Code Sections with Gender-Specific Terms
No Changes Recommended

Section	Catchline
§ 2.2-213.	Secretary of Health and Human Resources to develop certain criteria.
§ 2.2-1147.1.	Right to breast-feed.
§ 2.2-3901.	Unlawful discriminatory practice and gender discrimination defined.
§ 8.01-42.5.	Civil action for female genital mutilation
§ 8.01-225.	Persons rendering emergency care, obstetrical services exempt from liability.
§ 8.01-341.1.	Exemptions from jury service upon request.
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§ 16.1-260.	Intake; petition; investigation.
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§ 18.2-32.1.	Murder of a pregnant woman; penalty.
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§ 38.2-5001.	(Effective January 1, 2018) Definitions.
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Section	Catchline
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§ 63.2-1251.	Furnishing information; confidentiality; penalty.
§ 63.2-1252.	Search of registry.
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§ 63.2-1904.	Administrative support remedies available for individuals not receiving public assistance; fees.
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§ 63.2-1916.	Notice of administrative support order; contents; hearing; modification.
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§ 63.2-1946.	Virginia New Hire Reporting Center; State Directory of New Hires; reporting by employers.
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§ 64.2-102.	Meaning of child and related terms.

Section	Catchline
§ 64.2-103.	Evidence of paternity.

§ 2.2-213. Secretary of Health and Human Resources to develop certain criteria.

In order to respond to the needs of substance abusing **women** and their children, the Secretary shall develop criteria for (i) enhancing access to publicly funded substance abuse treatment programs in order to effectively serve pregnant substance abusers; (ii) determining when a drug-exposed child may be referred to the early intervention services and tracking system available through Part C of the Individuals with Disabilities Education Act, 20 U.S.C. § 1431 et seq.; (iii) determining the appropriate circumstances for contact between hospital discharge planners and local departments of social services for referrals for family-oriented prevention services, when such services are available and provided by the local social services agency; and (iv) determining when the parent of a drug-exposed infant, who may be endangering a child's health by failing to follow a discharge plan, may be referred to the child protective services unit of a local department of social services.

The Secretary shall consult with the Commissioner of Behavioral Health and Developmental Services, the Commissioner of Social Services, the Commissioner of Health, community services boards, behavioral health authorities, local departments of social services, and local departments of health in developing the criteria required by this section.

Drafting note: No change recommended.

§ 2.2-1147.1. Right to breast-feed.

Notwithstanding any other provision of law, a **woman** may breast-feed **her** child at any location where that **woman** would otherwise be allowed on property that is owned, leased or controlled by the Commonwealth as defined in § 2.2-1147.

Drafting note: No change recommended.

§ 2.2-3901. Unlawful discriminatory practice and gender discrimination defined.

Conduct that violates any Virginia or federal statute or regulation governing discrimination on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability shall be an "unlawful discriminatory practice" for the purposes of this chapter.

The terms "because of sex or gender" or "on the basis of sex or gender" or terms of similar import when used in reference to discrimination in the Code and acts of the General Assembly include because

of or on the basis of pregnancy, childbirth or related medical conditions. **Women** affected by pregnancy, childbirth or related medical conditions shall be treated the same for all purposes as persons not so affected but similar in their abilities or disabilities.

Drafting note: No change recommended.

§ 8.01-42.5. Civil action for *female* genital mutilation.

A. Any person injured by an individual who engaged in conduct that is prohibited under § 18.2-51.7, whether or not the individual has been charged with or convicted of the alleged violation, may sue therefor and recover compensatory damages, punitive damages, and reasonable attorney fees and costs.

B. No action shall be commenced under this section more than 10 years after the later of (i) the date of the last act in violation of § 18.2-51.7 or (ii) the date on which such person attained 18 years of age.

Drafting note: No change recommended.

§ 8.01-225. Persons rendering emergency care, obstetrical services exempt from liability.

