider, the home of the patient, the patient's place of employment, or
1357 any public or private primary or secondary school or postsecondary institution of higher education at which
1358 the person to whom telemedicine services are provided is located;

1359 31. A provision for the payment of medical assistance for targeted case management services for
 1360 individuals with severe traumatic brain injury;

1361 32. A provision for payment of medical assistance for the initial purchase or replacement of complex
 1362 rehabilitative technology manual and power wheelchair bases and related accessories, as defined by the
 1363 Department's durable medical equipment program policy, for patients who reside in nursing facilities. Initial
 1364 purchase or replacement may be contingent upon (i) determination of medical necessity; (ii) requirements in
 1365 accordance with regulations established through the Department's durable medical equipment program
 1366 policy; and (iii) exclusive use by the nursing facility resident. Recipients of medical assistance shall not be
 1367 required to pay any deductible, coinsurance, copayment, or patient costs related to the initial purchase or
 1368 replacement of complex rehabilitative technology manual and power wheelchair bases and related
 1369 accessories;

1370 33. A provision for payment of medical assistance for remote ultrasound procedures and remote fetal non-
 1371 stress tests. Such provision shall utilize established CPT codes for these procedures and shall apply when the
 1372 patient is in a residence or other off-site location from the patient's provider that provides the same standard
 1373 of care. The provision shall provide for reimbursement only when a provider uses digital technology (i) to
 1374 collect medical and other forms of health data from a patient and electronically transmit that information
 1375 securely to a health care provider in a different location for interpretation and recommendation; (ii) that is
 1376 compliant with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et
 1377 seq.); and (iii) that is approved by the U.S. Food and Drug Administration. For fetal non-stress tests under
 1378 CPT Code 59025, the provision shall provide for reimbursement only if such test (a) is conducted with a
 1379 place of service modifier for at-home monitoring and (b) uses remote monitoring solutions that are approved
 1380 by the U.S. Food and Drug Administration for on-label use to monitor fetal heart rate, maternal heart rate,
 1381 and uterine activity;

1382 34. A provision for payment of medical assistance for the prophylaxis, diagnosis, and treatment of
 1383 pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections and pediatric acute-
 1384 onset neuropsychiatric syndrome. Such provision shall include payment for treatment using antimicrobials,
 1385 medication, and behavioral therapies to manage neuropsychiatric symptoms, immunomodulating medicines,
 1386 plasma exchange, and intravenous immunoglobulin therapy. For the purposes of this subdivision:

1387 "Pediatric acute-onset neuropsychiatric syndrome" or "PANS" means a clinically defined disorder
 1388 characterized by the sudden onset of obsessive-compulsive symptoms (OCD) or eating restrictions,
 1389 concomitant with acute behavioral deterioration in at least two designated domains. Comorbid PANS
 1390 symptoms may include anxiety, sensory amplification or motor abnormalities, behavioral regression,
 1391 deterioration in school performance, mood disorder, urinary symptoms, or sleep disturbances. PANS does not
 1392 require a known trigger, although it is believed to be triggered by one or more pathogens.

1393 "Pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections" or
 1394 "PANDAS" means a subset of PANS that has five distinct criteria for diagnosis, including (i) abrupt
 1395 "overnight" OCD or dramatic, disabling tics; (ii) a relapsing-remitting, episodic symptom course; (iii) young
 1396 age at onset; (iv) presence of neurologic abnormalities; and (v) temporal association between symptom onset
 1397 and Group A streptococcal infection. The five criteria of PANDAS are usually accompanied by similar
 1398 comorbid symptoms as found in PANS;

1399 35. A provision for payment of medical assistance for rapid whole genome sequencing for children three
 1400 years of age or younger who are receiving inpatient hospital services in an intensive care unit. For the
 1401 purposes of this subdivision, "rapid whole genome sequencing" is defined as an investigation of the entire
 1402 human genome to identify disease-causing genetic changes that returns preliminary positive results within
 1403 seven days and final results within 15 days from the date of receipt of the sample by the lab performing the
 1404 test. "Rapid whole genome sequencing" includes patient-only whole genome sequencing and duo and trio
 1405 whole genome sequencing of the patient and biological parent or parents;

1406 36. A provision for payment of medical assistance for comprehensive dental care services for pregnant
 1407 women. Such services shall include (i) preventive services, such as cleanings, oral exams, and x-rays; (ii)
 1408 diagnostic services, including periodontal assessments and consultations; (iii) restorative procedures,
 1409 including fillings, root canals, and crowns; (iv) emergency dental care to address acute pain and infection; (v)
 1410 periodontal treatment for gum disease, including deep cleanings; and (vi) any other dental services deemed
 1411 medically necessary by the Department in consultation with dentists, other dental professionals, and public
 1412 health experts. Such provision shall provide for at least four dental visits during pregnancy, with additional
 1413 visits permitted upon recommendation from a licensed dentist or obstetrician. The Department of Medical
 1414 Assistance Services shall report annually to the Governor and the General Assembly on the implementation
 1415 and outcomes of this act. The report shall include (i) the number of pregnant women who utilized expanded
 1416 dental services; (ii) analysis of the impact of the expanded dental services on maternal and infant health
 1417 outcomes; (iii) any barriers to access or service delivery; and (iv) recommendations for further improvement;
 1418 and

1419 37. A provision for payment of medical assistance for postpartum doula care. Postpartum doula care

1420 covered under such provision shall include (i) emotional and physical support for the birthing individual and
1421 family during the postpartum period; (ii) assistance with infant care, breastfeeding, and safe sleeping
1422 practices; (iii) education on postpartum mental health and referrals to mental health resources as needed; (iv)
1423 guidance on physical recovery, nutrition, and self-care for the birthing individual; (v) connection to
1424 community resources and social support systems; and (vi) culturally appropriate and individualized care
1425 tailored to the birthing individual's needs. Such provision shall ensure that eligible individuals receive
1426 payment of medical assistance services for up to 10 doula visits, with up to four doula visits during pregnancy
1427 and up to six doula visits during the 12 months after the individual gives birth, with additional visits
1428 permitted if such visits are deemed medically necessary. The Department of Medical Assistance Services
1429 shall report annually to the Governor and the General Assembly on the implementation and outcomes of this
1430 act. The report shall include (i) the number of postpartum individuals who utilized doula care services; (ii)
1431 analysis of the impact of doula care services on maternal and infant health outcomes; (iii) feedback from
1432 birthing individuals, families, and doula service providers; and (iv) recommendations for improvement or
1433 expansion.

1434 B. In preparing the plan, the Board shall:

1435 1. Work cooperatively with the State Board of Health to ensure that quality patient care is provided and
1436 that the health, safety, security, rights and welfare of patients are ensured.

1437 2. Initiate such cost containment or other measures as are set forth in the appropriation act.

1438 3. Make, adopt, promulgate and enforce such regulations as may be necessary to carry out the provisions
1439 of this chapter.

1440 4. Examine, before acting on a regulation to be published in the Virginia Register of Regulations pursuant
1441 to § 2.2-4007.05, the potential fiscal impact of such regulation on local boards of social services. For
1442 regulations with potential fiscal impact, the Board shall share copies of the fiscal impact analysis with local
1443 boards of social services prior to submission to the Registrar. The fiscal impact analysis shall include the
1444 projected costs/savings to the local boards of social services to implement or comply with such regulation
1445 and, where applicable, sources of potential funds to implement or comply with such regulation.

1446 5. Incorporate sanctions and remedies for certified nursing facilities established by state law, in
1447 accordance with 42 C.F.R. § 488.400 et seq., Enforcement of Compliance for Long-Term Care Facilities
1448 With Deficiencies.

1449 6. On and after July 1, 2002, require that a prescription benefit card, health insurance benefit card, or other
1450 technology that complies with the requirements set forth in § 38.2-3407.4:2 be issued to each recipient of
1451 medical assistance services, and shall upon any changes in the required data elements set forth in subsection
1452 A of § 38.2-3407.4:2, either reissue the card or provide recipients such corrective information as may be
1453 required to electronically process a prescription claim.

1454 C. In order to enable the Commonwealth to continue to receive federal grants or reimbursement for
1455 medical assistance or related services, the Board, subject to the approval of the Governor, may adopt,
1456 regardless of any other provision of this chapter, such amendments to the state plan for medical assistance
1457 services as may be necessary to conform such plan with amendments to the United States Social Security Act
1458 or other relevant federal law and their implementing regulations or constructions of these laws and
1459 regulations by courts of competent jurisdiction or the United States Secretary of Health and Human Services.

1460 In the event conforming amendments to the state plan for medical assistance services are adopted, the
1461 Board shall not be required to comply with the requirements of Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of
1462 Title 2.2. However, the Board shall, pursuant to the requirements of § 2.2-4002, (i) notify the Registrar of
1463 Regulations that such amendment is necessary to meet the requirements of federal law or regulations or
1464 because of the order of any state or federal court, or (ii) certify to the Governor that the regulations are
1465 necessitated by an emergency situation. Any such amendments that are in conflict with the Code of Virginia
1466 shall only remain in effect until July 1 following adjournment of the next regular session of the General
1467 Assembly unless enacted into law.

1468 D. The Director of Medical Assistance Services is authorized to:

1469 1. Administer such state plan and receive and expend federal funds therefor in accordance with applicable
1470 federal and state laws and regulations; and enter into all contracts necessary or incidental to the performance
1471 of the Department's duties and the execution of its powers as provided by law.

1472 2. Enter into agreements and contracts with medical care facilities, physicians, dentists and other health
1473 care providers where necessary to carry out the provisions of such state plan. Any such agreement or contract
1474 shall terminate upon conviction of the provider of a felony. In the event such conviction is reversed upon
1475 appeal, the provider may apply to the Director of Medical Assistance Services for a new agreement or
1476 contract. Such provider may also apply to the Director for reconsideration of the agreement or contract
1477 termination if the conviction is not appealed, or if it is not reversed upon appeal.

1478 3. Refuse to enter into or renew an agreement or contract, or elect to terminate an existing agreement or
1479 contract, with any provider who has been convicted of or otherwise pled guilty to a felony, or pursuant to
1480 Subparts A, B, and C of 42 C.F.R. Part 1002, and upon notice of such action to the provider as required by 42
1481 C.F.R. § 1002.212.

1482 4. Refuse to enter into or renew an agreement or contract, or elect to terminate an existing agreement or
 1483 contract, with a provider who is or has been a principal in a professional or other corporation when such
 1484 corporation has been convicted of or otherwise pled guilty to any violation of § 32.1-314, 32.1-315, 32.1-316,
 1485 or 32.1-317, or any other felony or has been excluded from participation in any federal program pursuant to
 1486 42 C.F.R. Part 1002.

1487 5. Terminate or suspend a provider agreement with a home care organization pursuant to subsection E of
 1488 § 32.1-162.13.

1489 For the purposes of this subsection, "provider" may refer to an individual or an entity.

1490 E. In any case in which a Medicaid agreement or contract is terminated or denied to a provider pursuant to
 1491 subsection D, the provider shall be entitled to appeal the decision pursuant to 42 C.F.R. § 1002.213 and to a
 1492 post-determination or post-denial hearing in accordance with the Administrative Process Act (§ 2.2-4000 et
 1493 seq.). All such requests shall be in writing and be received within 15 days of the date of receipt of the notice.

1494 The Director may consider aggravating and mitigating factors including the nature and extent of any
 1495 adverse impact the agreement or contract denial or termination may have on the medical care provided to
 1496 Virginia Medicaid recipients. In cases in which an agreement or contract is terminated pursuant to subsection
 1497 D, the Director may determine the period of exclusion and may consider aggravating and mitigating factors to
 1498 lengthen or shorten the period of exclusion, and may reinstate the provider pursuant to 42 C.F.R. § 1002.215.

1499 F. When the services provided for by such plan are services which a marriage and family therapist,
 1500 clinical psychologist, clinical social worker, professional counselor, or clinical nurse specialist is licensed to
 1501 render in Virginia, the Director shall contract with any duly licensed marriage and family therapist, duly
 1502 licensed clinical psychologist, licensed clinical social worker, licensed professional counselor or licensed
 1503 clinical nurse specialist who makes application to be a provider of such services, and thereafter shall pay for
 1504 covered services as provided in the state plan. The Board shall promulgate regulations which reimburse
 1505 licensed marriage and family therapists, licensed clinical psychologists, licensed clinical social workers,
 1506 licensed professional counselors and licensed clinical nurse specialists at rates based upon reasonable criteria,
 1507 including the professional credentials required for licensure.

1508 G. The Board shall prepare and submit to the Secretary of the United States Department of Health and
 1509 Human Services such amendments to the state plan for medical assistance services as may be permitted by
 1510 federal law to establish a program of family assistance whereby children over the age of 18 years shall make
 1511 reasonable contributions, as determined by regulations of the Board, toward the cost of providing medical
 1512 assistance under the plan to their parents.

1513 H. The Department of Medical Assistance Services shall:

1514 1. Include in its provider networks and all of its health maintenance organization contracts a provision for
 1515 the payment of medical assistance on behalf of individuals up to the age of 21 who have special needs and
 1516 who are Medicaid eligible, including individuals who have been victims of child abuse and neglect, for
 1517 medically necessary assessment and treatment services, when such services are delivered by a provider which
 1518 specializes solely in the diagnosis and treatment of child abuse and neglect, or a provider with comparable
 1519 expertise, as determined by the Director.

1520 2. Amend the Medallion II waiver and its implementing regulations to develop and implement an
 1521 exception, with procedural requirements, to mandatory enrollment for certain children between birth and age
 1522 three certified by the Department of Behavioral Health and Developmental Services as eligible for services
 1523 pursuant to Part C of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.).

1524 3. Utilize, to the extent practicable, electronic funds transfer technology for reimbursement to contractors
 1525 and enrolled providers for the provision of health care services under Medicaid and the Family Access to
 1526 Medical Insurance Security Plan established under § 32.1-351.

1527 I. The Director is authorized to negotiate and enter into agreements for services rendered to eligible
 1528 recipients with special needs. The Board shall promulgate regulations regarding these special needs patients,
 1529 to include persons with AIDS, ventilator-dependent patients, and other recipients with special needs as
 1530 defined by the Board.

1531 J. Except as provided in subdivision A 1 of § 2.2-4345, the provisions of the Virginia Public Procurement
 1532 Act (§ 2.2-4300 et seq.) shall not apply to the activities of the Director authorized by subsection I of this
 1533 section. Agreements made pursuant to this subsection shall comply with federal law and regulation.

1534 K. When the services provided for by such plan are services by a pharmacist, pharmacy technician, or
 1535 pharmacy intern (i) performed under the terms of a collaborative agreement as defined in § 54.1-3300 and
 1536 consistent with the terms of a managed care contractor provider contract or the state plan or (ii) related to
 1537 services and treatment in accordance with § 54.1-3303.1, the Department shall provide reimbursement for
 1538 such service.

1539 **§ 37.2-804.2. (Effective until July 1, 2026) Disclosure of records.**

1540 Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is
 1541 currently providing services to a person who is the subject of proceedings pursuant to this chapter shall, upon
 1542 request, disclose to a magistrate, the court, the person's attorney, the person's guardian ad litem, the examiner
 1543 identified to perform an examination pursuant to § 37.2-815, the community services board or its designee or

1544 a certified evaluator, as defined in § 37.2-809, performing any evaluation, preadmission screening, or
1545 monitoring duties pursuant to this chapter, or a law-enforcement officer any information that is necessary and
1546 appropriate for the performance of his duties pursuant to this chapter. Any health care provider, as defined in
1547 § 32.1-127.1:03, or other provider who has provided or is currently evaluating or providing services to a
1548 person who is the subject of proceedings pursuant to this chapter shall disclose information that may be
1549 necessary for the treatment of such person to any other health care provider or other provider evaluating or
1550 providing services to or monitoring the treatment of the person. Health records disclosed to a
1551 law-enforcement officer shall be limited to information necessary to protect the officer, the person, or the
1552 public from physical injury or to address the health care needs of the person. Information disclosed to a
1553 law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

1554 Any health care provider providing services to a person who is the subject of proceedings under this
1555 chapter shall (i) inform the person that his family member or personal representative, including any agent
1556 named in an advance *health care* directive executed in accordance with the *Uniform Health Care Decisions*
1557 Act (~~§ 54.1-2984~~ 54.1-2993.2 et seq.), will be notified of information that is directly relevant to such
1558 individual's involvement with the person's health care, which may include the person's location and general
1559 condition, in accordance with subdivision D 34 of § 32.1-127.1:03, and (ii) make a reasonable effort to so
1560 notify the person's family member or personal representative, unless the provider has actual knowledge that
1561 the family member or personal representative is currently prohibited by court order from contacting the
1562 person. No health care provider shall be required to notify a person's family member or personal
1563 representative pursuant to this section if the health care provider has actual knowledge that such notice has
1564 been provided.

1565 Any health care provider disclosing records pursuant to this section shall be immune from civil liability
1566 for any harm resulting from the disclosure, including any liability under the federal Health Insurance
1567 Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person or provider
1568 disclosing such records intended the harm or acted in bad faith.

1569 § 37.2-804.2. (Effective July 1, 2026) Disclosure of records.

1570 Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is
1571 currently providing services to a person who is the subject of proceedings pursuant to this chapter shall, upon
1572 request, disclose to a magistrate, the court, the person's attorney, the person's guardian ad litem, the examiner
1573 identified to perform an examination pursuant to § 37.2-815, the community services board or its designee
1574 performing any evaluation, preadmission screening, or monitoring duties pursuant to this chapter, or a
1575 law-enforcement officer any information that is necessary and appropriate for the performance of his duties
1576 pursuant to this chapter. Any health care provider, as defined in § 32.1-127.1:03, or other provider who has
1577 provided or is currently evaluating or providing services to a person who is the subject of proceedings
1578 pursuant to this chapter shall disclose information that may be necessary for the treatment of such person to
1579 any other health care provider or other provider evaluating or providing services to or monitoring the
1580 treatment of the person. Health records disclosed to a law-enforcement officer shall be limited to information
1581 necessary to protect the officer, the person, or the public from physical injury or to address the health care
1582 needs of the person. Information disclosed to a law-enforcement officer shall not be used for any other
1583 purpose, disclosed to others, or retained.

1584 Any health care provider providing services to a person who is the subject of proceedings under this
1585 chapter shall (i) inform the person that his family member or personal representative, including any agent
1586 named in an advance *health care* directive executed in accordance with the *Uniform Health Care Decisions*
1587 Act (~~§ 54.1-2984~~ 54.1-2993.2 et seq.), will be notified of information that is directly relevant to such
1588 individual's involvement with the person's health care, which may include the person's location and general
1589 condition, in accordance with subdivision D 34 of § 32.1-127.1:03, and (ii) make a reasonable effort to so
1590 notify the person's family member or personal representative, unless the provider has actual knowledge that
1591 the family member or personal representative is currently prohibited by court order from contacting the
1592 person. No health care provider shall be required to notify a person's family member or personal
1593 representative pursuant to this section if the health care provider has actual knowledge that such notice has
1594 been provided.

1595 Any health care provider disclosing records pursuant to this section shall be immune from civil liability
1596 for any harm resulting from the disclosure, including any liability under the federal Health Insurance
1597 Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person or provider
1598 disclosing such records intended the harm or acted in bad faith.

**1599 § 37.2-805.1. Admission of incapacitated persons pursuant to advance health care directives or by
1600 guardians.**

1601 A. An agent for a person who has been determined to be incapable of making an informed decision may
1602 consent to the person's admission to a facility for no more than 10 calendar days if (i) prior to admission, a
1603 physician on the staff of or designated by the proposed admitting facility examines the person and states, in
1604 writing, that the person (a) has a mental illness, (b) ~~is incapable of making an informed~~ lacks the capacity,
1605 pursuant to § 54.1-2993.5, to make a health care decision, as defined in § 54.1-2982 54.1-2993.3, regarding

1606 admission, and (c) is in need of treatment in a facility; (ii) the proposed admitting facility is willing to admit
 1607 the person; and (iii) the person has executed an advance *health care* directive in accordance with the *Uniform*
 1608 *Health Care Decisions Act* (~~§ 54.1-2981~~ 54.1-2993.2 et seq.) authorizing his agent to consent to his
 1609 admission to a facility and, if the person protests the admission, he has included in his advance *health care*
 1610 directive specific authorization for his agent to make health care decisions even in the event of his protest ~~as~~
 1611 ~~provided in § 54.1-2986.2~~. In addition, for admission to a state facility, the person shall first be screened by
 1612 the community services board that serves the city or county where the person resides or, if impractical, where
 1613 the person is located.

1614 B. A guardian who has been appointed for an incapacitated person pursuant to Chapter 20 (~~§ 64.2-2000~~ et
 1615 seq.) of Title 64.2 may consent to admission of that person to a facility for no more than 10 calendar days if
 1616 (i) prior to admission, a physician on the staff of or designated by the proposed admitting facility examines
 1617 the person and states, in writing, that the person (a) has a mental illness, (b) is ~~ineapable of making an~~ ~~informed~~ ~~lacks the capacity, pursuant to § 54.1-2993.5, to make a health care~~ decision, as defined in ~~§ 54.1-2982~~ 54.1-2993.3, regarding admission, and (c) is in need of treatment in a facility; (ii) the proposed
 1618 admitting facility is willing to admit the person; and (iii) the guardianship order specifically authorizes the
 1619 guardian to consent to the admission of such person to a facility, pursuant to ~~§ 64.2-2009~~. In addition, for
 1620 admission to a state facility, the person shall first be screened by the community services board that serves the
 1621 city or county where the person resides or, if impractical, where the person is located.

1622 C. A person admitted to a facility pursuant to this section shall be discharged no later than 10 calendar
 1623 days after admission unless, within that time, the person's continued admission is authorized under other
 1624 provisions of law.

§ 37.2-817.01. Mandatory outpatient treatment.

1625 A. Prior to ordering involuntary admission pursuant to § 37.2-817, a judge or special justice shall
 1626 investigate and determine whether (i) mandatory outpatient treatment is appropriate as a less restrictive
 1627 alternative to admission pursuant to subsection B or (ii) mandatory outpatient treatment following a period of
 1628 inpatient treatment is appropriate pursuant to subsection C.

1629 B. After observing the person and considering (i) the recommendations of any treating or examining
 1630 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past
 1631 mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi)
 1632 the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, if the
 1633 judge or special justice finds by clear and convincing evidence that (a) the person has a mental illness and
 1634 that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future,
 1635 (1) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or
 1636 threatening harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity
 1637 to protect himself from harm or to provide for his basic human needs, (b) less restrictive alternatives to
 1638 involuntary inpatient treatment that would offer an opportunity for improvement of his condition have been
 1639 investigated and are determined to be appropriate, as reflected in the initial outpatient treatment plan prepared
 1640 in accordance with subsection F, (c) the person has the ability to adhere to the mandatory outpatient treatment
 1641 plan, and (d) the ordered treatment will be delivered on an outpatient basis by the community services board
 1642 or designated provider to the person, the judge or special justice shall by written order and specific findings
 1643 so certify and order that the person be admitted involuntarily to mandatory outpatient treatment. Less
 1644 restrictive alternatives shall not be determined to be appropriate unless the services are actually available in
 1645 the community. The duration of mandatory outpatient treatment shall be determined by the court based on
 1646 recommendations of the community services board but shall not exceed 180 days; in prescribing the terms of
 1647 the order, including its length, the judge or special justice shall consider the impact on the person's
 1648 opportunities and obligations, including education and employment. Upon expiration of an order for
 1649 mandatory outpatient treatment, the person shall be released from the requirements of the order unless the
 1650 order is continued in accordance with § 37.2-817.4.

1651 C. Upon finding by clear and convincing evidence that, in addition to the findings described in subsection
 1652 C of § 37.2-817, (i) the person has a history of lack of adherence to treatment for mental illness that has, at
 1653 least twice within the past 36 months, resulted in the person being subject to an order for involuntary
 1654 admission pursuant to subsection C of § 37.2-817 or being subject to a temporary detention order and then
 1655 voluntarily admitting himself in accordance with subsection B of § 37.2-814, except that such 36-month
 1656 period shall not include any time during which the person was receiving inpatient psychiatric treatment or
 1657 was incarcerated, as established by evidence admitted at the hearing, (ii) in view of the person's treatment
 1658 history and current behavior, the person is in need of mandatory outpatient treatment following inpatient
 1659 treatment in order to prevent a relapse or deterioration that would be likely to result in the person meeting the
 1660 criteria for involuntary inpatient treatment, (iii) the person has the ability to adhere to the comprehensive
 1661 mandatory outpatient treatment plan, and (iv) the person is likely to benefit from mandatory outpatient
 1662 treatment, the judge or special justice may order that, upon discharge from inpatient treatment, the person
 1663 adhere to a comprehensive mandatory outpatient treatment plan.

1664 The period of mandatory outpatient treatment shall begin upon discharge of the person from involuntary

1668 inpatient treatment, either upon expiration of the order for inpatient treatment pursuant to subsection C of
1669 § 37.2-817 or pursuant to § 37.2-837 or 37.2-838. The duration of mandatory outpatient treatment shall be
1670 determined by the court on the basis of recommendations of the community services board, and the maximum
1671 period of mandatory outpatient treatment shall not exceed 180 days; in prescribing the terms of the order,
1672 including its length, the judge or special justice shall consider the impact on the person's opportunities and
1673 obligations, including education and employment.

1674 The treating physician and facility staff shall develop the comprehensive mandatory outpatient treatment
1675 plan in conjunction with the community services board and the person. The comprehensive mandatory
1676 outpatient treatment plan shall include all of the components described in, and shall be filed with the court
1677 and incorporated into, the order for mandatory outpatient treatment following a period of involuntary
1678 inpatient treatment in accordance with subsection G. The community services board where the person resides
1679 upon discharge shall monitor the person's progress and adherence to the comprehensive mandatory outpatient
1680 treatment plan. Upon expiration of the order for mandatory outpatient treatment following a period of
1681 involuntary inpatient treatment, the person shall be released unless the order is continued in accordance with
1682 § 37.2-817.4.

1683 D. At any time prior to the discharge of a person who has been involuntarily admitted pursuant to
1684 subsection C of § 37.2-817, the person, the person's treating physician, a family member or personal
1685 representative of the person, or the community services board serving the county or city where the facility is
1686 located, the county or city where the person resides, or the county or city where the person will receive
1687 treatment following discharge may file a motion with the court for a hearing to determine whether such
1688 person should be ordered to mandatory outpatient treatment following a period of inpatient treatment upon
1689 discharge if such person, on at least two previous occasions within 36 months preceding the date of the
1690 hearing, has been (i) involuntarily admitted pursuant to subsection C of § 37.2-817 or (ii) the subject of a
1691 temporary detention order and voluntarily admitted himself in accordance with subsection B of § 37.2-814,
1692 except that such 36-month period shall not include any time during which the person was receiving inpatient
1693 psychiatric treatment or was incarcerated, as established by evidence admitted at the hearing. A district court
1694 judge or special justice shall hold the hearing within 72 hours after receiving the motion for a hearing to
1695 determine whether the person should be ordered to mandatory outpatient treatment following a period of
1696 involuntary inpatient treatment; however, if the 72-hour period expires on a Saturday, Sunday, or legal
1697 holiday, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or
1698 legal holiday. The district court judge or special justice may enter an order for a period of mandatory
1699 outpatient treatment following a period of involuntary inpatient treatment upon finding that the person meets
1700 the criteria set forth in subsection C.

1701 E. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a hospital,
1702 outpatient involuntary treatment with antipsychotic medication pursuant to Chapter 11 (§ 37.2-1100 et seq.),
1703 or other appropriate course of treatment as may be necessary to meet the needs of the person. Mandatory
1704 outpatient treatment shall not include the use of restraints or physical force of any kind in the provision of the
1705 medication. The community services board that serves the county or city in which the person resides shall
1706 recommend a specific course of treatment and programs for the provision of mandatory outpatient treatment.

1707 F. Any order for mandatory outpatient treatment entered pursuant to subsection B shall include an initial
1708 mandatory outpatient treatment plan developed by the community services board that completed the
1709 preadmission screening report. The plan shall, at a minimum, (i) identify the specific services to be provided,
1710 (ii) identify the provider who has agreed to provide each service, (iii) describe the arrangements made for the
1711 initial in-person appointment or contact with each service provider, and (iv) include any other relevant
1712 information that may be available regarding the mandatory outpatient treatment ordered. The order shall
1713 require the community services board to monitor the implementation of the mandatory outpatient treatment
1714 plan and the person's progress and adherence to the initial mandatory outpatient treatment plan.

1715 G. The community services board where the person resides that is responsible for monitoring the person's
1716 progress and adherence to the comprehensive mandatory outpatient treatment plan shall file a comprehensive
1717 mandatory outpatient treatment plan no later than five days, excluding Saturdays, Sundays, or legal holidays,
1718 after an order for mandatory outpatient treatment has been entered pursuant to subsection B. The community
1719 services board where the person resides that is responsible for monitoring the person's progress and adherence
1720 to the comprehensive mandatory outpatient treatment plan shall file a comprehensive mandatory outpatient
1721 treatment plan prior to discharging a person to mandatory outpatient treatment pursuant to subsection C or D.
1722 The comprehensive mandatory outpatient treatment plan shall (i) identify the specific type, amount, duration,
1723 and frequency of each service to be provided to the person; (ii) identify the provider that has agreed to
1724 provide each service included in the plan; (iii) certify that the services are the most appropriate and least
1725 restrictive treatment available for the person; (iv) certify that each provider has complied and continues to
1726 comply with applicable provisions of the Department's licensing regulations; (v) be developed with the fullest
1727 possible involvement and participation of the person and his family, with the person's consent, and reflect his
1728 preferences to the greatest extent possible to support his recovery and self-determination, including
1729 incorporating any preexisting crisis plan or advance *health care* directive of the person; (vi) specify the

1730 particular conditions to which the person shall be required to adhere; and (vii) describe (a) how the
 1731 community services board shall monitor the person's progress and adherence to the plan and (b) any
 1732 conditions, including scheduled meetings or continued adherence to medication, necessary for mandatory
 1733 outpatient treatment to be appropriate for the person. The community services board shall submit the
 1734 comprehensive mandatory outpatient treatment plan to the court for approval. Upon approval by the court, the
 1735 comprehensive mandatory outpatient treatment plan shall be filed with the court and incorporated into the
 1736 order of mandatory outpatient treatment entered pursuant to subsection B, C, or D, as appropriate. A copy of
 1737 the comprehensive mandatory outpatient treatment plan shall be provided to the person by the community
 1738 services board upon approval of the comprehensive mandatory outpatient treatment plan by the court.

1739 H. If the community services board responsible for developing a comprehensive mandatory outpatient
 1740 treatment plan pursuant to subsection B, C, or D determines that the services necessary for the treatment of
 1741 the person's mental illness are not available or cannot be provided to the person in accordance with the order
 1742 for mandatory outpatient treatment, it shall petition the court for rescission of the mandatory outpatient
 1743 treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient
 1744 treatment in accordance with the provisions of subsection D of § 37.2-817.1.

1745 I. Upon entry of any order for mandatory outpatient treatment pursuant to subsection B or mandatory
 1746 outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C or D, the
 1747 clerk of the court shall provide a copy of the order to the person who is the subject of the order, to his
 1748 attorney, and to the community services board required to monitor the person's progress and adherence to the
 1749 comprehensive mandatory outpatient treatment plan. The community services board shall acknowledge
 1750 receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of
 1751 the Supreme Court and provided by the court for this purpose within five business days.

1752 J. The court may transfer jurisdiction of the case to the district court where the person resides at any time
 1753 after the entry of the mandatory outpatient treatment order. The community services board responsible for
 1754 monitoring the person's progress and adherence to the comprehensive mandatory outpatient treatment plan
 1755 shall remain responsible for monitoring the person's progress and adherence to the plan until the community
 1756 services board serving the locality to which jurisdiction of the case has been transferred acknowledges the
 1757 transfer and receipt of the order to the clerk of the court on a form established by the Office of the Executive
 1758 Secretary of the Supreme Court and provided by the court for this purpose. The community services board
 1759 serving the locality to which jurisdiction of the case has been transferred shall acknowledge the transfer and
 1760 receipt of the order within five business days.

1761 K. Any order entered pursuant to this section shall provide for the disclosure of medical records pursuant
 1762 to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

§ 37.2-817.1. Monitoring and court review of mandatory outpatient treatment.

1763 A. As used in this section, "material nonadherence" means deviation from a comprehensive mandatory
 1764 outpatient treatment plan by a person who is subject to an order for mandatory outpatient treatment following
 1765 a period of involuntary inpatient treatment pursuant to subsection C or D of § 37.2-817.01 or an order for
 1766 mandatory outpatient treatment pursuant to subsection B of § 37.2-817.01 that it is likely to lead to the
 1767 person's relapse or deterioration and for which the person cannot provide a reasonable explanation.

1768 B. The community services board where the person resides shall monitor the person's progress and
 1769 adherence to the comprehensive mandatory outpatient treatment plan prepared in accordance with
 1770 § 37.2-817.01. Such monitoring shall include (i) contacting or making documented efforts to contact the
 1771 person regarding the comprehensive mandatory outpatient treatment plan and any support necessary for the
 1772 person to adhere to the comprehensive mandatory outpatient treatment plan, (ii) contacting the service
 1773 providers to determine if the person is adhering to the comprehensive mandatory outpatient treatment plan
 1774 and, in the event of material nonadherence, if the person fails or refuses to cooperate with efforts of the
 1775 community services board or providers of services identified in the comprehensive mandatory outpatient
 1776 treatment plan to address the factors leading to the person's material nonadherence, petitioning for a review
 1777 hearing pursuant to this section. Service providers identified in the comprehensive mandatory outpatient
 1778 treatment plan shall report any material nonadherence and any material changes in the person's condition to
 1779 the community services board. Any finding of material nonadherence shall be based upon a totality of the
 1780 circumstances.

1781 C. The community services board responsible for monitoring the person's progress and adherence to the
 1782 comprehensive mandatory outpatient treatment plan shall report monthly, in writing, to the court regarding
 1783 the person's and the community services board's compliance with the provisions of the comprehensive
 1784 mandatory outpatient treatment plan. If the community services board determines that the deterioration of the
 1785 condition or behavior of a person who is subject to an order for mandatory outpatient treatment following a
 1786 period of involuntary inpatient treatment pursuant to subsection C or D of § 37.2-817.01 or a mandatory
 1787 outpatient treatment order pursuant to subsection B of § 37.2-817.01 is such that there is a substantial
 1788 likelihood that, as a result of the person's mental illness, the person will, in the near future, (i) cause serious
 1789 physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm
 1790 and other relevant information, if any, or (ii) suffer serious harm due to his lack of capacity to protect himself

1792 from harm or to provide for his basic human needs, it shall immediately request that the magistrate issue an
1793 emergency custody order pursuant to § 37.2-808 or a temporary detention order pursuant to § 37.2-809. Entry
1794 of an emergency custody order, temporary detention order, or involuntary inpatient treatment order shall
1795 suspend but not rescind an existing order for mandatory outpatient treatment following a period of
1796 involuntary inpatient treatment pursuant to subsection C or D of § 37.2-817.01 or a mandatory outpatient
1797 treatment order pursuant to subsection B of § 37.2-817.01.

1798 D. The district court judge or special justice shall hold a hearing within five days after receiving the
1799 petition for review of the comprehensive mandatory outpatient treatment plan; however, if the fifth day is a
1800 Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the hearing shall be held by the
1801 close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is
1802 lawfully closed. The clerk shall provide notice of the hearing to the person, the community services board, all
1803 treatment providers listed in the comprehensive mandatory outpatient treatment order or discharge plan, and
1804 the original petitioner for the person's involuntary treatment. If the person is not represented by counsel, the
1805 court shall appoint an attorney to represent the person in this hearing and any subsequent hearing under this
1806 section or § 37.2-817.4, giving consideration to appointing the attorney who represented the person at the
1807 proceeding that resulted in the issuance of the mandatory outpatient treatment order or order for mandatory
1808 outpatient treatment following a period of involuntary inpatient treatment. The same judge or special justice
1809 that presided over the hearing resulting in the mandatory outpatient treatment order or order for mandatory
1810 outpatient treatment following a period of involuntary inpatient treatment need not preside at the
1811 nonadherence hearing or any subsequent hearings. The community services board shall offer to arrange the
1812 person's transportation to the hearing if the person is not detained and has no other source of transportation.

1813 Any of the following may petition the court for a hearing pursuant to this subsection: (i) the person who is
1814 subject to the mandatory outpatient treatment order or order for mandatory outpatient treatment following a
1815 period of involuntary inpatient treatment; (ii) the community services board responsible for monitoring the
1816 person's progress and adherence to the mandatory outpatient treatment order or order for mandatory
1817 outpatient treatment following a period of involuntary inpatient treatment; (iii) a treatment provider
1818 designated in the comprehensive mandatory outpatient treatment plan; (iv) the person who originally filed the
1819 petition that resulted in the entry of the mandatory outpatient treatment order or order for mandatory
1820 outpatient treatment following a period of involuntary inpatient treatment; (v) any health care agent
1821 designated in the advance *health care* directive of the person who is the subject of the mandatory outpatient
1822 treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient
1823 treatment; or (vi) if the person who is the subject of the mandatory outpatient treatment order or order for
1824 mandatory outpatient treatment following a period of involuntary inpatient treatment has been determined to
1825 be incapable of making an informed lack the capacity to make a health care decision pursuant to §
1826 54.1-2993.5, the person's agent, guardian, or other person authorized to make health care decisions for the
1827 person default surrogate pursuant to § 54.1-2986 54.1-2993.13.

1828 A petition filed pursuant to this subsection may request that the court do any of the following:

1829 1. Enforce a mandatory outpatient treatment order or order for mandatory outpatient treatment following a
1830 period of involuntary inpatient treatment and require the person who is the subject of the order to adhere to
1831 the comprehensive mandatory outpatient treatment plan, in the case of material nonadherence;

1832 2. Modify a mandatory outpatient treatment order or order for mandatory outpatient treatment following a
1833 period of involuntary inpatient treatment or a comprehensive mandatory outpatient treatment plan due to a
1834 change in circumstances, including changes in the condition, behavior, living arrangement, or access to
1835 services of the person who is the subject to the order; or

1836 3. Rescind a mandatory outpatient treatment order or order for mandatory outpatient treatment following a
1837 period of involuntary inpatient treatment.

1838 At any time after 30 days from entry of the mandatory outpatient treatment order pursuant to subsection B
1839 of § 37.2-817.01 or from the discharge of the person from involuntary inpatient treatment pursuant to an
1840 order under subsection C or D of § 37.2-817.01, the person may petition the court to rescind the order. The
1841 person shall not file a petition to rescind the order more than once during a 90-day period.

1842 E. If requested in a petition filed pursuant to subsection D or on the court's own motion, the court may
1843 appoint an examiner in accordance with § 37.2-815 who shall personally examine the person on or before the
1844 date of the review, as directed by the court, and certify to the court whether or not he has probable cause to
1845 believe that the person meets the criteria for mandatory outpatient treatment as specified in subsection B, C,
1846 or D of § 37.2-817.01, as may be applicable. The examination shall include all applicable requirements of
1847 § 37.2-815. The certification of the examiner may be admitted into evidence without the appearance of the
1848 examiner at the hearing if not objected to by the person or his attorney. If the person is not incarcerated or
1849 receiving treatment in an inpatient facility, the community services board shall arrange for the person to be
1850 examined at a convenient location and time. The community services board shall offer to arrange for the
1851 person's transportation to the examination if the person has no other source of transportation and resides
1852 within the service area or an adjacent service area of the community services board. If the person refuses or
1853 fails to appear, the community services board shall notify the court, or a magistrate if the court is not

1854 available, and the court or magistrate shall issue a mandatory examination order and capias directing the
 1855 primary law-enforcement agency in the jurisdiction where the person resides to transport the person to the
 1856 examination. The person shall remain in custody until a temporary detention order is issued or until the
 1857 person is released, but in no event shall the period exceed eight hours.

1858 F. If the person fails to appear for the hearing, the court may, after consideration of any evidence
 1859 regarding why the person failed to appear at the hearing, (i) dismiss the petition, (ii) issue an emergency
 1860 custody order pursuant to § 37.2-808, or (iii) reschedule the hearing pursuant to subsection D and issue a
 1861 subpoena for the person's appearance at the hearing and enter an order for mandatory examination, to be
 1862 conducted prior to the hearing and in accordance with subsection E.