A. Any person who:

1. In good faith, renders emergency care or assistance, without compensation, to any ill or injured person (i) at the scene of an accident, fire, or any life-threatening emergency; (ii) at a location for screening or stabilization of an emergency medical condition arising from an accident, fire, or any life-threatening emergency; or (iii) en route to any hospital, medical clinic, or doctor's office, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such care or assistance. For purposes of this subdivision, emergency care or assistance includes the forcible entry of a motor vehicle in order to remove an unattended minor at risk of serious bodily injury or death, provided the person has attempted to contact a law-enforcement officer, as defined in § 9.1-101, a firefighter, as defined in § 65.2-102, emergency medical services personnel, as defined in § 32.1-111.1, or an emergency 911 system, if feasible under the circumstances.

2. In the absence of gross negligence, renders emergency obstetrical care or assistance to a **female** in active labor who has not previously been cared for in connection with the pregnancy by such person or by another professionally associated with such person and whose medical records are not reasonably

available to such person shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care or assistance. The immunity herein granted shall apply only to the emergency medical care provided.

3. In good faith and without compensation, including any emergency medical services provider who holds a valid certificate issued by the Commissioner of Health, administers epinephrine in an emergency to an individual shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if such person has reason to believe that the individual receiving the injection is suffering or is about to suffer a life-threatening anaphylactic reaction.

4. Provides assistance upon request of any police agency, fire department, emergency medical services agency, or governmental agency in the event of an accident or other emergency involving the use, handling, transportation, transmission, or storage of liquefied petroleum gas, liquefied natural gas, hazardous material, or hazardous waste as defined in § 10.1-1400 or regulations of the Virginia Waste Management Board shall not be liable for any civil damages resulting from any act of commission or omission on his part in the course of his rendering such assistance in good faith.

5. Is an emergency medical services provider possessing a valid certificate issued by authority of the State Board of Health who in good faith renders emergency care or assistance, whether in person or by telephone or other means of communication, without compensation, to any injured or ill person, whether at the scene of an accident, fire, or any other place, or while transporting such injured or ill person to, from, or between any hospital, medical facility, medical clinic, doctor's office, or other similar or related medical facility, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care, treatment, or assistance, including but in no way limited to acts or omissions which involve violations of State Department of Health regulations or any other state regulations in the rendering of such emergency care or assistance.

6. In good faith and without compensation, renders or administers emergency cardiopulmonary resuscitation (CPR); cardiac defibrillation, including, but not limited to, the use of an automated external defibrillator (AED); or other emergency life-sustaining or resuscitative treatments or procedures which have been approved by the State Board of Health to any sick or injured person, whether at the scene of a

fire, an accident, or any other place, or while transporting such person to or from any hospital, clinic, doctor's office, or other medical facility, shall be deemed qualified to administer such emergency treatments and procedures and shall not be liable for acts or omissions resulting from the rendering of such emergency resuscitative treatments or procedures.

7. Operates an AED at the scene of an emergency, trains individuals to be operators of AEDs, or orders AEDs, shall be immune from civil liability for any personal injury that results from any act or omission in the use of an AED in an emergency where the person performing the defibrillation acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances, unless such personal injury results from gross negligence or willful or wanton misconduct of the person rendering such emergency care.

8. Maintains an AED located on real property owned or controlled by such person shall be immune from civil liability for any personal injury that results from any act or omission in the use in an emergency of an AED located on such property unless such personal injury results from gross negligence or willful or wanton misconduct of the person who maintains the AED or his agent or employee.

9. Is an employee of a school board or of a local health department approved by the local governing body to provide health services pursuant to § 22.1-274 who, while on school property or at a school-sponsored event, (i) renders emergency care or assistance to any sick or injured person; (ii) renders or administers emergency cardiopulmonary resuscitation (CPR); cardiac defibrillation, including, but not limited to, the use of an automated external defibrillator (AED); or other emergency life-sustaining or resuscitative treatments or procedures that have been approved by the State Board of Health to any sick or injured person; (iii) operates an AED, trains individuals to be operators of AEDs, or orders AEDs; or (iv) maintains an AED, shall not be liable for civil damages for ordinary negligence in acts or omissions on the part of such employee while engaged in the acts described in this subdivision.