1863 G. After observing the person and considering (i) the recommendations of any treating or examining
 1864 physician or psychologist licensed to practice in the Commonwealth, if available, (ii) the person's adherence
 1865 to the comprehensive mandatory outpatient treatment plan, (iii) any past mental health treatment of the
 1866 person, (iv) any examiner's certification, (v) any health records available, (vi) any report from the community
 1867 services board, and (vii) any other relevant evidence that may have been admitted at the hearing, the judge or
 1868 special justice shall make one of the following dispositions:

1869 1. In a hearing on any petition seeking enforcement of a mandatory outpatient treatment order, upon
 1870 finding that continuing mandatory outpatient treatment is warranted, the court shall direct the person to fully
 1871 comply with the mandatory outpatient treatment order or order for mandatory outpatient treatment following
 1872 a period of involuntary inpatient treatment and may make any modifications to such order or the
 1873 comprehensive mandatory outpatient treatment plan that are acceptable to the community services board or
 1874 treatment provider responsible for the person's treatment. In determining the appropriateness of the outpatient
 1875 treatment specified in such order and the comprehensive mandatory outpatient treatment plan, the court may
 1876 consider the person's material nonadherence to the existing mandatory treatment order.

1877 2. In a hearing on any petition seeking modification of a mandatory outpatient treatment order or order for
 1878 mandatory outpatient treatment following a period of involuntary inpatient treatment, upon a finding that (i)
 1879 one or more modifications of the order would benefit the person and help prevent relapse or deterioration of
 1880 the person's condition, (ii) the community services board and the treatment provider responsible for the
 1881 person's treatment are able to provide services consistent with such modification, and (iii) the person is able
 1882 to adhere to the modified comprehensive mandatory outpatient treatment plan, the court may order such
 1883 modification of the mandatory outpatient treatment order or order for mandatory outpatient treatment
 1884 following a period of involuntary inpatient treatment or the comprehensive mandatory outpatient treatment
 1885 plan as the court finds appropriate.

1886 3. In a hearing on any petition filed to enforce, modify, or rescind a mandatory outpatient treatment order,
 1887 upon finding that mandatory outpatient treatment is no longer appropriate, the court may rescind the order.

1888 H. The judge or special justice may schedule periodic status hearings for the purpose of obtaining
 1889 information regarding the person's progress while the mandatory outpatient treatment order or order for
 1890 mandatory outpatient treatment following a period of involuntary inpatient treatment remains in effect. The
 1891 clerk shall provide notice of the hearing to the person who is the subject of the order and the community
 1892 services board responsible for monitoring the person's condition and adherence to the plan. The person shall
 1893 have the right to be represented by counsel at the hearing, and if the person does not have counsel the court
 1894 shall appoint an attorney to represent the person. However, status hearings may be held without counsel
 1895 present by mutual consent of the parties. The community services board shall offer to arrange the person's
 1896 transportation to the hearing if the person is not detained and has no other source of transportation. During a
 1897 status hearing, the treatment plan may be amended upon mutual agreement of the parties. Contested matters
 1898 shall not be decided during a status hearing, nor shall any decision regarding enforcement, rescission, or
 1899 renewal of the order be entered.

1900 **§ 37.2-837. Discharge from state hospitals or training centers, conditional release, and trial or home
 1901 visits for individuals.**

1902 A. Except for an individual receiving services in a state hospital who is held upon an order of a court for a
 1903 criminal proceeding, the director of a state hospital or training center may discharge, after the preparation of a
 1904 discharge plan:

1905 1. Any individual in a state hospital who, in his judgment, (i) is recovered, (ii) does not have a mental
 1906 illness, or (iii) is impaired or not recovered but whose discharge will not be detrimental to the public welfare
 1907 or injurious to the individual;

1908 2. Any individual in a state hospital who is not a proper case for treatment within the purview of this
 1909 chapter; or

1910 3. Any individual in a training center who chooses to be discharged or, if the individual lacks the mental
 1911 capacity to choose, whose legally authorized representative chooses for him to be discharged. Pursuant to
 1912 regulations of the Centers for Medicare & Medicaid Services and the Department of Medical Assistance
 1913 Services, no individual at a training center who is enrolled in Medicaid shall be discharged if the individual or
 1914 his legally authorized representative on his behalf chooses to continue receiving services in a training center.

1915 Central State Hospital, Southern Virginia Mental Health Institute, and Southwestern Virginia Mental

1916 Health Institute shall, in consultation with the appropriate community services board or behavioral health
1917 authority, provide discharge planning for any individual to be discharged from the state hospital in 30 days or
1918 less after admission. For all individuals discharged from any other state facility in 30 days or less after
1919 admission, or from a state hospital more than 30 days after admission, or from a state training center, the
1920 discharge plan shall be formulated in accordance with the provisions of § 37.2-505 by the community
1921 services board or behavioral health authority that serves the city or county where the individual resided prior
1922 to admission or by the board or authority that serves the city or county where the individual or his legally
1923 authorized representative on his behalf chooses to reside immediately following the discharge. The discharge
1924 plan shall be contained in a uniform discharge document developed by the Department and used by all state
1925 hospitals, training centers, and community services boards or behavioral health authorities and shall identify
1926 (i) the services, including mental health, developmental, substance abuse, social, educational, medical,
1927 employment, housing, legal, advocacy, transportation, and other services that the individual will require upon
1928 discharge into the community, and (ii) the public or private agencies that have agreed to provide these
1929 services. If the individual will be housed in an assisted living facility, as defined in § 63.2-100, the discharge
1930 plan shall identify the facility, document its appropriateness for housing and capacity to care for the
1931 individual, contain evidence of the facility's agreement to admit and care for the individual, and describe how
1932 the community services board or behavioral health authority will monitor the individual's care in the facility.
1933 Prior to discharging an individual pursuant to subdivision A 1 or 2 who has not executed an advance *health*
1934 *care* directive, the director of a state hospital or his designee shall give to the individual a written explanation
1935 of the procedures for executing an advance *health care* directive in accordance with the *Uniform* Health Care
1936 Decisions Act (~~§ 54.1-2984 54.1-2993.2 et seq.~~) and an advance *health care* directive form, which may be the
1937 form set forth in ~~§ 54.1-2984 54.1-2993.12~~.

1938 B. The director may grant a trial or home visit to an individual receiving services in accordance with
1939 regulations adopted by the Board. The state facility granting a trial or home visit to an individual shall not be
1940 liable for his expenses during the period of that visit. Such liability shall devolve upon the relative,
1941 conservator, person to whose care the individual is entrusted while on the trial or home visit, or the
1942 appropriate local department of social services of the county or city in which the individual resided at the
1943 time of admission pursuant to regulations adopted by the State Board of Social Services.

1944 C. Any individual who is discharged pursuant to subdivision A 2 shall, if necessary for his welfare, be
1945 received and cared for by the appropriate local department of social services. The provision of public
1946 assistance or social services to the individual shall be the responsibility of the appropriate local department of
1947 social services as determined by regulations adopted by the State Board of Social Services. Expenses incurred
1948 for the provision of public assistance to the individual who is receiving 24-hour care while in an assisted
1949 living facility licensed pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2
1950 shall be the responsibility of the appropriate local department of social services of the county or city in which
1951 the individual resided at the time of admission.

§ 37.2-838. Discharge of individuals from a licensed hospital.

1952 The person in charge of a licensed hospital may discharge any individual involuntarily admitted who is
1953 recovered or, if not recovered, whose discharge will not be detrimental to the public welfare or injurious to
1954 the individual, or who meets other criteria as specified in § 37.2-837. Prior to discharging any individual who
1955 has not executed an advance *health care* directive, the person in charge of a licensed hospital or his designee
1956 shall give to the individual a written explanation of the procedures for executing an advance *health care*
1957 directive in accordance with the *Uniform* Health Care Decisions Act (~~§ 54.1-2984 54.1-2993.2 et seq.~~) and an
1958 advance *health care* directive form, which may be the form set forth in ~~§ 54.1-2984 54.1-2993.12~~. The person
1959 in charge of the licensed hospital may refuse to discharge any individual involuntarily admitted, if, in his
1960 judgment, the discharge will be detrimental to the public welfare or injurious to the individual. The person in
1961 charge of a licensed hospital may grant a trial or home visit to an individual in accordance with regulations
1962 adopted by the Board.

§ 37.2-1101. Judicial authorization of treatment.

1963 A. An appropriate circuit court or district court judge or special justice may authorize treatment for a
1964 mental or physical disorder on behalf of an adult person, in accordance with this section, if it finds upon clear
1965 and convincing evidence that (i) the person is either incapable of making an informed decision on his own
1966 behalf or is incapable of communicating such a decision due to a physical or mental disorder and (ii) the
1967 proposed treatment is in the best interest of the person.

1968 B. Any person may request authorization of treatment for an adult person by filing a petition in the circuit
1969 court or district court or with a special justice of the county or city in which the person for whom treatment is
1970 sought resides or is located or in the county or city in which the proposed place of treatment is located. Upon
1971 filing the petition, the petitioner or the court shall deliver or send a certified copy of the petition to the person
1972 for whom treatment is sought and, if the identity and whereabouts of the person's next of kin are known, to
1973 the next of kin.

1974 C. As soon as reasonably possible after the filing of the petition, the court shall appoint an attorney to
1975 represent the interests of the person for whom treatment is sought at the hearing. However, the appointment

1978 shall not be required in the event that the person or another interested person on behalf of the person elects to
 1979 retain private counsel at his own expense to represent the interests of the person at the hearing. If the person
 1980 for whom treatment is sought is indigent, his counsel shall be paid by the Commonwealth as provided in
 1981 § 37.2-804 from funds appropriated to reimburse expenses incurred in the involuntary admission process.
 1982 However, this provision shall not be construed to prohibit the direct payment of an attorney's fee by the
 1983 person or an interested person on his behalf, which fee shall be subject to the review and approval of the
 1984 court.

1985 D. Following the appointment of an attorney pursuant to subsection C, the court shall schedule an
 1986 expedited hearing of the matter. The court shall notify the person for whom treatment is sought, his next of
 1987 kin, if known, the petitioner, and their respective counsel of the date and time for the hearing. In scheduling
 1988 the hearing, the court shall take into account the type and severity of the alleged physical or mental disorder,
 1989 as well as the need to provide the person's attorney with sufficient time to adequately prepare his client's case.

1990 E. Notwithstanding the provisions of subsections B and D regarding delivery or service of the petition and
 1991 notice of the hearing to the next of kin of any person for whom consent to treatment is sought, if the person is
 1992 a patient in any hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123 or
 1993 an individual receiving services in any facility operated by the Department of Behavioral Health and
 1994 Developmental Services and such person has no known guardian or legally authorized representative, at the
 1995 time the petition is filed, the court may dispense with the requirement of any notice to the next of kin. If
 1996 treatment is necessary to prevent imminent or irreversible harm, the court in its discretion may dispense with
 1997 the requirement of providing notice. This subsection shall not be construed to interfere with any decision
 1998 made pursuant to the *Uniform Health Care Decisions Act* (§ 54.1-2981 54.1-2993.2 et seq.).

1999 F. Prior to the hearing, the attorney shall investigate the risks and benefits of the treatment decision for
 2000 which authorization is sought and of alternatives to the proposed decision. The attorney shall make a
 2001 reasonable effort to inform the person of this information and to ascertain the person's religious beliefs and
 2002 basic values and the views and preferences of the person's next of kin. A health care provider shall disclose or
 2003 make available to the attorney, upon request, any information, records, and reports concerning the person that
 2004 the attorney determines necessary to perform his duties under this section. Evidence presented at the hearing
 2005 may be submitted by affidavit in the absence of objection by the person for whom treatment is sought, the
 2006 petitioner, either of their respective counsel, or by any other interested party.

2007 G. Prior to authorizing treatment pursuant to this section, the court shall find:

2008 1. That there is no available person with legal authority under Article 8 (§ 54.1-2981 et seq.) of Chapter
 2009 29 of Title 54.1 *the Uniform Health Care Decisions Act* (§ 54.1-2993.2 et seq.), under the regulations
 2010 promulgated pursuant to § 37.2-400, or under other applicable law to authorize the proposed treatment. A
 2011 person who would have legal authority to authorize the proposed treatment shall be deemed to be unavailable
 2012 if such person (i) cannot be contacted within a reasonable period of time in light of the immediacy of the need
 2013 for treatment for the person for whom treatment is sought, (ii) is incapable of making an informed decision,
 2014 or (iii) is unable or unwilling to make a decision regarding authorization of the proposed treatment or to serve
 2015 as the legally authorized representative of the person for whom treatment is sought;

2016 2. That the person for whom treatment is sought is incapable of making an informed decision regarding
 2017 treatment or is physically or mentally incapable of communicating such a decision;

2018 3. That the person who is the subject of the petition is unlikely to become capable of making an informed
 2019 decision or of communicating an informed decision within the time required for decision; and

2020 4. That the proposed treatment is in the best interest of the person and is medically and ethically
 2021 appropriate with respect to (i) the medical diagnosis and prognosis and (ii) any other information provided by
 2022 the attending physician of the person for whom treatment is sought. However, the court shall not authorize a
 2023 proposed treatment that is contrary to the provisions of an advance *health care* directive executed by the
 2024 person pursuant to § 54.1-2983 *the Uniform Health Care Decisions Act* (§ 54.1-2993.2 et seq.) or is proven
 2025 by a preponderance of the evidence to be contrary to the person's religious beliefs or basic values or to
 2026 specific preferences stated by the person before becoming incapable of making an informed decision, unless
 2027 the treatment is necessary to prevent death or a serious irreversible condition. The court shall take into
 2028 consideration the right of the person to rely on nonmedical, remedial treatment in the practice of religion in
 2029 lieu of medical treatment.

2030 H. Any order authorizing treatment pursuant to subsection A shall describe any treatment authorized and
 2031 may authorize generally such related examinations, tests, or services as the court may determine to be
 2032 reasonably related to the treatment authorized. Treatment authorized by such order may include palliative
 2033 care as defined in § 32.1-162.1, if appropriate. The order shall require the treating physician to review and
 2034 document the appropriateness of the continued administration of antipsychotic medications not less
 2035 frequently than every 30 days. The order shall require the treating physician or other service provider to
 2036 report to the court and the person's attorney any change in the person's condition resulting in probable
 2037 restoration or development of the person's capacity to make and to communicate an informed decision prior
 2038 to completion of any authorized treatment and related services. The order may further require the treating
 2039 physician or other service provider to report to the court and the person's attorney any change in

2040 circumstances regarding any authorized treatment or related services that may indicate that such authorization
2041 is no longer in the person's best interests. Upon receipt of such report or upon the petition of any interested
2042 party, the court may enter an order withdrawing or modifying its prior authorization as it deems appropriate.
2043 Any petition or order under this section may be orally presented or entered, provided a written order shall be
2044 subsequently executed.

2045 I. Nothing in this section shall be construed to limit the authority of a treating physician or other service
2046 provider to administer treatment without judicial authorization when necessary to stabilize the condition of
2047 the person for whom treatment is sought in an emergency.

2048 **§ 37.2-1108. Effect of chapter on other laws.**

2049 A. Nothing in this chapter shall be deemed to affect the right to use and the authority conferred by any
2050 other applicable statutory or regulatory procedure relating to consent or to diminish any common law
2051 authority of a physician or other treatment provider to administer treatment to a person unable to give or to
2052 communicate informed consent to those actions, with or without the consent of the person's relative,
2053 including common law or other authority to provide treatment in an emergency situation; nor shall anything
2054 in this chapter be construed to affect the law defining the conditions under which consent shall be obtained
2055 for administering treatment or the nature of the consent required.

2056 B. Judicial authorization for treatment pursuant to this chapter need not be obtained for a person for whom
2057 consent or authorization has been granted or issued or may be obtained in accordance with the provisions of
2058 Article 8 (~~§ 54.1-2981 et seq.~~) of Chapter 29 of Title 54.1 *the Uniform Health Care Decisions Act*
2059 (~~§ 54.1-2993.2 et seq.~~) or other applicable statutes or common law of the Commonwealth.

2060 **§ 53.1-133.04. Medical and mental health treatment of prisoners incapable of giving consent.**

2061 A. The sheriff or administrator in charge of a local or regional correctional facility or his designee may
2062 petition the circuit court or any district court judge or any special justice, as defined in § 37.2-100, herein
2063 referred to as the court, of the county or city in which the prisoner is located for an order authorizing
2064 treatment of a prisoner confined in the local or regional correctional facility. Upon filing the petition, the
2065 petitioner or the court shall serve a certified copy of the petition to the person for whom treatment is sought
2066 and, if the identity and whereabouts of the person's next of kin are known, to the person's next of kin. The
2067 court shall authorize such treatment in a facility designated by the sheriff or administrator upon finding, on
2068 the basis of clear and convincing evidence, that the prisoner is incapable, either mentally or physically, of
2069 giving informed consent to such treatment; that the prisoner does not have a relevant advanced directive,
2070 guardian, or other substitute decision maker; that the proposed treatment is in the best interests of the
2071 prisoner; and that the jail has sufficient medical and nursing resources available to safely administer the
2072 treatment and respond to any adverse side effects that might arise from the treatment. The facility designated
2073 for treatment by the sheriff or administrator may be located within a local or regional correctional facility if
2074 such facility is licensed to provide the treatment authorized by the court order.

2075 B. Prior to the court's authorization of such treatment, the court shall appoint an attorney to represent the
2076 interests of the prisoner. Evidence shall be presented concerning the prisoner's condition and proposed
2077 treatment, which evidence may, in the court's discretion and in the absence of objection by the prisoner or the
2078 prisoner's attorney, be submitted by affidavit.

2079 C. Any order authorizing treatment pursuant to subsection A shall describe the treatment authorized and
2080 authorize generally such examinations, tests, medications, and other treatments as are in the best interests of
2081 the prisoner but may not authorize nontherapeutic sterilization, abortion, or psychosurgery. Such order shall
2082 require the licensed physician, psychiatrist, clinical psychologist, professional counselor, or clinical social
2083 worker acting within his area of expertise who is treating the prisoner to report to the court and the prisoner's
2084 attorney any change in the prisoner's condition resulting in restoration of the prisoner's capability to consent
2085 prior to completion of the authorized treatment and related services. Upon receipt of such report, the court
2086 may enter such order withdrawing or modifying its prior authorization as it deems appropriate. Any petition
2087 or order under this section may be orally presented or entered, provided that a written order is subsequently
2088 executed.

2089 D. Prior to authorizing treatment pursuant to this section, the court shall find that there is no available
2090 person with legal authority under the *Uniform Health Care Decisions Act* (~~§ 54.1-2981 54.1-2993.2 et seq.~~)
2091 or under other applicable law to authorize the proposed treatment.

2092 E. Any order of a judge under subsection A may be appealed de novo within 10 days to the circuit court
2093 for the jurisdiction where the prisoner is located, and any order of a circuit court hereunder, either originally
2094 or on appeal, may be appealed within 10 days to the Court of Appeals, which shall give such appeal priority
2095 and hear the appeal as soon as possible.

2096 F. Whenever the director of any hospital or facility reasonably believes that treatment is necessary to
2097 protect the life, health, or safety of a prisoner, such treatment may be given during the period allowed for any
2098 appeal unless prohibited by order of a court of record wherein the appeal is pending.

2099 G. Upon the advice of a licensed physician, psychiatrist, or clinical psychologist acting within his area of
2100 expertise who has attempted to obtain consent and upon a finding of probable cause to believe that a prisoner
2101 is incapable, due to any physical or mental condition, of giving informed consent to treatment and that the

2102 medical standard of care calls for testing, observation, or other treatment within the next 12 hours to prevent
 2103 death, disability, or a serious irreversible condition, the court or, if the court is unavailable, a magistrate shall
 2104 issue an order authorizing temporary admission of the prisoner to a hospital or other health care facility and
 2105 authorizing such testing, observation, or other treatment. Such order shall expire after a period of 12 hours
 2106 unless extended by the court as part of an order authorizing treatment under subsection A.

2107 H. Any licensed health or mental health professional or licensed facility providing services pursuant to the
 2108 court's or magistrate's authorization as provided in this section shall have no liability arising out of a claim to
 2109 the extent that it is based on lack of consent to such services, except with respect to injury or death resulting
 2110 from gross negligence or willful and wanton misconduct. Any such professional or facility providing services
 2111 with the consent of the prisoner receiving treatment shall have no liability arising out of a claim to the extent
 2112 that it is based on lack of capacity to consent, except with respect to injury or death resulting from gross
 2113 negligence or willful and wanton misconduct, if a court or a magistrate has denied a petition hereunder to
 2114 authorize such services and such denial was based on an affirmative finding that the prisoner was capable of
 2115 making an informed decision regarding the proposed services.

2116 I. Nothing in this section shall be deemed to limit or repeal any common law rule relating to consent for
 2117 medical treatment or the right to apply or the authority conferred by any other applicable statute or regulation
 2118 relating to consent.

2119 **§ 54.1-2807.02. Absence of next of kin.**

2120 In the absence of a next of kin, a person designated to make arrangements for the decedent's burial or the
 2121 disposition of his remains pursuant to § 54.1-2825, an agent named in an advance *health care* directive
 2122 pursuant to § 54.1-2984 *the Uniform Health Care Decisions Act* (§ 54.1-2993.2), or any guardian appointed
 2123 pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 who may exercise the powers conferred in the order
 2124 of appointment or by § 64.2-2019, or upon the failure or refusal of such next of kin, designated person, agent,
 2125 or guardian to accept responsibility for the disposition of the decedent, then any other person 18 years of age
 2126 or older who is able to provide positive identification of the deceased and is willing to pay for the costs
 2127 associated with the disposition of the decedent's remains shall be authorized to make arrangements for such
 2128 disposition of the decedent's remains. If a funeral service establishment or funeral service licensee makes
 2129 arrangements with a person other than a next of kin, designated person, agent, or guardian in accordance with
 2130 this section, then the funeral service licensee or funeral service establishment shall be immune from civil
 2131 liability unless such act, decision, or omission resulted from bad faith or malicious intent.

2132 **§ 54.1-2818.1. Prerequisites for cremation.**

2133 No dead human body shall be cremated without permission of the Office of the Chief Medical Examiner
 2134 as required by § 32.1-309.3 and visual identification of the deceased by the next-of-kin or his representative,
 2135 who may be any person designated to make arrangements for the disposition of the decedent's remains
 2136 pursuant to § 54.1-2825, an agent named in an advance *health care* directive pursuant to § 54.1-2984 *the*
 2137 *Uniform Health Care Decisions Act* (§ 54.1-2993.2), or any guardian appointed pursuant to Chapter 20
 2138 (§ 64.2-2000 et seq.) of Title 64.2 who may exercise the powers conferred in the order of appointment or by
 2139 § 64.2-2019, or, in cases in which the next of kin or his representative fails or refuses to provide visual
 2140 identification of the deceased, by any other person 18 years of age or older who is able to provide positive
 2141 identification of the deceased. If no such next of kin or his representative or other person 18 years of age or
 2142 older is available or willing to make visual identification of the deceased, such identification shall be made by
 2143 a member of the primary law-enforcement agency of the city or county in which the person or institution
 2144 having initial custody of the body is located, pursuant to court order. When visual identification is not
 2145 feasible, other positive identification of the deceased may be used as a prerequisite for cremation. Unless
 2146 such act, decision, or omission resulted from bad faith or malicious intent, the funeral service establishment,
 2147 funeral service licensee, crematory, cemetery, primary law-enforcement officer, sheriff, county, or city shall
 2148 be immune from civil liability for any act, decision, or omission resulting from cremation. Nothing in this
 2149 section shall prevent a law-enforcement agency other than the primary law-enforcement agency from
 2150 performing the duties established by this section if so requested by the primary law-enforcement agency and
 2151 agreed to by the other law-enforcement agency.

2152 **§ 54.1-2818.5. Request for life insurance information; notification of beneficiaries.**

2153 A. In any case in which a funeral service provider licensed pursuant to this chapter believes that a
 2154 decedent for whom funeral services are being provided is insured under an individual or group life insurance
 2155 policy, the funeral service provider may request information regarding the deceased person's life insurance
 2156 policy from the life insurer believed to have issued the policy. Such request for information shall include (i) a
 2157 copy of the deceased person's death certificate filed in accordance with § 32.1-263; (ii) written authorization
 2158 for the funeral service provider's submission of the request that is executed by a person designated to make
 2159 arrangements for the decedent's burial or disposition of his remains pursuant to § 54.1-2825, an agent named
 2160 in an advance *health care* directive pursuant to § 54.1-2984 *the Uniform Health Care Decisions Act*
 2161 (§ 54.1-2993.2 et seq.), a guardian appointed pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 who
 2162 may exercise the powers conferred in the order of appointment or by § 64.2-2019, or the next of kin as
 2163 defined in § 54.1-2800; and (iii) if the deceased person was covered or is believed to have been covered under

2164 a group life insurance policy, the affiliation of the deceased person entitling the deceased to coverage under
2165 the group life insurance policy.

2166 B. Upon receipt of the information requested pursuant to subsection A, if the beneficiary of record under
2167 the life insurance contract or group life insurance policy is not the estate of the deceased person, the
2168 requesting funeral service provider shall make all reasonable efforts to contact all the beneficiaries of record
2169 within four calendar days of receiving such information and provide to the beneficiaries all information
2170 provided to the funeral service provider by the life insurer. The funeral service provider shall, prior to
2171 providing any information to the beneficiaries in accordance with this subsection, inform the beneficiaries
2172 that the beneficiary of a life insurance policy has no legal duty or obligation to pay any amounts associated
2173 with the provision of funeral services or the debts or obligations of the deceased person.

2174 **§ 54.1-2970.1. Individual lacking capacity to make health care decision; procedure for physical
2175 evidence recovery kit examination; consent by minors.**

2176 A. A licensed physician, a physician assistant, an advanced practice registered nurse, or a registered nurse
2177 may perform a physical evidence recovery kit examination for a person who is believed to be the victim of a
2178 sexual assault and who is ~~incapable of making an informed~~ lacks the capacity to make a health care decision
2179 regarding consent to such examination when:

2180 1. There is a need to conduct the examination before the victim is likely to be able to make ~~an informed~~ a
2181 health care decision in order to preserve physical evidence of the alleged sexual assault from degradation;

2182 2. No legally authorized representative or other person authorized to consent to medical treatment on the
2183 individual's behalf is reasonably available to provide consent within the time necessary to preserve physical
2184 evidence of the alleged sexual assault; and

2185 3. A capacity reviewer, as defined in § 54.1-2982, *A person authorized to find that an individual lacks
2186 capacity pursuant to § 54.1-2993.5* provides written certification that, based upon a personal examination of
2187 the individual, the individual is ~~incapable of making an informed~~ lacks the capacity to make a health care
2188 decision regarding the physical evidence recovery kit examination and that, given the totality of the
2189 circumstances, the examination should be performed. The capacity reviewer person who provides such
2190 written certification shall not be otherwise currently involved in the treatment of the person assessed, unless
2191 an independent capacity reviewer person authorized to find that an individual lacks capacity pursuant to
2192 § 54.1-2993.5 is not reasonably available.

2193 A1. For purposes of this section, if a parent or guardian of a minor refuses to consent to a physical
2194 evidence recovery kit examination of the minor, the minor may consent.

2195 B. Any physical evidence recovery kit examination performed pursuant to this section shall be performed
2196 in accordance with the requirements of §§ 19.2-11.2 and 19.2-165.1 and shall protect the alleged victim's
2197 identity.

2198 C. A licensed physician, a physician assistant, an advanced practice registered nurse, or a registered nurse
2199 who exercises due care under the provisions of this act shall not be liable for any act or omission related to
2200 performance of an examination in accordance with this section.

2201 **§ 54.1-2987.1. Durable Do Not Resuscitate Orders.**

2202 A. As used in this section:

2203 "Durable Do Not Resuscitate Order" means a written physician's order issued pursuant to this section to
2204 withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory
2205 arrest. For purposes of this article, cardiopulmonary resuscitation shall include cardiac compression,
2206 endotracheal intubation and other advanced airway management, artificial ventilation, and defibrillation and
2207 related procedures. A "Durable Do Not Resuscitate Order" is not and shall not be construed to be an
2208 advance health care directive as that term is used in the Uniform Health Care Decisions Act (§ 54.1-2993.2
2209 et seq.).

2210 "Health care provider" includes, but is not limited to, qualified emergency medical services personnel.

2211 "Person authorized to consent on the patient's behalf" means any person authorized by law to consent on
2212 behalf of the patient incapable of making an informed decision or, in the case of a minor child, the parent or
2213 parents having custody of the child or the child's legal guardian or as otherwise provided by law.

2214 B. A Durable Do Not Resuscitate Order may be issued by a physician for his patient with whom he has a
2215 bona fide physician/patient relationship as defined in the guidelines of the Board of Medicine, and only with
2216 the consent of the patient or, if the patient is a minor or is otherwise incapable of making an informed
2217 decision regarding consent for such an order, upon the request of and with the consent of the person
2218 authorized to consent on the patient's behalf.

2219 C. A Durable Do Not Resuscitate Order or other order regarding life-prolonging procedures executed in
2220 accordance with the laws of another state in which such order was executed shall be deemed to be valid for
2221 purposes of this article and shall be given effect as provided in this article.

2222 D. If a patient is able to, and does, express to a health care provider or practitioner the desire to be
2223 resuscitated in the event of cardiac or respiratory arrest, such expression shall revoke the provider's or
2224 practitioner's authority to follow a Durable Do Not Resuscitate Order. In no case shall any person other than
2225 the patient have authority to revoke a Durable Do Not Resuscitate Order executed upon the request of and

2226 with the consent of the patient himself.

2227 If the patient is a minor or is otherwise incapable of making an informed decision and the Durable Do Not
 2228 Resuscitate Order was issued upon the request of and with the consent of the person authorized to consent on
 2229 the patient's behalf, then the expression by said authorized person to a health care provider or practitioner of
 2230 the desire that the patient be resuscitated shall so revoke the provider's or practitioner's authority to follow a
 2231 Durable Do Not Resuscitate Order.

2232 When a Durable Do Not Resuscitate Order has been revoked as provided in this section, a new Order may
 2233 be issued upon consent of the patient or the person authorized to consent on the patient's behalf.

2234 E. Durable Do Not Resuscitate Orders issued in accordance with this section or deemed valid in
 2235 accordance with subsection C shall remain valid and in effect until revoked as provided in subsection D or
 2236 until rescinded, in accordance with accepted medical practice, by the provider who issued the Durable Do Not
 2237 Resuscitate Order. In accordance with this section and regulations promulgated by the Board of Health, (i)
 2238 qualified emergency medical services personnel as defined in § 32.1-111.1; (ii) licensed health care
 2239 practitioners in any facility, program or organization operated or licensed by the Board of Health, the
 2240 Department of Social Services, or the Department of Behavioral Health and Developmental Services or
 2241 operated, licensed or owned by another state agency; and (iii) licensed health care practitioners at any
 2242 continuing care retirement community registered with the State Corporation Commission pursuant to Chapter
 2243 49 (§ 38.2-4900 et seq.) of Title 38.2 are authorized to follow Durable Do Not Resuscitate Orders that are
 2244 available to them in a form approved by the Board of Health or deemed valid in accordance with subsection
 2245 C.

2246 F. The provisions of this section shall not authorize any qualified emergency medical services personnel
 2247 or licensed health care provider or practitioner who is attending the patient at the time of cardiac or
 2248 respiratory arrest to provide, continue, withhold or withdraw health care if such provider or practitioner
 2249 knows that taking such action is protested by the patient incapable of making an informed decision. No
 2250 person shall authorize providing, continuing, withholding or withdrawing health care pursuant to this section
 2251 that such person knows, or upon reasonable inquiry ought to know, is contrary to the religious beliefs or basic
 2252 values of a patient incapable of making an informed decision or the wishes of such patient fairly expressed
 2253 when the patient was capable of making an informed decision. Further, this section shall not authorize the
 2254 withholding of other medical interventions, such as intravenous fluids, oxygen or other therapies deemed
 2255 necessary to provide comfort care or to alleviate pain.

2256 G. This section shall not prevent, prohibit or limit a physician from issuing a written order, other than a
 2257 Durable Do Not Resuscitate Order, not to resuscitate a patient in the event of cardiac or respiratory arrest in
 2258 accordance with accepted medical practice.

2259 H. Valid Do Not Resuscitate Orders or Emergency Medical Services Do Not Resuscitate Orders issued
 2260 before July 1, 1999, pursuant to the then-current law, shall remain valid and shall be given effect as provided
 2261 in this article.

§ 54.1-2988.1. Assistance with completing and executing advance health care directives.

2262 A. The distribution of written advance *health care* directives in a form meeting the requirements of
 2263 ~~§ 54.1-2984 the Uniform Health Care Decisions Act~~ (§ 54.1-2993.2 et seq.) and the provision of technical
 2264 advice, consultation, and assistance to persons with regard to the completion and execution of such forms by
 2265 (i) health care providers, including their authorized agents or employees, or (ii) qualified advance *health care*
 2266 directive facilitators shall not constitute the unauthorized practice of law pursuant to Chapter 39 (§ 54.1-3900
 2267 et seq.).

2268 B. The provision of ministerial assistance to a person with regard to the completion or execution of a
 2269 written advance *health care* directive in a form meeting the requirements of ~~§ 54.1-2984 the Uniform Health~~
 2270 *Care Decisions Act* (§ 54.1-2993.2 et seq.) shall not constitute the unauthorized practice of law pursuant to
 2271 Chapter 39 (§ 54.1-3900 et seq.). For the purpose of this subsection, "ministerial assistance" includes reading
 2272 the form of an advance *health care* directive meeting the requirements of ~~§ 54.1-2984 the Uniform Health~~
 2273 *Care Decisions Act* (§ 54.1-2993.2 et seq.) to a person, discussing the person's preferences with regard to
 2274 items included in the form, recording the person's answers on the form, and helping the person sign the form
 2275 and obtain any other necessary signatures on the form. "Ministerial assistance" does not include the
 2276 expressing of an opinion regarding the legal effects of any item contained in the form of an advance *health*
 2277 *care* directive meeting the requirements of ~~§ 54.1-2984 the Uniform Health Care Decisions Act~~
 2278 (§ 54.1-2993.2 et seq.) or the offering of legal advice to a person completing or executing such form.

**§ 54.1-2993.1. Qualified advance health care directive facilitators; requirements for training
 2281 programs.**

2282 The Department of Health shall approve a program for the training of qualified advance *health care*
 2283 directive facilitators that includes (i) instruction on the meaning of provisions of a form meeting the
 2284 requirements of ~~§ 54.1-2984 the Uniform Health Care Decisions Act~~ (§ 54.1-2993.2 et seq.), including
 2285 designating a health care agent and giving instructions relating to one or more specific types of health care,
 2286 and (ii) requirements for demonstrating competence in assisting persons with completing and executing
 2287 advance *health care* directives, including a written examination on information provided during the training

2288 program.

2289 In determining whether a training program meets the criteria set forth in this section, the Department of
2290 Health may consult with the Department for Aging and Rehabilitative Services, the Department of Behavioral
2291 Health and Developmental Services, and the Virginia State Bar.

2292 *Article 8.1.*

2293 *Uniform Health Care Decisions Act.*

2294 **§ 54.1-2993.2. Short title.**

2295 *The provisions of this article shall be known and may be cited as the Uniform Health Care Decisions Act.*

2296 **§ 54.1-2993.3. Definitions.**

2297 *As used in this article, unless the context requires a different meaning:*

2298 *"Advance health care directive" means a power of attorney for health care, health care instruction, or
2299 both. "Advance health care directive" includes an advance mental health care directive.*

2300 *"Advance mental health care directive" means a power of attorney for health care, health care
2301 instruction, or both, created under § 54.1-2993.10.*

2302 *"Agent" means an individual appointed under a power of attorney for health care to make a health care
2303 decision for the individual who made the appointment. "Agent" includes a co-agent or alternate agent
2304 appointed under § 54.1-2993.21.*

2305 *"Capacity" means having capacity pursuant to § 54.1-2993.4.*

2306 *"Capacity reviewer" means an individual who is qualified by training or experience to assess whether a
2307 person is capable or incapable of making an informed decision and is authorized to practice in the
2308 Commonwealth as a licensed physician, a clinical psychologist, a physician assistant, an advanced practice
2309 registered nurse, a licensed clinical social worker, or another responsible health care professional.*

2310 *"Default surrogate" means an individual authorized under § 54.1-2993.13 to make a health care decision
2311 for another individual.*

2312 *"Domestic partner" means an individual who has been living together with another individual as a couple
2313 in a committed relationship for at least one year after each became an adult or was emancipated and who are
2314 not married to each other.*

2315 *"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,
2316 electromagnetic, or similar capabilities.*

2317 *"Family member" means a spouse, adult child, parent, sibling, or grandparent or an adult descendant of
2318 a spouse, child, parent, sibling, or grandparent. "Family member" includes grandchildren, nieces, nephews,
2319 aunts, uncles, and cousins related by bloodline or adoption.*

2320 *"Guardian" means a person appointed under other law by a court to make decisions regarding the
2321 personal affairs of an individual, which may include health care decisions. The term does not include a
2322 guardian ad litem.*

2323 *"Health care" means care or treatment or a service or procedure to maintain, monitor, diagnose, or
2324 otherwise affect an individual's physical or mental illness, injury, or condition. "Health care" includes mental
2325 health care.*

2326 *"Health care decision" means a decision made by an individual or the individual's surrogate regarding
2327 the individual's health care, including:*

2328 *1. Selection or discharge of a health care professional or health care institution;*

2329 *2. Approval or disapproval of a diagnostic test, surgical procedure, medication, therapeutic intervention,
2330 or other health care; and*

2331 *3. Direction to provide, withhold, or withdraw medically assisted nutrition or hydration, mechanical
2332 ventilation, or other health care.*

2333 *"Health care institution" means a facility or agency licensed, certified, or otherwise authorized or
2334 permitted by other law to provide health care in the Commonwealth in the ordinary course of business.*

2335 *"Health care instruction" means a direction, whether or not yet in a record, made by an individual that
2336 indicates the individual's goals, preferences, or wishes concerning the provision, withholding, or withdrawal
2337 of health care. "Health care instruction" includes a direction intended to be effective if a specified condition
2338 arises.*

2339 *"Health care professional" means a physician or other individual licensed, certified, or otherwise
2340 authorized or permitted by other law of the Commonwealth to provide health care in the Commonwealth in
2341 the ordinary course of business or the practice of the physician's or individual's profession.*

2342 *"Individual" means an adult or emancipated minor.*

2343 *"Mental health care" means care or treatment or a service or procedure to maintain, monitor, diagnose,
2344 or otherwise affect an individual's mental illness or other psychiatric, psychological, or psychosocial
2345 condition.*

2346 *"Nursing home" means a nursing facility as defined in § 1919(a)(1) of the Social Security Act, 42 U.S.C. §
2347 1396r(a)(1), as amended, or skilled nursing facility as defined in § 1819(a)(1) of the Social Security Act, 42
2348 U.S.C. § 1395i-3(a)(1), as amended.*

2349 *"Person interested in the welfare of the individual" means:*

2350 1. *The individual's surrogate;*
 2351 2. *A family member of the individual;*
 2352 3. *The domestic partner of the individual;*
 2353 4. *A public entity providing health care case management or protective services to the individual;*
 2354 5. *A person appointed under other law to make decisions for the individual under a power of attorney for*
 2355 *finances; or*
 2356 6. *A person who has an ongoing personal or professional relationship with the individual, including a*
 2357 *person who has provided educational or health care services or supported decision making to the individual.*
 2358 "*Physician*" means an individual authorized to practice medicine pursuant to Article 3 (§ 54.1-2929 et
 2359 *seq.*).