10. Is a volunteer in good standing and certified to render emergency care by the National Ski Patrol System, Inc., who, in good faith and without compensation, renders emergency care or assistance to any injured or ill person, whether at the scene of a ski resort rescue, outdoor emergency rescue, or any other place or while transporting such injured or ill person to a place accessible for transfer to any available

emergency medical system unit, or any resort owner voluntarily providing a ski patroller employed by him to engage in rescue or recovery work at a resort not owned or operated by him, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care, treatment, or assistance, including but not limited to acts or omissions which involve violations of any state regulation or any standard of the National Ski Patrol System, Inc., in the rendering of such emergency care or assistance, unless such act or omission was the result of gross negligence or willful misconduct.

11. Is an employee of (i) a school board, (ii) a school for students with disabilities as defined in § 22.1-319 licensed by the Board of Education, or (iii) a private school accredited pursuant to § 22.1-19 as administered by the Virginia Council for Private Education and is authorized by a prescriber and trained in the administration of insulin and glucagon, who, upon the written request of the parents as defined in § 22.1-1, assists with the administration of insulin or, in the case of a school board employee, with the insertion or reinsertion of an insulin pump or any of its parts pursuant to subsection B of § 22.1-274.01:1 or administers glucagon to a student diagnosed as having diabetes who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if the insulin is administered according to the child's medication schedule or such employee has reason to believe that the individual receiving the glucagon is suffering or is about to suffer life-threatening hypoglycemia. Whenever any such employee is covered by the immunity granted herein, the school board or school employing him shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such insulin or glucagon treatment.

12. Is an employee of a public institution of higher education or a private institution of higher education who is authorized by a prescriber and trained in the administration of insulin and glucagon, who assists with the administration of insulin or administers glucagon to a student diagnosed as having diabetes who requires insulin injections or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if the insulin is administered according to the student's medication schedule or such employee has reason to believe that the individual receiving the glucagon is

suffering or is about to suffer life-threatening hypoglycemia. Whenever any employee is covered by the immunity granted in this subdivision, the institution shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such insulin or glucagon treatment.

13. Is a school nurse, an employee of a school board, an employee of a local governing body, or an employee of a local health department who is authorized by a prescriber and trained in the administration of epinephrine and who provides, administers, or assists in the administration of epinephrine to a student believed in good faith to be having an anaphylactic reaction, or is the prescriber of the epinephrine, shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment.

14. Is an employee of a school for students with disabilities, as defined in § 22.1-319 and licensed by the Board of Education, or an employee of a private school that is accredited pursuant to § 22.1-19 as administered by the Virginia Council for Private Education who is authorized by a prescriber and trained in the administration of epinephrine and who administers or assists in the administration of epinephrine to a student believed in good faith to be having an anaphylactic reaction, or is the prescriber of the epinephrine, shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment. Whenever any employee is covered by the immunity granted in this subdivision, the school shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from such administration or assistance.

15. Is an employee of a public institution of higher education or a private institution of higher education who is authorized by a prescriber and trained in the administration of epinephrine and who administers or assists in the administration of epinephrine to a student believed in good faith to be having an anaphylactic reaction, or is the prescriber of the epinephrine, shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment. Whenever any employee is covered by the immunity granted in this subdivision, the institution shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from such administration or assistance.

16. Is an employee of a provider licensed by the Department of Behavioral Health and Developmental Services, or provides services pursuant to a contract with a provider licensed by the Department of Behavioral Health and Developmental Services, who has been trained in the administration of insulin and glucagon and who administers or assists with the administration of insulin or administers glucagon to a person diagnosed as having diabetes who requires insulin injections or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia in accordance with § 54.1-3408 shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if the insulin is administered in accordance with the prescriber's instructions or such person has reason to believe that the individual receiving the glucagon is suffering or is about to suffer life-threatening hypoglycemia. Whenever any employee of a provider licensed by the Department of Behavioral Health and Developmental Services or a person who provides services pursuant to a contract with a provider licensed by the Department of Behavioral Health and Developmental Services is covered by the immunity granted herein, the provider shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such insulin or glucagon treatment.