2360 "*Power of attorney for health care*" means a record in which an individual appoints an agent to make
 2361 *health care decisions for the individual.*
 2362 "*Reasonably available*" means being able to be contacted without undue effort and being willing and able
 2363 *to act in a timely manner considering the urgency of an individual's health care situation. When used to refer*
 2364 *to an agent or default surrogate, "reasonably available" includes being willing and able to comply with the*
 2365 *duties under § 54.1-2993.18 in a timely manner considering the urgency of an individual's health care*
 2366 *situation.*
 2367 "*Record*" means information:
 2368 1. *Inscribed on a tangible medium; or*
 2369 2. *Stored in an electronic or other medium and retrievable in perceivable form.*
 2370 "*Responsible health care professional*" means:
 2371 1. *A health care professional designated by an individual or the individual's surrogate to have primary*
 2372 *responsibility for the individual's health care or for overseeing a course of treatment; or*
 2373 2. *In the absence of a designation under subdivision 1 or if the professional designated under subdivision*
 2374 *1 is not reasonably available, a health care professional who has primary responsibility for overseeing the*
 2375 *individual's health care or for overseeing a course of treatment.*
 2376 "*Sign*" means, with present intent to authenticate or adopt a record, to:
 2377 1. *Execute or adopt a tangible symbol (such as an "X"); or*
 2378 2. *Attach to or logically associate with the record an electronic symbol, sound, or process.*
 2379 "*State*" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin
 2380 *Islands, or any other territory or possession subject to the jurisdiction of the United States. "State" includes a*
 2381 *federally recognized Indian tribe.*
 2382 "*Supported decision making*" means assistance, from one or more persons of an individual's choosing,
 2383 *that helps the individual make or communicate a decision, including by helping the individual understand the*
 2384 *nature and consequences of the decision.*
 2385 "*Surrogate*" means:
 2386 1. *An agent;*
 2387 2. *A guardian authorized to make health care decisions; or*
 2388 3. *A default surrogate.*
 2389 **§ 54.1-2993.4. Capacity.**
 2390 A. *An individual has capacity for the purpose of this article if the individual:*
 2391 1. *Is willing and able to communicate a decision independently or with appropriate services,*
 2392 *technological assistance, supported decision making, or other reasonable accommodation; and*
 2393 2. *In making or revoking:*
 2394 a. *A health care decision, understands the nature and consequences of the decision, including the primary*
 2395 *risks and benefits of the decision;*
 2396 b. *A health care instruction, understands the nature and consequences of the instruction, including the*
 2397 *primary risks and benefits of the choices expressed in the instruction; or*
 2398 c. *An appointment of an agent under a health care power of attorney or identification of a default*
 2399 *surrogate under subdivision B 1 of § 54.1-2993.13, recognizes the identity of the individual being appointed*
 2400 *or identified and understands the general nature of the relationship of the individual making the appointment*
 2401 *or identification with the individual being appointed or identified.*
 2402 B. *The right of an individual who has capacity to make a decision about the individual's health care is not*
 2403 *affected by whether the individual creates or revokes an advance health care directive.*
 2404 **§ 54.1-2993.5. Presumption of capacity; overcoming presumption.**
 2405 A. *An individual is presumed to have capacity to make or revoke a health care decision, health care*
 2406 *instruction, and power of attorney for health care unless:*
 2407 1. *A court has found the individual lacks capacity to do so; or*
 2408 2. *The presumption is rebutted under subsection B.*
 2409 B. *Subject to §§ 54.1-2993.6 and 54.1-2993.7, a presumption under subsection A may be rebutted by a*
 2410 *finding that the individual lacks capacity:*
 2411 1. *Subject to subsection C, made on the basis of a contemporaneous examination by any of the following:*

2412 a. A physician;
2413 b. A psychologist licensed or otherwise authorized to practice in the Commonwealth; or
2414 c. An individual with training and expertise in the finding of lack of capacity who is licensed or otherwise
2415 authorized to practice in the Commonwealth as:
2416 (1) A physician assistant;
2417 (2) An advanced practice registered nurse; or
2418 (3) A licensed clinical social worker; or
2419 d. A responsible health care professional not described in subdivision a, b, or c if:
2420 (1) The individual about whom the finding is to be made is experiencing a health condition requiring a
2421 decision regarding health care treatment to be made promptly to avoid loss of life or serious harm to the
2422 health of the individual; and
2423 (2) An individual listed in subdivision a, b, or c is not reasonably available;
2424 2. Made in accordance with accepted standards of the profession and the scope of practice of the
2425 individual making the finding and to a reasonable degree of certainty;
2426 3. Documented in a record signed by the individual making the finding that includes an opinion of the
2427 cause, nature, extent, and probable duration of the lack of capacity; and
2428 4. Documented in a written certification obtained from a capacity reviewer that, based upon a personal
2429 examination of the patient, the patient is incapable of making an informed decision. However, certification by
2430 a capacity reviewer shall not be required if the patient is unconscious or experiencing a profound impairment
2431 of consciousness due to trauma, stroke, or other acute physiological condition. The capacity reviewer
2432 providing written certification that a patient is incapable of making an informed decision, if required, shall
2433 not be otherwise currently involved in the treatment of the person assessed, unless an independent capacity
2434 reviewer is not reasonably available. The cost of the assessment shall be considered for all purposes a cost of
2435 the patient's health care.

2436 C. The finding under subsection B may not be made by:
2437 1. A family member of the individual presumed to have capacity;
2438 2. The domestic partner of the individual or a descendant of the domestic partner; or
2439 3. The individual's surrogate, a family member of the surrogate, or a descendant of the surrogate.
2440 D. If the finding under subsection B was based on a condition the individual no longer has or a
2441 responsible health care professional subsequently has good cause to believe the individual has capacity, the
2442 individual is presumed to have capacity unless a court finds the individual lacks capacity or the presumption
2443 is rebutted under subsection B.

2444 § 54.1-2993.6. Notice of finding of lack of capacity; right to object.

2445 A. As soon as reasonably feasible, an individual who makes a finding under subsection B of § 54.1-2993.5
2446 shall inform the individual about whom the finding was made or the individual's responsible health care
2447 professional of the finding.

2448 B. As soon as reasonably feasible, a responsible health care professional who is informed of a finding
2449 under subsection B of § 54.1-2993.5 shall inform the individual about whom the finding was made and the
2450 individual's surrogate.

2451 C. An individual found under subsection B of § 54.1-2993.5 to lack capacity may object to the finding:
2452 1. By orally informing a responsible health care professional;
2453 2. By a record provided to a responsible health care professional or the health care institution in which
2454 the individual resides or is receiving care; or
2455 3. By another act that clearly indicates the individual's objection.

2456 D. If the individual objects under subsection C, the finding under subsection B of § 54.1-2993.5 is not
2457 sufficient to rebut a presumption of capacity in subsection A of § 54.1-2993.5 and the individual shall be
2458 treated as having capacity unless:

2459 1. The individual withdraws the objection;
2460 2. A court finds the individual lacks the presumed capacity;
2461 3. The individual is experiencing a health condition requiring a decision regarding health care treatment
2462 to be made promptly to avoid imminent loss of life or serious harm to the health of the individual; or
2463 4. Subject to subsection E, the finding is confirmed by a second finding made by an individual authorized
2464 under subdivision B 1 of § 54.1-2993.5 who:
2465 a. Did not make the first finding;
2466 b. Is not a family member of the individual who made the first finding; and
2467 c. Is not the domestic partner of the individual who made the first finding or a descendant of the domestic
2468 partner.

2469 E. A second finding that the individual lacks capacity under subdivision D 4 is not sufficient to rebut the
2470 presumption of capacity if the individual is requesting the provision or continuation of life-sustaining
2471 treatment and the finding is being used to make a decision to withhold or withdraw the treatment.

2472 F. As soon as reasonably feasible, a health care professional who is informed of an objection under
2473 subsection C shall:

2474 1. Communicate the objection to a responsible health care professional; and
 2475 2. Document the objection and the date of the objection in the individual's medical record or
 2476 communicate the objection and the date of the objection to an administrator with responsibility for medical
 2477 records of the health care institution providing health care to the individual, who shall document the
 2478 objection and the date of the objection in the individual's medical record.

2479 **§ 54.1-2993.7. Judicial review for finding of lack of capacity.**

2480 A. An individual found under subsection B of § 54.1-2993.5 to lack capacity, a responsible health care
 2481 professional, the health care institution providing health care to the individual, or a person interested in the
 2482 welfare of the individual may petition the circuit court in the locality in which the individual resides or is
 2483 located to determine whether the individual lacks capacity.

2484 B. The court in which a petition under subsection A is filed shall appoint a guardian ad litem. The court
 2485 shall hear the petition as soon as possible, but not later than seven days after the petition is filed. As soon as
 2486 possible, but not later than seven days after the hearing, the court shall determine whether the individual
 2487 lacks capacity. The court may determine the individual lacks capacity only if the court finds by clear and
 2488 convincing evidence that the individual lacks capacity.

2489 **§ 54.1-2993.8. Health care instruction.**

2490 A. An individual may create a health care instruction that expresses the individual's preferences for future
 2491 health care, including preferences regarding:

- 2492 1. Health care professionals or health care institutions;
- 2493 2. How a health care decision will be made and communicated;
- 2494 3. Persons that should or should not be consulted regarding a health care decision;
- 2495 4. A person to serve as guardian for the individual if one is appointed; and
- 2496 5. An individual to serve as a default surrogate.

2497 B. A health care professional to whom an individual communicates or provides an instruction under
 2498 subsection A shall document the instruction and the date of the instruction in the individual's medical record
 2499 or communicate the instruction and date of the instruction to an administrator with responsibility for medical
 2500 records of the health care institution providing health care to the individual, who shall document the
 2501 instruction and the date of the instruction in the individual's medical record.

2502 C. A health care instruction made by an individual that conflicts with an earlier health care instruction
 2503 made by the individual, including an instruction documented in a medical order, revokes the earlier
 2504 instruction to the extent of the conflict.

2505 D. A health care instruction may be in the same record as a power of attorney for health care.

2506 **§ 54.1-2993.9. Power of attorney for health care.**

2507 A. An individual may create a power of attorney for health care to appoint an agent to make health care
 2508 decisions for the individual.

2509 B. An individual is disqualified from acting as agent for an individual who lacks capacity to make health
 2510 care decisions if:

2511 1. A court finds that the potential agent poses a danger to the individual's well-being, even if the court
 2512 does not issue a protective order against the potential agent; or

2513 2. The potential agent is an owner, operator, employee, or contractor of a nursing home or other
 2514 residential care facility in which the individual resides or is receiving care, unless the owner, operator,
 2515 employee, or contractor is a family member of the individual, the domestic partner of the individual, or a
 2516 descendant of the domestic partner.

2517 C. A health care decision made by an agent is effective without judicial approval.

2518 D. A power of attorney for health care shall be in a record, signed by the individual creating the power,
 2519 and signed by an adult witness who:

- 2520 1. Reasonably believes the act of the individual to create the power of attorney is voluntary and knowing;
- 2521 2. Is not:

2522 a. The agent appointed by the individual;

2523 b. The agent's spouse or domestic partner;

2524 c. If the individual resides or is receiving care in a nursing home or other residential care facility, the
 2525 owner, operator, employee, or contractor of the nursing home or other residential care facility; and

2526 3. Is present when the individual signs the power of attorney or when the individual represents that the
 2527 power of attorney reflects the individual's wishes.

2528 E. A witness under subsection D is considered present if the witness and the individual are:

2529 1. Physically present in the same location;

2530 2. Using electronic means that allow for real-time audio and visual transmission and communication in
 2531 real time to the same extent as if the witness and the individual were physically present in the same location;
 2532 or

2533 3. Able to speak to and hear each other in real time through audio connection if:

2534 a. The identity of the individual is reasonably known to the witness; or

2535 b. The witness is able to authenticate the identity of the individual by receiving accurate answers from the

2536 *individual that enable the authentication.*

2537 *F. A power of attorney for health care may include a health care instruction.*

2538 **§ 54.1-2993.10. Advance mental health care directive.**

2539 *A. An individual may create an advance health care directive that addresses only mental health care for*
2540 *the individual. The directive may include a health care instruction, a power of attorney for health care, or*
2541 *both.*

2542 *B. A health care instruction under this section may include the individual's:*

2543 *1. General philosophy and objectives regarding mental health care;*

2544 *2. Specific goals, preferences, and wishes regarding the provision, withholding, or withdrawal of a form*
2545 *of mental health care, including:*

2546 *a. Preferences regarding professionals, programs, and facilities;*

2547 *b. Admission to a mental-health facility, including duration of admission;*

2548 *c. Preferences regarding medications;*

2549 *d. Refusal to accept a specific type of mental health care, including a medication; and*

2550 *e. Preferences regarding crisis intervention.*

2551 *C. A power of attorney for health care under this section may appoint an agent to make decisions only for*
2552 *mental health care.*

2553 *D. An individual may direct in an advance mental health care directive that, if the individual is*
2554 *experiencing a psychiatric or psychological event specified in the directive, the individual may not revoke the*
2555 *directive or a part of the directive.*

2556 *E. If an advance mental health care directive includes a direction under subsection D, the advance mental*
2557 *health care directive shall be in a record that is separate from any other advance health care directive*
2558 *created by the individual and signed by the individual creating the advance mental health care directive and*
2559 *at least two adult witnesses who:*

2560 *1. Attest that to the best of their knowledge the individual:*

2561 *a. Understood the nature and consequences of the direction, including its risks and benefits; and*

2562 *b. Made the direction voluntarily and without coercion or undue influence;*

2563 *2. Are not:*

2564 *a. The agent appointed by the individual;*

2565 *b. The agent's spouse or domestic partner; and*

2566 *c. If the individual resides in a nursing home or other residential care facility, the owner, operator,*
2567 *employee, or contractor of the nursing home or other residential care facility; and*

2568 *3. Are physically present in the same location as the individual.*

2569 **§ 54.1-2993.11. Relationship of advance mental health care directive and other advance health care**
2570 **directive.**

2571 *A. If a direction in an advance mental health care directive of an individual conflicts with a direction in*
2572 *another advance health care directive of the individual, the later direction revokes the earlier direction to the*
2573 *extent of the conflict.*

2574 *B. An appointment of an agent to make decisions only for mental health care for an individual does not*
2575 *revoke an earlier appointment of an agent to make other health care decisions for the individual. A later*
2576 *appointment revokes the authority of an agent under the earlier appointment to make decisions about mental*
2577 *health care unless otherwise specified in the power of attorney making the later appointment.*

2578 *C. An appointment of an agent to make health care decisions for an individual other than decisions about*
2579 *mental health care made after appointment of an agent authorized to make only mental health care decisions*
2580 *does not revoke the appointment of the agent authorized to make only mental health care decisions.*

2581 **§ 54.1-2993.12. Optional form.**

2582 *The following form may be used to create an advance health care directive:*

2583 **ADVANCE HEALTH CARE DIRECTIVE**

2584 **HOW YOU CAN USE THIS FORM**

2585 *You can use this form if you wish to name someone to make health care decisions for you in case you*
2586 *cannot make decisions for yourself. This is called giving the person a power of attorney for health care. This*
2587 *person is called your Agent.*

2588 *You can also use this form to state your wishes, preferences, and goals for health care, and to say if you*
2589 *want to be an organ donor after you die.*

2590 **YOUR NAME AND DATE OF BIRTH**

2591 *Name:*

2592 *Date of birth:*

2593 **PART A: NAMING AN AGENT**

2594 *This part lets you name someone else to make health care decisions for you. You may leave any item blank*
2595 *and then strike through that item.*

2596 **1. NAMING AN AGENT**

2597 *I want the following person to make health care decisions for me if I cannot make decisions for myself:*

2598 Name:

2599 Optional contact information (it is helpful to include information such as address, phone, and email):

2600 2. NAMING AN ALTERNATE AGENT

2601 I want the following person to make health care decisions for me if I cannot and my Agent is not able or available to make them for me:

2603 Name:

2604 Optional contact information (it is helpful to include information such as address, phone, and email):

2605 3. LIMITING YOUR AGENT'S AUTHORITY

2606 I give my Agent the power to make all health care decisions for me if I cannot make those decisions for myself, except the following:

2608 (If you do not add a limitation here, your Agent will be able make all health care decisions that an Agent is permitted to make under state law.)

2610 PART B: HEALTH CARE INSTRUCTIONS

2611 This part lets you state your priorities for health care and state types of health care you do and do not want.

2613 1. INSTRUCTIONS ABOUT LIFE-SUSTAINING TREATMENT

2614 This section gives you the opportunity to say how you want your Agent to act while making decisions for you. You may mark or initial each choice. You also may leave any choice blank.

2616 Treatment. Medical treatment needed to keep me alive but not needed for comfort or any other purpose should (mark or initial all that apply):

2618 Always be given to me. (If you mark or initial this choice, you should not mark or initial other choices in this "treatment" section.)

2620 Not be given to me if I have a condition that is not curable and is expected to cause my death soon, even if treated.

2622 Not be given to me if I am unconscious and I am not expected to be conscious again.

2623 Not be given to me if I have a medical condition from which I am not expected to recover that prevents me from communicating with people I care about, caring for myself, and recognizing family and friends.

2626 Other (write what you want or do not want):

2627 Food and liquids. If I can't swallow and staying alive requires me to get food or liquids through a tube or other means for the rest of my life, then food or liquids should (mark or initial all that apply):

2629 Always be given to me. (If you mark or initial this choice, you should not mark or initial other choices in this "food and liquids" section.)

2631 Not be given to me if I have a condition that is not curable and is expected to cause me to die soon, even if treated.

2633 Not be given to me if I am unconscious and am not expected to be conscious again.

2635 Not be given to me if I have a medical condition from which I am not expected to recover that prevents me from communicating with people I care about, caring for myself, and recognizing family and friends.

2637 Other (write what you want or do not want):

2638 Pain relief. If I am in significant pain, care that will keep me comfortable but is likely to shorten my life should (mark or initial all that apply):

2640 Always be given to me. (If you mark or initial this choice, you should not mark or initial other choices in this "pain relief" section.)

2642 Never be given to me. (If you mark or initial this choice, you should not mark or initial other choices in this "pain relief" section.)

2644 Be given to me if I have a condition that is not curable and is expected to cause me to die soon, even if treated.

2646 Be given to me if I am unconscious and am not expected to be conscious again.

2648 Be given to me if I have a medical condition from which I am not expected to recover that prevents me from communicating with people I care about, caring for myself, and recognizing family and friends.

2649 Other (write what you want or do not want):

2650 2. MY PRIORITIES

2651 You can use this section to indicate what is important to you, and what is not important to you. This information can help your Agent make decisions for you if you cannot. It also helps others understand your preferences.

2654 You may mark or initial each choice. You also may leave any choice blank.

2655 Staying alive as long as possible even if I have substantial physical limitations is:

2656 Very important

2657 Somewhat important

2658 Not important

2659 Staying alive as long as possible even if I have substantial mental limitations is:

2660 Very important
2661 Somewhat important
2662 Not important
2663 Being free from significant pain is:
2664 Very important
2665 Somewhat important
2666 Not important
2667 Being independent is:
2668 Very important
2669 Somewhat important
2670 Not important

2671 Having my Agent talk with my family before making decisions about my care is:
2672 Very important
2673 Somewhat important
2674 Not important

2675 Having my Agent talk with my friends before making decisions about my care is:
2676 Very important
2677 Somewhat important
2678 Not important

2679 **3. OTHER INSTRUCTIONS**

2680 You can write in this section more information about your goals, values, and preferences for treatment,
2681 including care you want or do not want. You can also use this section to name anyone who you do not want to
2682 make decisions for you under any conditions.

2683 **PART C: OPTIONAL SPECIAL POWERS AND GUIDANCE**

2684 This part lets you give your Agent additional powers and provide more guidance about your wishes. You
2685 may mark or initial each choice. You also may leave any choice blank.

2686 **1. OPTIONAL SPECIAL POWERS**

2687 My Agent can do the following things ONLY if I have marked or initialed them below:

2688 Admit me as a voluntary patient to a facility for mental health treatment for up to _____ days
2689 (write in the number of days you want, such as 7, 14, 30, or another number).

2690 (If I do not mark or initial this choice, my Agent is not authorized to admit me as a voluntary patient to
2691 this type of facility.)

2692 Place me in a nursing home for more than 100 days even if my needs can be met somewhere else, I
2693 am not terminally ill, and I object.

2694 (If I do not mark or initial this choice, my Agent is not authorized to do this.)

2695 **2. ACCESS TO MY HEALTH INFORMATION**

2696 My Agent may obtain, examine, and share information about my health needs and health care if I am not
2697 able to make decisions for myself. If I mark or initial below, my Agent may also obtain, examine, and share
2698 information at any time my Agent thinks it will help me.

2699 I give my Agent permission to obtain, examine, and share information about my health needs and
2700 health care whenever my Agent thinks it will help me.

2701 **3. FLEXIBILITY FOR MY AGENT**

2702 Mark or initial below if you want to give your Agent flexibility in following instructions you provide in
2703 this form. If you do not, your Agent is required to follow the instructions even if your Agent thinks something
2704 else would be better for you.

2705 I give my Agent permission to be flexible in applying these instructions if my Agent thinks it would
2706 be in my best interest based on what my Agent knows about me.

2707 **4. NOMINATION OF GUARDIAN**

2708 You can say who you would want as your guardian if you needed one. A guardian is a person appointed
2709 by a court to make decisions for someone who cannot make decisions. Filling this out does NOT mean you
2710 want or need a guardian.

2711 If a court appoints a guardian to make personal decisions for me, I want the court to choose:

2712 My Agent named in this form. If my Agent cannot be a guardian, I want the Alternate Agent named
2713 in this form.

2714 Other (write who you would want and their contact information):

2715 **PART D: ORGAN DONATION**

2716 This part lets you donate your organs after you die. You may leave any item blank.

2717 **1. DONATION**

2718 You may mark or initial only one choice.

2719 I donate my organs, tissues, and other body parts after I die, even if it requires maintaining
2720 treatments that conflict with other instructions I have put in this form, EXCEPT for those I list below (list any
2721 body parts you do NOT want to donate):

2722 (____) I do not want my organs, tissues, or body parts donated to anybody for any reason. (If you mark or
 2723 initial this choice, you should skip the "purpose of donation" section.)

2724 2. PURPOSE OF DONATION

2725 You may mark or initial all that apply. (If you do not mark or initial any of the purposes below, your
 2726 donation can be used for all of them.)