17. Is an employee of a provider licensed by the Department of Behavioral Health and Developmental Services, or provides services pursuant to a contract with a provider licensed by the Department of Behavioral Health and Developmental Services, who has been trained in the administration of epinephrine and who administers or assists in the administration of epinephrine to a person believed in good faith to be having an anaphylactic reaction in accordance with the prescriber's instructions shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment.

18. In good faith prescribes, dispenses, or administers naloxone or other opioid antagonist used for overdose reversal in an emergency to an individual who is believed to be experiencing or about to experience a life-threatening opiate overdose shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if acting in accordance with the provisions of subsection X or Y of § 54.1-3408 or in his role as a member of an emergency medical services agency.

19. Is an employee of a school board, school for students with disabilities as defined in § 22.1-319 licensed by the Board of Education, or private school accredited pursuant to § 22.1-19 as administered by the Virginia Council for Private Education who is trained in the administration of injected medications for the treatment of adrenal crisis resulting from a condition causing adrenal insufficiency and who administers or assists in the administration of such medications to a student diagnosed with a condition causing adrenal insufficiency when the student is believed to be experiencing or about to experience an adrenal crisis pursuant to a written order or standing protocol issued by a prescriber within the course of his professional practice and in accordance with the prescriber's instructions shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment.

B. Any licensed physician serving without compensation as the operational medical director for an emergency medical services agency that holds a valid license as an emergency medical services agency issued by the Commissioner of Health shall not be liable for any civil damages for any act or omission resulting from the rendering of emergency medical services in good faith by the personnel of such licensed agency unless such act or omission was the result of such physician's gross negligence or willful misconduct.

Any person serving without compensation as a dispatcher for any licensed public or nonprofit emergency medical services agency in the Commonwealth shall not be liable for any civil damages for any act or omission resulting from the rendering of emergency services in good faith by the personnel of such licensed agency unless such act or omission was the result of such dispatcher's gross negligence or willful misconduct.

Any individual, certified by the State Office of Emergency Medical Services as an emergency medical services instructor and pursuant to a written agreement with such office, who, in good faith and in the performance of his duties, provides instruction to persons for certification or recertification as a certified basic life support or advanced life support emergency medical services provider shall not be liable for any civil damages for acts or omissions on his part directly relating to his activities on behalf of such office unless such act or omission was the result of such emergency medical services instructor's gross negligence or willful misconduct.

Any licensed physician serving without compensation as a medical advisor to an E-911 system in the Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering medical advice in good faith to establish protocols to be used by the personnel of the E-911 service, as defined in § 58.1-1730, when answering emergency calls unless such act or omission was the result of such physician's gross negligence or willful misconduct.

Any licensed physician who directs the provision of emergency medical services, as authorized by the State Board of Health, through a communications device shall not be liable for any civil damages for any act or omission resulting from the rendering of such emergency medical services unless such act or omission was the result of such physician's gross negligence or willful misconduct.

Any licensed physician serving without compensation as a supervisor of an AED in the Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering medical advice in good faith to the owner of the AED relating to personnel training, local emergency medical services coordination, protocol approval, AED deployment strategies, and equipment maintenance plans and records unless such act or omission was the result of such physician's gross negligence or willful misconduct.

C. Any communications services provider, as defined in § 58.1-647, including mobile service, and any provider of Voice-over-Internet Protocol service, in the Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering such service with or without charge related to emergency calls unless such act or omission was the result of such service provider's gross negligence or willful misconduct.

Any volunteer engaging in rescue or recovery work at a mine, or any mine operator voluntarily providing personnel to engage in rescue or recovery work at a mine not owned or operated by such operator, shall not be liable for civil damages for acts or omissions resulting from the rendering of such rescue or recovery work in good faith unless such act or omission was the result of gross negligence or willful misconduct. For purposes of this subsection, "Voice-over-Internet Protocol service" or "VoIP service" means any Internet protocol-enabled services utilizing a broadband connection, actually originating or terminating in Internet Protocol from either or both ends of a channel of communication

offering real time, multidirectional voice functionality, including, but not limited to, services similar to traditional telephone service.

D. Nothing contained in this section shall be construed to provide immunity from liability arising out of the operation of a motor vehicle.

E. For the purposes of this section, "compensation" shall not be construed to include (i) the salaries of police, fire, or other public officials or personnel who render such emergency assistance; (ii) the salaries or wages of employees of a coal producer engaging in emergency medical services or first aid services pursuant to the provisions of § 45.1-161.38, 45.1-161.101, 45.1-161.199, or 45.1-161.263; (iii) complimentary lift tickets, food, lodging, or other gifts provided as a gratuity to volunteer members of the National Ski Patrol System, Inc., by any resort, group, or agency; (iv) the salary of any person who (a) owns an AED for the use at the scene of an emergency, (b) trains individuals, in courses approved by the Board of Health, to operate AEDs at the scene of emergencies, (c) orders AEDs for use at the scene of emergencies, or (d) operates an AED at the scene of an emergency; or (v) expenses reimbursed to any person providing care or assistance pursuant to this section.

For the purposes of this section, "emergency medical services provider" shall include a person licensed or certified as such or its equivalent by any other state when he is performing services that he is licensed or certified to perform by such other state in caring for a patient in transit in the Commonwealth, which care originated in such other state.

Further, the public shall be urged to receive training on how to use CPR and an AED in order to acquire the skills and confidence to respond to emergencies using both CPR and an AED.

Drafting note: No change recommended.

§ 8.01-341.1. Exemptions from jury service upon request.

Any of the following persons may serve on juries in civil and criminal cases but shall be exempt from jury service upon his request:

1. through 3. [Repealed.]

4. A mariner actually employed in maritime service;

5. through 7. [Repealed.]

8. A person who has legal custody of and is necessarily and personally responsible for a child or children 16 years of age or younger requiring continuous care by him during normal court hours, or any **mother** who is breast-feeding a child;

9. A person who is necessarily and personally responsible for a person having a physical or mental impairment requiring continuous care by him during normal court hours;

10. Any person over 70 years of age;

11. Any person whose spouse is summoned to serve on the same jury panel;

12. Any person who is the only person performing services for a business, commercial or agricultural enterprise and whose services are so essential to the operations of the business, commercial or agricultural enterprise that such enterprise must close or cease to function if such person is required to perform jury duty;

13. Any person who is the only person performing services for a political subdivision as a firefighter, as defined in § 65.2-102, and whose services are so essential to the operations of the political subdivision that such political subdivision will suffer an undue hardship in carrying out such services if such person is required to perform jury duty;

14. Any person employed by the Office of the Clerk of the House of Delegates, the Office of the Clerk of the Senate, the Division of Legislative Services, and the Division of Legislative Automated Systems; however, this exemption shall apply only to jury service starting (i) during the period beginning 60 days prior to the day any regular session commences and ending 30 days after the day of adjournment of such session and (ii) during the period beginning seven days prior to the day any reconvened or special session commences and ending seven days after the day of adjournment of such session;

15. Any general registrar, member of a local electoral board, or person appointed or employed by either the general registrar or the local electoral board, except officers of election appointed pursuant to Article 5 (§ 24.2-115 et seq.) of Chapter 1 of Title 24.2; however, this exemption shall apply only to jury service starting (i) during the period beginning 90 days prior to any election and continuing through election day, (ii) during the period to ascertain the results of the election and continuing for 10 days after the local electoral board certifies the results of the election under § 24.2-671 or the State Board of Elections

certifies the results of the election under § 24.2-679, or (iii) during the period of an election recount or contested election pursuant to Chapter 8 (§ 24.2-800 et seq.) of Title 24.2. Any officer of election shall be exempt from jury service only on election day and during the periods set forth in clauses (ii) and (iii); and

16. Any member of the armed services of the United States or the diplomatic service of the United States appointed under the Foreign Service Act (22 U.S.C. § 3901 et seq.) who will be serving outside of the United States at the time of such jury service.