2727 Organs, tissues, or body parts that I donate may be used for:

2728 (____) Transplant

2729 (____) Therapy

2730 (____) Research

2731 (____) Education

2732 (____) All of the above

2733 PART E: SIGNATURES

2734 YOUR SIGNATURE

2735 Sign your name:

2736 Today's date:

2737 City/Town/Village and State (optional):

2738 SIGNATURE OF A WITNESS

2739 You need a witness if you are using this form to name an Agent or provide health care instructions. The
 2740 witness must be an adult and cannot be the person you are naming as Agent or the Agent's spouse or
 2741 someone the Agent lives with as a couple. If you live or are receiving care in a nursing home, the witness
 2742 cannot be an employee or contractor of the home or someone who owns or runs the home.

2743 Name of Witness:

2744 Signature of Witness:

2745 (Only sign as a witness if you think the person signing above is doing it voluntarily.)

2746 Date witness signed:

2747 PART F: INFORMATION FOR AGENTS

2748 1. If this form names you as an Agent, you can make decisions about health care for the person who
 2749 named you when the person cannot make their own.

2750 2. If you make a decision for the person, follow any instructions the person gave, including any in this
 2751 form.

2752 3. If you do not know what the person would want, make the decision that you think is in the person's best
 2753 interest. To figure out what is in the person's best interest, consider the person's values, preferences, and
 2754 goals if you know them or can learn them. Some of these preferences may be in this form. You should also
 2755 consider any behavior or communication from the person that indicates what the person currently wants.

2756 4. If this form names you as an Agent, you can also get and share the person's health information. But
 2757 unless the person has said so in this form, you can get or share this information only when the person cannot
 2758 make decisions about the person's health care.

2759 § 54.1-2993.13. Default surrogate.

2760 A. A default surrogate may make a health care decision for an individual who lacks capacity to make
 2761 health care decisions and for whom an agent, or guardian authorized to make health care decisions, has not
 2762 been appointed or is not reasonably available.

2763 B. Unless the individual has an advance health care directive that indicates otherwise, a member of the
 2764 following classes, in descending order of priority, who is reasonably available and not disqualified under
 2765 § 54.1-2993.15, may act as a default surrogate for the individual:

2766 1. An adult the individual has identified, other than in a power of attorney for health care, to make a
 2767 health care decision for the individual if the individual cannot make the decision;

2768 2. The individual's spouse, unless:

2769 a. A petition for annulment or divorce has been filed and not dismissed or withdrawn;

2770 b. A decree of annulment or divorce has been issued; or

2771 c. The spouse has abandoned the individual for more than one year;

2772 3. The individual's adult child;

2773 4. The individual's parent;

2774 5. The individual's domestic partner;

2775 6. The individual's adult sibling;

2776 7. The individual's adult grandchild or grandparent;

2777 8. An adult not listed in subdivisions 1 through 7 who has assisted the individual with supported decision
 2778 making routinely during the preceding six months;

2779 9. The individual's adult stepchild not listed in subdivisions 1 through 8 whom the individual actively
 2780 parented during the stepchild's minor years and with whom the individual has an ongoing relationship;

2781 10. An adult not listed in subdivisions 1 through 9 who has exhibited special care and concern for the
 2782 individual and is familiar with the individual's personal values; or

2783 11. Any other blood relative in the descending order of blood relationship.

2784 C. A responsible health care professional may require an individual who assumes authority to act as a
2785 default surrogate to provide a declaration in a record under penalty of perjury stating facts and
2786 circumstances reasonably sufficient to establish the authority.

2787 D. If a responsible health care professional reasonably determines that an individual who assumed
2788 authority to act as a default surrogate is not willing or able to comply with a duty under § 54.1-2993.18 or
2789 fails to comply with the duty in a timely manner, the professional may recognize the individual next in
2790 priority under subsection B as the default surrogate.

2791 E. A health care decision made by a default surrogate is effective without judicial approval.

2792 **§ 54.1-2993.14. Disagreement among default surrogates.**

2793 A. A default surrogate who assumes authority under § 54.1-2993.13 shall inform a responsible health
2794 care professional if two or more members of a class under subsection B of § 54.1-2993.13 have assumed
2795 authority to act as default surrogates and the members do not agree on a health care decision.

2796 B. A responsible health care professional shall comply with the decision of a majority of the members of
2797 the class with highest priority under subsection B of § 54.1-2993.13 who have communicated their views to
2798 the professional and the professional reasonably believes are acting consistent with their duties under
2799 § 54.1-2993.18.

2800 C. If a responsible health care professional is informed that the members of the class who have
2801 communicated their views to the professional are evenly divided concerning the health care decision, the
2802 professional shall make a reasonable effort to solicit the views of members of the class who are reasonably
2803 available but have not yet communicated their views to the professional. The professional, after the
2804 solicitation, shall comply with the decision of a majority of the members who have communicated their views
2805 to the professional and the professional reasonably believes are acting consistent with their duties under
2806 § 54.1-2993.18.

2807 D. If the class remains evenly divided after the effort is made under subsection C, the health care decision
2808 shall be made as provided by other law of the Commonwealth regarding the treatment of an individual who is
2809 found to lack capacity.

2810 **§ 54.1-2993.15. Disqualification to act as default surrogate.**

2811 A. An individual for whom a health care decision would be made may disqualify another individual from
2812 acting as default surrogate for the first individual. The disqualification shall be in a record signed by the first
2813 individual or communicated verbally or nonverbally to the individual being disqualified, another individual,
2814 or a responsible health care professional. Disqualification under this subsection is effective even if made by
2815 an individual who lacks capacity to make an advance health care directive if the individual clearly
2816 communicates a desire that the individual being disqualified not make health care decisions for the
2817 individual.

2818 B. An individual is disqualified from acting as a default surrogate for an individual who lacks capacity to
2819 make health care decisions if:

2820 1. A court finds that the potential default surrogate poses a danger to the individual's well-being, even if
2821 the court does not issue a protective order against the potential default surrogate;

2822 2. The potential default surrogate is an owner, operator, employee, or contractor of a nursing home or
2823 other residential care facility in which the individual is residing or receiving care unless the owner, operator,
2824 employee, or contractor is a family member of the individual, the domestic partner of the individual, or a
2825 descendant of the domestic partner; or

2826 3. The potential default surrogate refuses to provide a timely declaration under subsection C of
2827 § 54.1-2993.13.

2828 **§ 54.1-2993.16. Revocation.**

2829 A. An individual may revoke the appointment of an agent, the designation of a default surrogate, or a
2830 health care instruction in whole or in part, unless:

2831 1. A court finds the individual lacks capacity to do so;

2832 2. The individual is found under subsection B of § 54.1-2993.5 to lack capacity to do so and, if the
2833 individual objects to the finding, the finding is confirmed under subdivision D 4 of § 54.1-2993.6; or

2834 3. The individual created an advance mental health care directive that includes the provision under
2835 subsection D of § 54.1-2993.10 and the individual is experiencing the psychiatric or psychological event
2836 specified in the directive.

2837 B. Revocation under subsection A may be by any act of the individual that clearly indicates that the
2838 individual intends to revoke the appointment, designation, or instruction, including an oral statement to a
2839 health care professional.

2840 C. Except as provided in § 54.1-2993.11, an advance health care directive of an individual that conflicts
2841 with another advance health care directive of the individual revokes the earlier directive to the extent of the
2842 conflict.

2843 D. Unless otherwise provided in an individual's advance health care directive appointing an agent, the
2844 appointment of a spouse of an individual as agent for the individual is revoked if:

2845 1. A petition for annulment or divorce has been filed and not dismissed or withdrawn;

2846 2. A decree of annulment or divorce has been issued; or
 2847 3. The spouse has abandoned the individual for more than one year.

2848 **§ 54.1-2993.17. Validity of advance health care directive; conflict with other law.**
 2849 A. An advance health care directive created outside the Commonwealth is valid if it complies with:
 2850 1. The law of the state specified in the directive or, if a state is not specified, the state in which the
 2851 individual created the directive; or
 2852 2. This article.
 2853 B. A person may assume without inquiry that an advance health care directive is genuine, valid, and still
 2854 in effect and may implement and rely on it, unless the person has good cause to believe the directive is invalid
 2855 or has been revoked.
 2856 C. An advance health care directive or revocation of a directive or a signature on a directive or
 2857 revocation may not be denied legal effect or enforceability solely because it is in electronic form.
 2858 D. Evidence relating to an advance health care directive or revocation of a directive or a signature on a
 2859 directive or revocation may not be excluded in a proceeding solely because the evidence is in electronic form.
 2860 E. This article does not affect the validity of an electronic record or signature that is valid under the
 2861 Uniform Electronic Transactions Act (§ 59.1-479 et seq.).
 2862 F. If this article conflicts with other law of the Commonwealth relating to the creation, execution,
 2863 implementation, or revocation of an advance health care directive, this article prevails.

2864 **§ 54.1-2993.18. Duties of Agent or Default Surrogate.**
 2865 A. An agent or default surrogate has a fiduciary duty to the individual for whom the agent or default
 2866 surrogate is acting when exercising or purporting to exercise a power under § 54.1-2993.19.
 2867 B. An agent or default surrogate shall make a health care decision in accordance with the direction of the
 2868 individual in an advance health care directive and other goals, preferences, and wishes of the individual to
 2869 the extent known or reasonably ascertainable by the agent or default surrogate.
 2870 C. If there is not a direction in an advance health care directive and the goals, preferences, and wishes of
 2871 the individual regarding a health care decision are not known or reasonably ascertainable by the agent or
 2872 default surrogate, the agent or default surrogate shall make the decision in accordance with the agent's or
 2873 default surrogate's determination of the individual's best interest.
 2874 D. In determining the individual's best interest under subsection C, the agent or default surrogate shall:
 2875 1. Give primary consideration to the individual's contemporaneous communications, including verbal and
 2876 nonverbal expressions;
 2877 2. Consider the individual's values to the extent known or reasonably ascertainable by the agent or
 2878 default surrogate; and
 2879 3. Consider the risks and benefits of the potential health care decision.
 2880 E. As soon as reasonably feasible, an agent or default surrogate who is informed of a revocation of an
 2881 advance health care directive or disqualification of the agent or default surrogate shall communicate the
 2882 revocation or disqualification to a responsible health care professional.

2883 **§ 54.1-2993.19. Powers of agent and default surrogate.**
 2884 A. Except as provided in subsection C, the power of an agent or default surrogate commences when the
 2885 individual is found under subsection B of § 54.1-2993.5 or by a court to lack capacity to make a health care
 2886 decision. The power ceases if the individual later is found to have capacity to make a health care decision, or
 2887 the individual objects under subsection C of § 54.1-2993.6 to the finding of lack of capacity under subsection
 2888 B of § 54.1-2993.5. The power resumes if:
 2889 1. The power ceased because the individual objected under subsection C of § 54.1-2993.6; and
 2890 2. The finding of lack of capacity is confirmed under subdivision D 4 of § 54.1-2993.6 or a court finds that
 2891 the individual lacks capacity to make a health care decision.
 2892 B. An agent or default surrogate may request, receive, examine, copy, and consent to the disclosure of
 2893 medical and other health care information about the individual if the individual would have the right to
 2894 request, receive, examine, copy, or consent to the disclosure of the information.
 2895 C. A power of attorney for health care may provide that the power of an agent under subsection B
 2896 commences on appointment.
 2897 D. If no other person is authorized to do so, an agent or default surrogate may apply for public or private
 2898 health insurance and benefits on behalf of the individual. An agent or default surrogate who may apply for
 2899 insurance and benefits does not, solely by reason of the power, have a duty to apply for the insurance or
 2900 benefits.
 2901 E. An agent or default surrogate may not consent to voluntary admission of the individual to a facility for
 2902 mental health treatment unless:
 2903 1. Voluntary admission is specifically authorized by the individual in an advance health care directive in
 2904 a record; and
 2905 2. The admission is for no more than the maximum of the number of days specified in the directive or 10
 2906 days, whichever is less.
 2907 F. Except as provided in subsection G, an agent or default surrogate may not consent to placement of the

2908 *individual in a nursing home if the placement is intended to be for more than 100 days if:*

- 2909 1. *An alternative living arrangement is reasonably feasible;*
- 2910 2. *The individual objects to the placement; or*
- 2911 3. *The individual is not terminally ill.*

2912 *G If specifically authorized by the individual in an advance health care directive in a record, an agent or default surrogate may consent to placement of the individual in a nursing home for more than 100 days even if:*

- 2915 1. *An alternative living arrangement is reasonably feasible;*
- 2916 2. *The individual objects to the placement; and*
- 2917 3. *The individual is not terminally ill.*

2918 **§ 54.1-2993.20. Limitation on powers.**

2919 *A. If an individual has a long-term disability requiring routine treatment by artificial nutrition, hydration, or mechanical ventilation and a history of using the treatment without objection, an agent or default surrogate may not consent to withhold or withdraw the treatment unless:*

- 2922 1. *The treatment is not necessary to sustain the individual's life or maintain the individual's well-being;*
- 2923 2. *The individual has expressly authorized the withholding or withdrawal in a health care instruction that has not been revoked; or*

2925 *3. The individual has experienced a major reduction in health or functional ability from which the individual is not expected to recover, even with other appropriate treatment, and the individual has not:*

- 2927 a. *Given a direction inconsistent with withholding or withdrawal; or*

2928 *b. Communicated by verbal or nonverbal expression a desire for artificial nutrition, hydration, or mechanical ventilation.*

2930 *B. A default surrogate may not make a health care decision if, by other law of the Commonwealth, the decision:*

- 2932 1. *May not be made by a guardian; or*

2933 *2. May be made by a guardian only if the court appointing the guardian specifically authorizes the guardian to make the decision.*

2935 **§ 54.1-2993.21. Co-agents; alternate agent.**

2936 *A. An individual in a power of attorney for health care may appoint multiple individuals as co-agents. Unless the power of attorney provides otherwise, each co-agent may exercise independent authority.*

2938 *B. An individual in a power of attorney for health care may appoint one or more individuals to act as alternate agents if a predecessor agent resigns, dies, becomes disqualified, is not reasonably available, or otherwise is unwilling or unable to act as agent.*

2941 *C. Unless the power of attorney provides otherwise, an alternate agent has the same authority as the original agent:*

2943 *1. At any time the original agent is not reasonably available or is otherwise unwilling or unable to act, for the duration of the unavailability, unwillingness, or inability to act; or*

2945 *2. If the original agent and all other predecessor agents have resigned or died or are disqualified from acting as agent.*

2947 **§ 54.1-2993.22. Duties of health care professional; responsible health care professional; health care institution.**

2949 *A. A responsible health care professional who is aware that an individual has been found to lack capacity to make a decision shall make a reasonable effort to determine if the individual has a surrogate.*

2951 *B. If possible before implementing a health care decision made by a surrogate, a responsible health care professional, as soon as reasonably feasible, shall communicate to the individual the decision made and the identity of the surrogate.*

2954 *C. A responsible health care professional who makes or is informed of a finding that an individual lacks capacity to make a health care decision or no longer lacks capacity, or that other circumstances exist that affect a health care instruction or the authority of a surrogate, as soon as reasonably feasible, shall:*

- 2957 1. *Document the finding or circumstance in the individual's medical record; and*
- 2958 2. *If possible, communicate to the individual and the individual's surrogate the finding or circumstance and that the individual may object under subsection C of § 54.1-2993.6 to the finding under subsection B of § 54.1-2993.5.*

2961 *D. A responsible health care professional who is informed that an individual has created or revoked an advance health care directive or that a surrogate for an individual has been appointed, designated, or disqualified, shall:*

- 2964 1. *Document the information as soon as reasonably feasible in the individual's medical record; and*
- 2965 2. *If evidence of the directive, revocation, appointment, designation, or disqualification is in a record, request a copy and, on receipt, cause the copy to be included in the individual's medical record.*

2967 *E. Except as provided in subsections F and G, a health care professional or health care institution providing health care to an individual shall comply with:*

- 2969 1. *A health care instruction given by the individual regarding the individual's health care;*

2970 2. A *Durable Do Not Resuscitate Order* issued pursuant to § 54.1-2987.1;

2971 3. A reasonable interpretation by the individual's surrogate of an instruction given by the individual; and

2972 4. A health care decision for the individual made by the individual's surrogate in accordance with

2973 §§ 54.1-2993.18 and 54.1-2993.19 to the same extent as if the decision had been made by the individual at a

2974 time when the individual had capacity.

2975 F. A health care professional or a health care institution may refuse to provide health care consistent with

2976 a health care instruction, health care decision, or *Durable Do Not Resuscitate Order* issued pursuant to

2977 § 54.1-2987.1 if:

2978 1. The instruction, decision, or *Durable Do Not Resuscitate Order* is contrary to a policy of the health

2979 care institution providing care to the individual that is based expressly on reasons of conscience and the

2980 policy was timely communicated to the individual or to the individual's surrogate;

2981 2. The care would require health care that is not available to the professional or institution; or

2982 3. Compliance with the instruction, decision, or *Durable Do Not Resuscitate Order* would:

2983 a. Require the professional to provide care that is contrary to the professional's religious belief or moral

2984 conviction if other law permits the professional to refuse to provide care for that reason;

2985 b. Require the professional or institution to provide care that is contrary to generally accepted health

2986 care standards applicable to the professional or institution; or

2987 c. Violate a court order or other law.

2988 G. A health care professional or health care institution that refuses to provide care under subsection F

2989 shall:

2990 1. As soon as reasonably feasible, inform the individual, if possible, and the individual's surrogate of the

2991 refusal;

2992 2. Immediately make a reasonable effort to transfer the individual to another health care professional or

2993 health care institution that is willing to comply with the instruction, decision, or *Durable Do Not Resuscitate*

2994 Order; and

2995 3. Either:

2996 a. If care is refused under subdivision F 1 or 2, provide life-sustaining care and care needed to keep or

2997 make the individual comfortable, consistent with accepted medical standards to the extent feasible, until a

2998 transfer is made; or

2999 b. If care is refused under subdivision F 3, provide life-sustaining care and care needed to keep or make

3000 the individual comfortable, consistent with accepted medical standards, until a transfer is made or, if the

3001 professional or institution reasonably believes that a transfer cannot be made, for at least 10 days after the

3002 refusal.

3003 **§ 54.1-2993.23. Decision by guardian.**

3004 A. A guardian may refuse to comply with or revoke the individual's advance health care directive only if

3005 the court appointing the guardian expressly orders the noncompliance or revocation.

3006 B. Unless a court orders otherwise, a health care decision made by an agent appointed by an individual

3007 subject to guardianship prevails over a decision of the guardian appointed for the individual.

3008 **§ 54.1-2993.24. Immunity.**

3009 A. A health care professional or health care institution acting in good faith is not subject to civil or

3010 criminal liability or to discipline for unprofessional conduct for:

3011 1. Complying with a health care decision made for an individual by another person if compliance is based

3012 on a reasonable belief that the person has authority to make the decision, including a decision to withhold or

3013 withdraw health care;

3014 2. Refusing to comply with a health care decision made for an individual by another person if the refusal

3015 is based on a reasonable belief that the person lacked authority or capacity to make the decision;

3016 3. Complying with an advance health care directive based on a reasonable belief that the directive is

3017 valid;

3018 4. Refusing to comply with an advance health care directive based on a reasonable belief that the

3019 directive is not valid, including a reasonable belief that the directive was not made by the individual or, after

3020 its creation, was substantively altered by a person other than the individual who created it;

3021 5. Determining that an individual who otherwise might be authorized to act as an agent or default

3022 surrogate is not reasonably available;

3023 6. Complying with an individual's direction under subsection D of § 54.1-2993.10; or

3024 7. Issuing, consenting to, making, or following a *Durable Do Not Resuscitate Order* pursuant to

3025 § 54.1-2987.1.

3026 B. An agent, default surrogate, or individual with a reasonable belief that the individual is an agent or a

3027 default surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for a

3028 health care decision made in a good faith effort to comply with § 54.1-2993.18.