Drafting note: No change recommended.

§ 8.01-419. Table of life expectancy.

Whenever, in any case not otherwise specifically provided for, it is necessary to establish the expectancy of continued life of any person from any period of such person's life, whether he be living at the time or not, the following table shall be received in all courts and by all persons having power to determine litigation as evidence, with other evidence as to the health, constitution and habits of such person, of such expectancy represented by the figures in the following columns:

a		**BOTH**		
b	**AGE**	**SEXES**	***MALE***	***FEMALE***
c	0	77.4	74.7	80
d	1	77	74.3	79.5
e	2	76	73.3	78.5
f	3	75	72.4	77.6
g	4	74	71.4	76.6
h	5	73.1	70.4	75.6
i	6	72.1	69.4	74.6
j	7	71.1	68.4	73.6
k	8	70.1	67.4	72.6
l	9	69.1	66.5	71.6
m	10	68.1	65.5	70.6
n	11	67.1	64.5	69.6
o	12	66.1	63.5	68.7
p	13	65.1	62.5	67.7
q	14	64.2	61.5	66.7
r	15	63.2	60.5	65.7
s	16	62.2	59.6	64.7
t	17	61.2	58.6	63.7
u	18	60.3	57.7	62.8
v	19	59.3	56.7	61.8
w	20	58.4	55.8	60.8

a		**BOTH**		
b	**AGE**	**SEXES**	***MALE***	***FEMALE***
x	21	57.4	54.9	59.8
y	22	56.5	54	58.9
z	23	55.5	53	57.9
aa	24	54.6	52.1	56.9
ab	25	53.6	51.2	56
ac	26	52.7	50.3	55
ad	27	51.7	49.3	54
ae	28	50.8	48.4	53
af	29	49.8	47.4	52.1
ag	30	48.9	46.5	51.1
ah	31	47.9	45.6	50.1
ai	32	47	44.6	49.2
aj	33	46	43.7	48.2
ak	34	45.1	42.8	47.2
al	35	44.1	41.8	46.3
am	36	43.2	40.9	45.3
an	37	42.3	40	44.4
ao	38	41.3	39.1	43.4
ap	39	40.4	38.1	42.5
aq	40	39.5	37.2	41.5
ar	41	38.6	36.3	40.6
as	42	37.6	35.4	39.7
at	43	36.7	34.5	38.7
au	44	35.8	33.6	37.8
av	45	34.9	32.8	36.9
aw	46	34	31.9	36
ax	47	33.1	31	35.1
ay	48	32.3	30.2	34.1
az	49	31.4	29.3	33.2
ba	50	30.5	28.5	32.3
bb	51	29.6	27.6	31.4
bc	52	28.8	26.8	30.6
bd	53	27.9	26	29.7
be	54	27.1	25.1	28.8
bf	55	26.2	24.3	27.9
bg	56	25.4	23.5	27
bh	57	24.6	22.7	26.2
bi	58	23.8	21.9	25.3
bj	59	23	21.2	24.5
bk	60	22.2	20.4	23.7
bl	61	21.4	19.6	22.8