3029 **§ 54.1-2993.25. Prohibited conduct; civil penalty.**

3030 A. A person may not:

3031 1. Intentionally falsify, in whole or in part, an advance health care directive;

3032 2. For the purpose of frustrating the intent of the individual who created an advance health care directive
3033 or with knowledge that doing so is likely to frustrate the intent:
3034 a. Intentionally conceal, deface, obliterate, or delete the directive or a revocation of the directive without
3035 consent of the individual who created or revoked the directive; or
3036 b. Intentionally withhold knowledge of the existence or revocation of the directive from a responsible
3037 health care professional or health care institution providing health care to the individual who created or
3038 revoked the directive;
3039 3. Coerce or fraudulently induce an individual to create, revoke, or refrain from creating or revoking an
3040 advance health care directive or a part of a directive; or
3041 4. Require or prohibit the creation or revocation of an advance health care directive as a condition for
3042 providing health care.
3043 B. An individual who is the subject of conduct prohibited under subsection A, or the individual's estate,
3044 has a cause of action against a person who violates subsection A for statutory damages of \$25,000 or actual
3045 damages resulting from the violation, whichever is greater.
3046 C. Subject to subsection D, an individual who makes a health care instruction, or the individual's estate,
3047 has a cause of action against a health care professional or health care institution that intentionally violates
3048 § 54.1-2993.22 for statutory damages of \$50,000 or actual damages resulting from the violation, whichever
3049 is greater.
3050 D. A health care professional who is an emergency medical services provider is not liable under
3051 subsection C for a violation of subsection E of § 54.1-2993.22 if:
3052 1. The violation occurs in the course of providing care to an individual experiencing a health condition
3053 for which the professional reasonably believes the care was appropriate to avoid imminent loss of life or
3054 serious harm to the individual;
3055 2. The failure to comply is consistent with accepted standards of the profession of the professional; and
3056 3. The provision of care does not begin in a health care institution in which the individual resides or is
3057 receiving care.
3058 E. In an action under this section, a prevailing plaintiff may recover reasonable attorney fees, court costs,
3059 and other reasonable litigation expenses.
3060 F. A cause of action or remedy under this section is in addition to any cause of action or remedy under
3061 other law.

3062 **§ 54.1-2993.26. Effect of copy; certified physical copy.**
3063 A. A physical or electronic copy of an advance health care directive, revocation of an advance health care
3064 directive, or appointment, designation, or disqualification of a surrogate has the same effect as the original.
3065 B. An individual may create a certified physical copy of an advance health care directive or revocation of
3066 an advance health care directive that is in electronic form by affirming under penalty of perjury that the
3067 physical copy is a complete and accurate copy of the directive or revocation.

3068 **§ 54.1-2993.27. Judicial relief.**
3069 A. On petition of an individual, the individual's surrogate, a health care professional or health care
3070 institution providing health care to the individual, or a person interested in the welfare of the individual, the
3071 court may:
3072 1. Enjoin implementation of a health care decision made by an agent or default surrogate on behalf of the
3073 individual, on a finding that the decision is inconsistent with § 54.1-2993.18 or 54.1-2993.19;
3074 2. Enjoin an agent from making a health care decision for the individual, on a finding that the individual's
3075 appointment of the agent has been revoked or the agent:
3076 a. Is disqualified under subsection B of § 54.1-2993.9;
3077 b. Is unwilling or unable to comply with § 54.1-2993.18; or
3078 c. Poses a danger to the individual's well-being;
3079 3. Enjoin another individual from acting as a default surrogate, on a finding that the other individual
3080 acting as a default surrogate did not comply with § 54.1-2993.13 or the other individual:
3081 a. Is disqualified under § 54.1-2993.15;
3082 b. Is unwilling or unable to comply with § 54.1-2993.18; or
3083 c. Poses a danger to the first individual's well-being; or
3084 4. Order implementation of a health care decision made:
3085 a. By and for the individual; or
3086 b. By an agent or default surrogate who is acting in compliance with the powers and duties of the agent or
3087 default surrogate.
3088 B. In this article, advocacy for the withholding or withdrawal of health care or mental health care from
3089 an individual is not itself evidence that an agent or default surrogate, or a potential agent or default
3090 surrogate, poses a danger to the individual's well-being.

3091 **§ 54.1-2993.28. Construction.**
3092 A. This article does not authorize mercy killing, assisted suicide, or euthanasia.
3093 B. This article does not affect other law of the Commonwealth governing treatment for mental illness of

3094 *an individual involuntarily committed to a facility, as defined in § 37.2-100, pursuant to Article 5 (§ 37.2-814
3095 et seq.) of Chapter 8 of Title 37.2.*

3096 *C. Death of an individual caused by withholding or withdrawing health care in accordance with this
3097 article does not constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an
3098 annuity providing a death benefit, notwithstanding any term of the policy or annuity.*

3099 *D. This article does not create a presumption concerning the intention of an individual who has not
3100 created an advance health care directive.*

3101 *E. An advance health care directive created before, on, or after July 1, 2025, shall be interpreted in
3102 accordance with other law of the Commonwealth, excluding the Commonwealth's choice-of-law rules, at the
3103 time the directive is implemented.*

3104 **§ 54.1-2993.29. Uniformity of application and construction.**

3105 *In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law
3106 among jurisdictions that enact it.*

3107 **§ 54.1-2993.30. Saving provisions.**

3108 *A. An advance health care directive created before July 1, 2025, is valid if it complies with this article or
3109 complied at the time of creation with the law of the state in which it was created.*

3110 *B. This article does not affect the validity or effect of an act done before July 1, 2025.*

3111 *C. An individual who assumed authority to act as default surrogate before July 1, 2025, may continue to
3112 act as default surrogate until the individual for whom the default surrogate is acting has capacity or the
3113 default surrogate is disqualified, whichever occurs first.*

3114 **§ 54.1-2993.31. Transitional provision.**

3115 *This article applies to an advance health care directive created before, on, or after July 1, 2025.*

3116 **§ 54.1-2995. Filing of documents with the registry; regulations; fees.**

3117 A person may submit any of the following documents and the revocations of these documents to the
3118 Department of Health for filing in the Advance Health Care Planning Registry established pursuant to this
3119 article:

3120 1. A ~~health care~~ power of attorney for health care.

3121 2. An advance ~~health care~~ directive created pursuant to Article 8 (§ 54.1-2981 et seq.) the Uniform Health
3122 Care Decisions Act (§ 54.1-2993.2 et seq.) or a subsequent act of the General Assembly.

3123 3. A declaration of an anatomical gift made pursuant to the Revised Uniform Anatomical Gift Act
3124 (§ 32.1-291.1 et seq.).

3125 4. Any other document that supports advance health care planning, including ~~Durable~~ Do Not Resuscitate
3126 Order or portable medical order forms.

3127 B. The document may be submitted for filing only by the person who executed the document or his legal
3128 representative or designee and shall be accompanied by any fee required by the Department of Health.

3129 C. All data and information contained in the registry shall remain confidential and shall be exempt from
3130 the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

3131 D. The Board of Health shall promulgate regulations to carry out the provisions of this article, which shall
3132 include, but not be limited to (i) a determination of who may access the registry, including physicians, other
3133 licensed health care providers, the declarant, and his legal representative or designee; (ii) a means of annually
3134 reminding registry users of which documents they have registered; and (iii) fees for filing a document with
3135 the registry. Such fees shall not exceed the direct costs associated with development and maintenance of the
3136 registry and with the education of the public about the availability of the registry, and shall be exempt from
3137 statewide indirect costs charged and collected by the Department of Accounts. No fee shall be charged for the
3138 filing of a document revoking any document previously filed with the registry.

3139 **§ 63.2-501. Application for assistance.**

3140 A. Except as provided for in the state plan for medical assistance services pursuant to § 32.1-325,
3141 application for public assistance shall be made to the local department and filed with the local director of the
3142 county or city in which the applicant resides; however, when necessary to overcome backlogs in the
3143 application and renewal process, the Commissioner may temporarily utilize other entities to receive and
3144 process applications, conduct periodic eligibility renewals, and perform other tasks associated with eligibility
3145 determinations. Such entities shall be subject to the confidentiality requirements set forth in § 63.2-501.1.
3146 Applications and renewals processed by other entities pursuant to this subsection shall be subject to appeals
3147 pursuant to § 63.2-517. Such application may be made either electronically or in writing on forms prescribed
3148 by the Commissioner and shall be signed by the applicant or otherwise attested to in a manner prescribed by
3149 the Commissioner under penalty of perjury in accordance with § 63.2-502.

3150 If the condition of the applicant for public assistance precludes his signing or otherwise attesting to the
3151 accuracy of information contained in an application for public assistance, the application may be made on his
3152 behalf by his guardian or conservator. If no guardian or conservator has been appointed for the applicant, the
3153 application may be made by any competent adult person having sufficient knowledge of the applicant's
3154 circumstances to provide the necessary information, until such time as a guardian or conservator is appointed
3155 by a court.

3156 B. Local departments or the Commissioner shall provide each applicant for public assistance with
3157 information regarding his rights and responsibilities related to eligibility for and continued receipt of public
3158 assistance. Such information shall be provided in an electronic or written format approved by the Board that
3159 is easily understandable and shall also be provided orally to the applicant by an employee of the local
3160 department, except in the case of energy assistance. The local department shall require each applicant to
3161 acknowledge, in a format approved by the Board, that the information required by this subsection has been
3162 provided and shall maintain such acknowledgment together with information regarding the application for
3163 public assistance.

3164 C. Local departments or the Commissioner shall provide each applicant for Medicaid with information
3165 regarding advance *health care* directives pursuant to Article 8 (§ 54.1-2984 et seq.) of Chapter 29 of Title
3166 54.1 *the Uniform Health Care Decisions Act* (§ 54.1-2993.2 et seq.), including information about the purpose
3167 and benefits of advance *health care* directives and how the applicant may make an advance *health care*
3168 directive.

3169 D. The Commissioner and local departments shall administer the Child Care Subsidy Program as provided
3170 for in the State Child Care Plan prepared by the Department of Education.

3171 **§ 63.2-1605. Protective services for adults by local departments.**

3172 A. Each local board, to the extent that federal or state matching funds are made available to each locality,
3173 shall provide, pursuant to regulations and subject to supervision of the Commissioner for Aging and
3174 Rehabilitative Services, adult protective services for adults who are found to be abused, neglected, or
3175 exploited and who meet one of the following criteria: (i) the adult is 60 years of age or older or (ii) the adult
3176 is 18 years of age or older and is incapacitated. The requirement to provide such services shall not limit the
3177 right of any individual to refuse to accept any of the services so offered, except as provided in § 63.2-1608.

3178 B. Upon receipt of the report pursuant to § 63.2-1606, the local department shall determine the validity of
3179 such report and shall initiate an investigation within 24 hours of the time the report is received in the local
3180 department. Local departments shall consider valid any report meeting all of the following criteria: (i) the
3181 subject of the report is an adult as defined in this article, (ii) the report concerns a specific adult and there is
3182 enough information to locate the adult, and (iii) the report describes the circumstances of the alleged abuse,
3183 neglect, or exploitation.

3184 C. The local department shall immediately refer the matter and all relevant documentation to the local
3185 law-enforcement agency where the adult resides or where the alleged abuse, neglect, or exploitation took
3186 place or, if these places are unknown, where the alleged abuse, neglect, or exploitation was discovered for
3187 investigation, upon receipt of an initial report pursuant to § 63.2-1606 involving any of the following or upon
3188 determining, during the course of an investigation pursuant to this article, the occurrence of any of the
3189 following:

- 3190 1. Sexual abuse as defined in § 18.2-67.10;
- 3191 2. Death that is believed to be the result of abuse or neglect;
- 3192 3. Serious bodily injury or disease as defined in § 18.2-369 that is believed to be the result of abuse or
3193 neglect;
- 3194 4. Suspected financial exploitation of an adult; or
- 3195 5. Any other criminal activity involving abuse or neglect that places the adult in imminent danger of death
3196 or serious bodily harm.

3197 Local law-enforcement agencies shall provide local departments with a preferred point of contact for
3198 referrals.

3199 D. The local department shall refer any appropriate matter and all relevant documentation, to the
3200 appropriate licensing, regulatory, or legal authority for administrative action or criminal investigation.

3201 E. If a local department is denied access to an adult for whom there is reason to suspect the need for adult
3202 protective services, then the local department may petition the circuit court for an order allowing access or
3203 entry or both. Upon a showing of good cause supported by an affidavit or testimony in person, the court may
3204 enter an order permitting such access or entry.

3205 F. In any case of suspected adult abuse, neglect, or exploitation, local departments, with the informed
3206 consent of the adult or his legal representative, shall take or cause to be taken photographs, video recordings,
3207 or appropriate medical imaging of the adult and his environment as long as such measures are relevant to the
3208 investigation and do not conflict with § 18.2-386.1. However, if the adult is determined to be incapable of
3209 making an informed decision and of giving informed consent and either has no legal representative or the
3210 legal representative is the suspected perpetrator of the adult abuse, neglect, or exploitation, consent may be
3211 given by an agent appointed under an advance ~~medical~~ *health care* directive or ~~medical~~ *power of attorney*, or
3212 by a ~~person~~ authorized, *default surrogate* pursuant to § 54.1-2986 54.1-2993.13. In the event no agent or
3213 ~~authorized representative~~ *default surrogate* is immediately available, then consent shall be deemed to be
3214 given.

3215 G. Local departments shall foster the development, implementation, and coordination of adult protective
3216 services to prevent adult abuse, neglect, and exploitation.

3217 H. Local departments shall not investigate allegations of abuse, neglect, or exploitation of adults

3218 incarcerated in state correctional facilities.

3219 I. The report and evidence received by the local department and any written findings, evaluations, records, and recommended actions shall be confidential and shall be exempt from disclosure requirements of the 3220 Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that such information may be disclosed to 3221 persons having a legitimate interest in the matter in accordance with §§ 63.2-102 and 63.2-104 and pursuant 3222 to official interagency agreements or memoranda of understanding between state agencies.

3223 J. All written findings and actions of the local department or its director regarding adult protective 3224 services investigations are final and shall not be (i) appealable to the Commissioner for Aging and 3225 Rehabilitative Services or (ii) considered a final agency action for purposes of judicial review pursuant to the 3226 provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

3227 K. Each local department may foster, when practicable, the creation, maintenance, and coordination of 3228 community-based multidisciplinary teams that shall include, where possible, members of the medical, mental 3229 health, social work, nursing, education, legal, and law-enforcement professions. Such teams shall:

3230 1. Assist the local department in identifying abused, neglected, and exploited adults as defined in 3231 § 63.2-1603.

3232 2. Coordinate medical, social, and legal services for abused, neglected, and exploited adults and their 3233 families.

3234 3. Develop innovative programs for detection and prevention of the abuse, neglect, and exploitation of 3235 adults.

3236 4. Promote community awareness and action to address the abuse, neglect, and exploitation of adults.

3237 5. Disseminate information to the general public regarding the problem of abuse, neglect, and exploitation 3238 of adults, strategies and methods for preventing such abuse, neglect, and exploitation, and treatment options 3239 for abused, neglected, and exploited adults.

3240 Such multidisciplinary teams may share information among the parties in the performance of their duties 3241 but shall be bound by confidentiality and shall execute a sworn statement to honor the confidentiality of the 3242 information they share. A violation of this subsection is punishable as a Class 3 misdemeanor. All such 3243 information and records shall be used by the team only in the exercise of its proper function and shall not be 3244 disclosed. No person who participated in the team and no member of the team shall be required to make any 3245 statement as to what transpired during a meeting or what information was collected during the meeting. Upon 3246 the conclusion of a meeting, all information and records concerning the adult shall be returned to the 3247 originating agency or destroyed. Any information exchanged in accordance with the multidisciplinary review 3248 team shall not be considered to be a violation of any of the provisions of § 63.2-102, 63.2-104, or 63.2-105.

3249 **§ 64.2-2000. Definitions.**

3250 As used in this chapter, unless the context requires a different meaning:

3251 "Advance health care directive" shall have has the same meaning as provided in § 54.1-2982 54.1-2993.3.

3252 "Annual report" means the report required to be filed by a guardian pursuant to § 64.2-2020.

3253 "Conservator" means a person appointed by the court who is responsible for managing the estate and 3254 financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited 3255 conservator" or a "temporary conservator." "Conservator" includes (i) a local or regional program designated 3256 by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 3257 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization 3258 established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to 3259 incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to 3260 the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for 3261 Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other 3262 individuals.

3263 "Estate" includes both real and personal property.

3264 "Facility" means a state or licensed hospital, training center, psychiatric hospital, or other type of 3265 residential or outpatient mental health or mental retardation facility. When modified by the word "state," 3266 "facility" means a state hospital or training center operated by the Department of Behavioral Health and 3267 Developmental Services, including the buildings and land associated with it.

3268 "Guardian" means a person appointed by the court who has the powers and duties set out in § 64.2-2019, 3269 or § 63.2-1609 if applicable, and who is responsible for the personal affairs of an incapacitated person, 3270 including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, 3271 education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. 3272 Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The 3273 term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative 3274 Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any 3275 local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal 3276 Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization 3277 shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization 3278 has been designated by the Department for Aging and Rehabilitative Services as a public guardian, it may 3279

3280 also serve as a guardian for other individuals.

3281 "Guardian ad litem" means an attorney appointed by the court to represent the interests of the respondent
3282 and whose duties include evaluation of the petition for guardianship or conservatorship and filing a report
3283 with the court pursuant to § 64.2-2003.

3284 "Incapacitated person" means an adult who has been found by a court to be incapable of receiving and
3285 evaluating information effectively or responding to people, events, or environments to such an extent that the
3286 individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic
3287 needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide
3288 for his support or for the support of his legal dependents without the assistance or protection of a conservator.
3289 A finding that the individual displays poor judgment alone shall not be considered sufficient evidence that the
3290 individual is an incapacitated person within the meaning of this definition. A finding that a person is
3291 incapacitated shall be construed as a finding that the person is "mentally incompetent" as that term is used in
3292 Article II, Section 1 of the Constitution of Virginia and Title 24.2 unless the court order entered pursuant to
3293 this chapter specifically provides otherwise.

3294 "Individualized education plan" or "IEP" means a plan or program developed annually to ensure that a
3295 child who has a disability identified under the law and is attending an elementary or secondary educational
3296 institution receives specialized instruction and related services as provided by 20 U.S.C. § 1414.

3297 "Individual receiving services" or "individual" means a current direct recipient of public or private mental
3298 health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and includes the
3299 terms "consumer," "patient," "resident," "recipient," or "client."

3300 "Limited conservator" means a person appointed by the court who has only those responsibilities for
3301 managing the estate and financial affairs of an incapacitated person as specified in the order of appointment.

3302 "Limited guardian" means a person appointed by the court who has only those responsibilities for the
3303 personal affairs of an incapacitated person as specified in the order of appointment.

3304 "Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly
3305 impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and
3306 requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

3307 "Petition" means the document filed with a circuit court to initiate a proceeding to appoint a guardian or
3308 conservator.

3309 "Power of attorney" has the same meaning ascribed to it in § 64.2-1600.

3310 "Property" includes both real and personal property.

3311 "Respondent" means an allegedly incapacitated person for whom a petition for guardianship or
3312 conservatorship has been filed.

3313 "Supported decision-making agreement" has the same meaning ascribed to it in § 37.2-314.3.

3314 "Temporary conservator" means a person appointed by a court for a limited duration of time as specified
3315 in the order of appointment.

3316 "Temporary guardian" means a person appointed by a court for a limited duration of time as specified in
3317 the order of appointment.

3318 "Transition plan" means the plan that is required as part of the IEP used to help students and families
3319 prepare for the future after the student reaches the age of majority.

3320 **§ 64.2-2002. Who may file petition; contents.**

3321 A. Any person, including a community services board and any other local or state governmental agency,
3322 may file a petition for the appointment of a guardian, a conservator, or both.

3323 B. A petition for the appointment of a guardian, a conservator, or both, shall state the petitioner's name,
3324 place of residence, post office address, and relationship, if any, to the respondent and, to the extent known as
3325 of the date of filing, shall include the following:

3326 1. The respondent's name, date of birth, place of residence or location, post office address, and the sealed
3327 filing of the social security number;

3328 2. The basis for the court's jurisdiction under the provisions of Article 2 (§ 64.2-2105 et seq.) of Chapter
3329 21;

3330 3. The names and post office addresses of the respondent's spouse, adult children, parents, and adult
3331 siblings or, if no such relatives are known to the petitioner, at least three other known relatives of the
3332 respondent, including stepchildren. If a total of three such persons cannot be identified and located, the
3333 petitioner shall certify that fact in the petition, and the court shall set forth such finding in the final order;

3334 4. The name, place of residence or location, and post office address of the individual or facility, if any,
3335 that is responsible for or has assumed responsibility for the respondent's care or custody;

3336 5. a. The name, place of residence or location, and post office address of any agent designated under a
3337 durable power of attorney or an advance *health care* directive of which the respondent is the principal, and
3338 any guardian, committee, or conservator currently acting, whether in this state or elsewhere, and the
3339 petitioner shall attach a copy of any such durable power of attorney, advance *health care* directive, or order
3340 appointing the guardian, committee, or conservator, if available;

3341 b. The name, location, and post office address of the respondent's primary health care provider, if any;

3342 6. The type of guardianship or conservatorship requested and a brief description of the nature and extent
 3343 of the respondent's alleged incapacity;

3344 7. When the petition requests appointment of a guardian, a brief description of the services currently being
 3345 provided for the respondent's health, care, safety, or rehabilitation and, where appropriate, a recommendation
 3346 as to living arrangements and treatment plan;

3347 8. If the appointment of a limited guardian is requested, the specific areas of protection and assistance to
 3348 be included in the order of appointment and, if the appointment of a limited conservator is requested, the
 3349 specific areas of management and assistance to be included in the order of appointment;

3350 9. The name and post office address of any proposed guardian or conservator or any guardian or
 3351 conservator nominated by the respondent and that person's relationship to the respondent;

3352 10. The native language of the respondent and any necessary alternative mode of communication;

3353 11. A statement of the financial resources of the respondent that shall, to the extent known, list the
 3354 approximate value of the respondent's property and the respondent's anticipated annual gross income, other
 3355 receipts, and debts, contained in a separate confidential addendum, pursuant to § 64.2-2000.1;

3356 12. A statement of whether the petitioner believes that the respondent's attendance at the hearing would be
 3357 detrimental to the respondent's health, care, or safety; and

3358 13. A request for appointment of a guardian ad litem.

3359 C. The petitioner shall complete and file with the petition for appointment of a guardian, a conservator, or
 3360 both, a cover sheet on a form prepared by the Office of the Executive Secretary of the Supreme Court of
 3361 Virginia. Such cover sheet shall contain such information as the Executive Secretary deems necessary.

3362 **§ 64.2-2003. Appointment of guardian ad litem.**

3363 A. On the filing of every petition for guardianship or conservatorship, the court shall appoint a guardian
 3364 ad litem to represent the interests of the respondent. The guardian ad litem shall be paid a fee that is fixed by
 3365 the court to be paid by the petitioner or taxed as costs, as the court directs.

3366 B. Duties of the guardian ad litem include (i) personally visiting the respondent; (ii) advising the
 3367 respondent of rights pursuant to §§ 64.2-2006 and 64.2-2007 and certifying to the court that the respondent
 3368 has been so advised; (iii) recommending that legal counsel be appointed for the respondent, pursuant to
 3369 § 64.2-2006, if the guardian ad litem believes that counsel for the respondent is necessary; (iv) notifying the
 3370 court as soon as practicable if the respondent requests counsel regardless of whether the guardian ad litem
 3371 recommends counsel; (v) investigating the petition and evidence, requesting additional evaluation if
 3372 necessary, considering whether a less restrictive alternative to guardianship or conservatorship is available,
 3373 including the use of an advance *health care* directive, supported decision-making agreement, or durable
 3374 power of attorney, and filing a report pursuant to subsection C; (vi) making a good faith effort to consult
 3375 directly with the respondent's primary health care provider, if any, unless the evaluation report required by
 3376 § 64.2-2005 is prepared in whole or in part by such provider; and (vii) personally appearing at all court
 3377 proceedings and conferences. If the respondent is between 17 and a half and 21 years of age and has an
 3378 Individualized Education Plan (IEP) and transition plan, the guardian ad litem shall review such IEP and
 3379 transition plan and include the results of his review in the report required by clause (v).

3380 C. In the report required by clause (v) of subsection B, the guardian ad litem shall address the following
 3381 major areas of concern: (i) whether the court has jurisdiction; (ii) whether a guardian or conservator is needed
 3382 based on evaluations and reviews conducted pursuant to subsection B; (iii) the extent of the duties and
 3383 powers of the guardian or conservator; (iv) the propriety and suitability of the person selected as guardian or
 3384 conservator after consideration of (a) the person's geographic location, (b) the person's familial or other
 3385 relationship with the respondent, (c) the person's ability to carry out the powers and duties of the office, (d)
 3386 the person's commitment to promoting the respondent's welfare, (e) any potential conflicts of interests, (f)
 3387 whether the person works as a professional guardian on a full-time basis, (g) the person's expected capacity as
 3388 a guardian, (h) the wishes of the respondent, (i) the recommendations of relatives, and (j) whether the person
 3389 is named as a perpetrator in any substantiated adult protective services complaint involving the respondent
 3390 following allegations of abuse or neglect; (v) a recommendation as to the amount of surety on the
 3391 conservator's bond, if any; and (vi) consideration of proper residential placement of the respondent. The
 3392 report shall also contain an explanation by the guardian ad litem as to any (a) decision not to recommend the
 3393 appointment of counsel for the respondent, (b) determination that a less restrictive alternative to guardianship
 3394 or conservatorship is not advisable, and (c) determination that appointment of a limited guardian or
 3395 conservator is not appropriate. If the guardian ad litem was unable to consult directly with the respondent's
 3396 primary health care provider, such information shall also be included in such report.

3397 D. Any individual or entity with information, records, or reports relevant to a guardianship or
 3398 conservatorship proceeding, including any (i) health care provider, local school division, or local department
 3399 of social services; (ii) criminal justice agency as that term is defined in § 9.1-101, unless the disclosure of
 3400 such information, records, or reports would impede an ongoing criminal investigation or proceeding; and (iii)
 3401 financial institution as that term is defined in § 6.2-100, investment advisor as that term is defined in
 3402 § 13.1-501, or other financial service provider shall disclose or make available to the guardian ad litem, upon
 3403 request, any information, records, and reports concerning the respondent that the guardian ad litem

3404 determines necessary to perform his duties under this section to the extent allowed under the
3405 Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) and 12 U.S.C. § 3403. The request from the guardian ad
3406 litem shall be accompanied by a copy of the court order (a) appointing the guardian ad litem for the
3407 respondent and (b) that allows the release of the respondent's nonpublic personal information to the guardian
3408 ad litem. All such information, records, and reports shall be provided to the guardian ad litem at no charge.
3409 Disclosures, records, and reports can be provided in electronic form to the guardian ad litem and may be
3410 accompanied by a statement of expenses or an invoice, which shall be filed with the report of the guardian ad
3411 litem to be considered by the court when awarding costs among the parties pursuant to § 64.2-2008. Absent
3412 gross negligence or willful misconduct, the person or entity making disclosures, and their staff, shall be
3413 immune from civil or criminal liability for providing information or records to a court-appointed guardian ad
3414 litem pursuant to this section.

§ 64.2-2009. Court order of appointment; limited guardianships and conservatorships.

3415 A. The court's order appointing a guardian or conservator shall (i) state the nature and extent of the
3416 person's incapacity; (ii) define the powers and duties of the guardian or conservator so as to permit the
3417 incapacitated person to care for himself and manage property to the extent he is capable; (iii) specify whether
3418 the appointment of a guardian or conservator is limited to a specified length of time, as the court in its
3419 discretion may determine; (iv) specify the legal disabilities, if any, of the person in connection with the
3420 finding of incapacity, including but not limited to mental competency for purposes of Article II, § 1 of the
3421 Constitution of Virginia or Title 24.2; (v) include any limitations deemed appropriate following consideration
3422 of the factors specified in § 64.2-2007; (vi) set the bond of the guardian and the bond and surety, if any, of the
3423 conservator; and (vii) where a petition is brought prior to the incapacitated person's eighteenth birthday,
3424 pursuant to subsection C of § 64.2-2001, whether the order shall take effect immediately upon entry or on the
3425 incapacitated person's eighteenth birthday.

3426 A1. Beginning July 1, 2023, the court shall set a schedule in the order of appointment for periodic review
3427 hearings, to be held no later than one year after the initial appointment and no later than every three years
3428 thereafter, unless the court orders that such hearings are to be waived because they are unnecessary or
3429 impracticable or that such hearings shall be held on such other schedule as the court shall determine. Any
3430 such determination to waive the hearing or use a schedule differing from that prescribed in this subsection
3431 shall be supported in the order and address the reason for such determination, including (i) the likelihood that
3432 the respondent's condition will improve or the respondent will regain capacity, (ii) whether concerns or
3433 questions were raised about the suitability of the person appointed as a guardian or conservator at the time of
3434 the initial appointment, and (iii) whether the appointment of a guardian or conservator or the appointment of
3435 the specifically appointed guardian or conservator was contested by the respondent or another party.

3436 The court shall not waive the initial periodic review hearing scheduled pursuant to this subsection where
3437 the petitioner for guardianship or conservatorship is a hospital, convalescent home, or certified nursing
3438 facility licensed by the Department of Health pursuant to § 32.1-123; an assisted living facility, as defined in
3439 § 63.2-100, or any other similar institution; or a health care provider other than a family member. If the
3440 petitioner is a hospital, convalescent home, or certified nursing facility licensed by the Department of Health
3441 pursuant to § 32.1-123 or an assisted living facility as defined in § 63.2-100, nothing in this chapter shall
3442 require such petitioner to attend any periodic review hearing.

3443 Any person may file a petition, which may be on a form developed by the Office of the Executive
3444 Secretary of the Supreme Court of Virginia, to hold a periodic review hearing prior to the scheduled date set
3445 forth in the order of appointment. The court shall hold an earlier hearing upon good cause shown. At such a
3446 hearing, the court shall review the schedule set forth in the order of appointment and determine whether
3447 future periodic review hearings are necessary or may be waived.

3448 A2. If the court has ordered a hearing pursuant to subsection A1, the court shall appoint a guardian ad
3449 litem, who shall conduct an investigation in accordance with the stated purpose of the hearing and file a
3450 report. The incapacitated person has a right to be represented by counsel, and the provisions of § 64.2-2006
3451 shall apply, mutatis mutandis. The guardian ad litem shall provide notice of the hearing to the incapacitated
3452 person and to all individuals entitled to notice as identified in the court order of appointment. Fees and costs
3453 shall be paid in accordance with the provisions of §§ 64.2-2003 and 64.2-2008. The court shall enter an order
3454 reflecting any findings made during the review hearing and any modification to the guardianship or
3455 conservatorship.

3456 B. The court may appoint a limited guardian for an incapacitated person who is capable of addressing
3457 some of the essential requirements for his care for the limited purpose of medical decision making, decisions
3458 about place of residency, or other specific decisions regarding his personal affairs. The court may appoint a
3459 limited conservator for an incapacitated person who is capable of managing some of his property and
3460 financial affairs for limited purposes that are specified in the order.

3461 C. Unless the guardian has a professional relationship with the incapacitated person or is employed by or
3462 affiliated with a facility where the person resides, the court's order may authorize the guardian to consent to
3463 the admission of the person to a facility pursuant to § 37.2-805.1, upon finding by clear and convincing
3464 evidence that (i) the person has severe and persistent mental illness that significantly impairs the person's

3466 capacity to exercise judgment or self-control, as confirmed by the evaluation of a licensed psychiatrist; (ii)
3467 such condition is unlikely to improve in the foreseeable future; and (iii) the guardian has formulated a plan
3468 for providing ongoing treatment of the person's illness in the least restrictive setting suitable for the person's
3469 condition.

3470 D. A guardian need not be appointed for a person who has appointed an agent under an advance *health*
3471 *care* directive executed in accordance with the provisions of Article 8 (~~§ 54.1-2984 et seq.~~) of Chapter 29 of
3472 Title 54.1 the Uniform Health Care Decisions Act (~~§ 54.1-2993.2 et seq.~~), unless the court determines that the
3473 agent is not acting in accordance with the wishes of the principal or there is a need for decision making
3474 outside the purview of the advance *health care* directive. A guardian need not be appointed for a person
3475 where a health care decision is made pursuant to, and within the scope of, the *Uniform Health Care Decisions*
3476 Act (~~§ 54.1-2984 54.1-2993.2 et seq.~~).

3477 A conservator need not be appointed for a person (i) who has appointed an agent under a durable power of
3478 attorney, unless the court determines pursuant to the Uniform Power of Attorney Act (~~§ 64.2-1600 et seq.~~)
3479 that the agent is not acting in the best interests of the principal or there is a need for decision making outside
3480 the purview of the durable power of attorney or (ii) whose only or major source of income is from the Social
3481 Security Administration or other government program and who has a representative payee.

3482 E. All orders appointing a guardian shall include the following statements in conspicuous bold print in at
3483 least 14-point type:

3484 1. Pursuant to § 64.2-2009 of the Code of Virginia, (name of guardian), is hereby appointed as guardian of
3485 (name of respondent) with all duties and powers granted to a guardian pursuant to § 64.2-2019 of the Code of
3486 Virginia, including but not limited to: (enter a statement of the rights removed and retained, if any, at the time
3487 of appointment; whether the appointment of a guardian is a full guardianship, public guardianship pursuant to
3488 § 64.2-2010 of the Code of Virginia, limited guardianship pursuant to § 64.2-2009 of the Code of Virginia, or
3489 temporary guardianship; and the duration of the appointment).

3490 2. Pursuant to the provisions of subsection E of § 64.2-2019 of the Code of Virginia, a guardian, to the
3491 extent possible, shall encourage the incapacitated person to participate in decisions, shall consider the
3492 expressed desires and personal values of the incapacitated person to the extent known, and shall not restrict
3493 an incapacitated person's ability to communicate with, visit, or interact with other persons with whom the
3494 incapacitated person has an established relationship, unless such restriction is reasonable to prevent physical,
3495 mental, or emotional harm to or financial exploitation of such incapacitated person and after consideration of
3496 the expressed wishes of the incapacitated person. Such restrictions shall only be imposed pursuant to
3497 § 64.2-2019.1.

3498 3. Pursuant to § 64.2-2020 of the Code of Virginia, an annual report shall be filed by the guardian with the
3499 local department of social services for the jurisdiction where the incapacitated person resides.

3500 4. Pursuant to § 64.2-2012 of the Code of Virginia, all guardianship orders are subject to petition for
3501 restoration of the incapacitated person to capacity; modification of the type of appointment or areas of
3502 protection, management, or assistance granted; or termination of the guardianship. In lieu of such a petition,
3503 if the person subject to the guardianship is not represented by counsel, such person may initiate the process
3504 by sending informal written communications to the court. All orders appointing a guardian, conservator, or
3505 both shall include the current mailing address, email address, and physical address of the court issuing the
3506 order and to which such informal written communication shall be directed.

3507 § 64.2-2019. Duties and powers of guardian.

3508 A. A guardian stands in a fiduciary relationship to the incapacitated person for whom he was appointed
3509 guardian and may be held personally liable for a breach of any fiduciary duty to the incapacitated person. A
3510 guardian shall not be liable for the acts of the incapacitated person unless the guardian is personally
3511 negligent. A guardian shall not be required to expend personal funds on behalf of the incapacitated person.

3512 B. A guardian's duties and authority shall not extend to decisions addressed in a valid advance *health care*
3513 directive or durable power of attorney previously executed by the incapacitated person. A guardian may seek
3514 court authorization to revoke, suspend, or otherwise modify a durable power of attorney, as provided by the
3515 Uniform Power of Attorney Act (~~§ 64.2-1600 et seq.~~). Notwithstanding the provisions of the *Uniform Health*
3516 *Care Decisions Act* (~~§ 54.1-2984 54.1-2993.2 et seq.~~) and in accordance with the procedures of § 64.2-2012,
3517 a guardian may seek court authorization to modify the designation of an agent under an advance *health care*
3518 directive, but the modification shall not in any way affect the incapacitated person's directives concerning the
3519 provision or refusal of specific medical treatments or procedures.

3520 C. A guardian shall maintain sufficient contact with the incapacitated person to know of his capabilities,
3521 limitations, needs, and opportunities and as needed to comply with the duties imposed upon him pursuant to
3522 the order of appointment and this section and any other provision of law. The guardian shall visit the
3523 incapacitated person as often as necessary and at least three times per year, with at least one visit occurring
3524 every 120 days. Except as otherwise provided in subsection C1, of the three required visits, at least two visits
3525 shall be conducted by the guardian. The guardian shall conduct at least one of such visits in person; the
3526 second such visit may be conducted by the guardian via virtual conference or video call between the guardian
3527 and incapacitated person, provided that the technological means by which such conference or call can take

3528 place are readily available.

3529 The remaining visit may be conducted (i) by the guardian; (ii) by a person other than the guardian,
3530 including (a) a family member or friend monitored by the guardian or (b) a skilled professional retained by
3531 the guardian to perform guardianship duties on behalf of the guardian and who is experienced in the care of
3532 individuals, including older adults or adults with disabilities; or (iii) via virtual conference or video call
3533 between either the guardian or such family member or friend monitored by the guardian or skilled
3534 professional and the incapacitated person, provided that the technological means by which such conference or
3535 call can take place are readily available. If a person other than the guardian conducts any such visit, he shall
3536 provide a written report to the guardian regarding any visit conducted by such person.

3537 A telephone call shall meet the requirements of this subsection only if such technological means are not
3538 readily available.

3539 C1. If for reasons outside the guardian's control the guardian cannot make an in-person visit to an
3540 incapacitated person, then such visit may be conducted in person by an individual designated by the guardian
3541 pursuant to subsection C. If either the guardian or such individual designated by the guardian is unable to
3542 conduct an in-person visit, then such visit may be conducted virtually through electronic means such as a
3543 virtual conference or video call, or, if such technological means are not readily available, by telephone.

3544 C2. In the event of a state of emergency or public health crisis in which a facility in which the
3545 incapacitated person resides is not allowing in-person visitation, visitation requirements required pursuant to
3546 subsection C may be met via a virtual conference or video call between the guardian and incapacitated
3547 person, to the extent feasible for the facility to provide the technological means by which such conference or
3548 call can take place. A telephone call shall meet the requirements of this subsection only if such technological
3549 means are not readily available.

3550 D. A guardian shall be required to seek prior court authorization to change the incapacitated person's
3551 residence to another state, to terminate or consent to a termination of the person's parental rights, or to initiate
3552 a change in the person's marital status.

3553 E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate in decisions,
3554 to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, in
3555 making decisions, shall consider the expressed desires and personal values of the incapacitated person to the
3556 extent known and shall otherwise act in the incapacitated person's best interest and exercise reasonable care,
3557 diligence, and prudence. A guardian shall not restrict an incapacitated person's ability to communicate with,
3558 visit, or interact with other persons with whom the incapacitated person has an established relationship,
3559 unless such restriction is reasonable to prevent physical, mental, or emotional harm to or financial
3560 exploitation of such incapacitated person and after consideration of the expressed wishes of the incapacitated
3561 person. Such restrictions shall only be imposed pursuant to § 64.2-2019.1.

3562 E1. A guardian and any skilled professional retained by such guardian to perform guardianship duties on
3563 behalf of the guardian pursuant to clause (ii) (b) of subsection C shall complete the training developed by the
3564 Department for Aging and Rehabilitative Services pursuant to § 51.5-150.1 within 120 days after the date of
3565 the qualification of such guardian, unless such training was completed within the past 36 months in
3566 conjunction with another guardianship appointment made pursuant to § 64.2-2009. No guardian or skilled
3567 professional retained by such guardian shall be required to complete such training more frequently than once
3568 every 36 months.

3569 F. A guardian shall have authority to make arrangements for the funeral and disposition of remains,
3570 including cremation, interment, entombment, memorialization, inurnment, or scattering of the cremains, or
3571 some combination thereof, if the guardian is not aware of any person that has been otherwise designated to
3572 make such arrangements as set forth in § 54.1-2825. A guardian shall have authority to make arrangements
3573 for the funeral and disposition of remains after the death of an incapacitated person if, after the guardian has
3574 made a good faith effort to locate the next of kin of the incapacitated person to determine if the next of kin
3575 wishes to make such arrangements, the next of kin does not wish to make the arrangements or the next of kin
3576 cannot be located. Good faith effort shall include contacting the next of kin identified in the petition for
3577 appointment of a guardian. The funeral service licensee, funeral service establishment, registered crematory,
3578 cemetery, cemetery operator, or guardian shall be immune from civil liability for any act, decision, or
3579 omission resulting from acceptance of any dead body for burial, cremation, or other disposition when the
3580 provisions of this section are met, unless such acts, decisions, or omissions resulted from bad faith or
3581 malicious intent.

3582 2. **That §§ 54.1-2981, 54.1-2982, 54.1-2983, 54.1-2983.2 through 54.1-2987, 54.1-2988, and 54.1-2989**
3583 **through 54.1-2993 of the Code of Virginia are repealed.**

3584 3. **That the provisions of this act may result in a net increase in periods of imprisonment or**
3585 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
3586 **appropriation cannot be determined for periods of imprisonment in state adult correctional facilities;**
3587 **therefore, Chapter 725 of the Acts of Assembly of 2025 requires the Virginia Criminal Sentencing**
3588 **Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of**
3589 **Virginia, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the**

3590 custody of the Department of Juvenile Justice.

INTRODUCED

HB548