a		**BOTH**		
b	**AGE**	**SEXES**	***MALE***	***FEMALE***
bm	62	20.6	18.9	22
bn	63	19.8	18.2	21.2
bo	64	19.1	17.5	20.4
bp	65	18.4	16.8	19.7
bq	66	17.6	16.1	18.9
br	67	16.9	15.4	18.1
bs	68	16.2	14.7	17.4
bt	69	15.5	14.1	16.7
bu	70	14.8	13.4	15.9
bv	71	14.2	12.8	15.2
bw	72	13.5	12.2	14.5
bx	73	12.9	11.6	13.8
by	74	12.3	11	13.2
bz	75	11.7	10.5	12.5
ca	76	11.1	9.9	11.9
cb	77	10.5	9.4	11.3
cc	78	10	8.9	10.7
cd	79	9.4	8.4	10.1
ce	80	8.9	7.9	9.5
cf	81	8.4	7.5	9
cg	82	7.9	7	8.4
ch	83	7.5	6.6	7.9
ci	84	7	6.3	7.4
cj	85	6.6	5.9	7
ck	86	6.2	5.5	6.6
cl	87	5.8	5.2	6.1
cm	88	5.5	4.9	5.7
cn	89	5.1	4.6	5.4
co	90	4.8	4.3	5
cp	91	4.5	4	4.7
cq	92	4.2	3.8	4.4
cr	93	4	3.5	4.1
cs	94	3.7	3.3	3.8
ct	95	3.5	3.1	3.5
cu	96	3.2	2.9	3.3
cv	97	3	2.7	3.1
cw	98	2.8	2.5	2.9
cx	99	2.6	2.4	2.7
cy	100+	2.5	2.2	2.5

310

311 Drafting note: No change recommended.

§ 15.2-5325. Clinics and instruction programs.

An authority shall have power to provide and operate outpatient departments, **maternity** clinics and any other clinics customarily operated in hospitals in metropolitan centers and to provide teaching and instruction programs and schools for medical students, interns, physicians and nurses.

Drafting note: No change recommended.

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests, and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk; (ii) designated nonattorney employees of the Department of Social Services may complete, sign, and file petitions and motions relating to the establishment, modification, or enforcement of support on forms approved by the Supreme Court of Virginia with the clerk; (iii) designated nonattorney employees of a local department of social services may complete, sign, and file with the clerk, on forms approved by the Supreme Court of Virginia, petitions for foster care review, petitions for permanency planning hearings, petitions to establish **paternity**, motions to establish or modify support, motions to amend or review an order, and motions for a rule to show cause; and (iv) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision, or delinquent. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of social services in accordance with the provisions of Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify, or enforce an order for support of a child. If the petitioner is seeking or receiving child

support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision, or delinquent only if the juvenile (i) is not alleged to have committed a violent juvenile felony or (ii) has not previously been proceeded against informally or adjudicated delinquent for an offense that would be a felony if committed by an adult. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is delinquent for an offense that would be a felony if committed by an adult shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated delinquent for an offense that would be a felony if committed by an adult.

If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and the attendance officer has provided documentation to the intake officer that the relevant school division has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with

the court. The intake officer may defer filing the complaint for 90 days and proceed informally by developing a truancy plan. The intake officer may proceed informally only if the juvenile has not previously been proceeded against informally or adjudicated in need of supervision for failure to comply with compulsory school attendance as provided in § 22.1-254. The juvenile and his parent or parents, guardian, or other person standing in loco parentis must agree, in writing, for the development of a truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents, guardian, or other person standing in loco parentis participate in such programs, cooperate in such treatment, or be subject to such conditions and limitations as necessary to ensure the juvenile's compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an interagency interdisciplinary team approach. The team may include qualified personnel who are reasonably available from the appropriate department of social services, community services board, local school division, court service unit, and other appropriate and available public and private agencies and may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then the intake officer shall file the petition.

Whenever informal action is taken as provided in this subsection on a complaint alleging that a child is in need of services, in need of supervision, or delinquent, the intake officer shall (i) develop a plan for the juvenile, which may include restitution and the performance of community service, based upon community resources and the circumstances which resulted in the complaint, (ii) create an official record of the action taken by the intake officer and file such record in the juvenile's case file, and (iii) advise the juvenile and the juvenile's parent, guardian, or other person standing in loco parentis and the complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241 will result in the filing of a petition with the court.

C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody, visitation, or support of a child is the subject of controversy or requires determination, (ii) a person has

deserted, abandoned, or failed to provide support for any person in violation of law, (iii) a child or such child's parent, guardian, legal custodian, or other person standing in loco parentis is entitled to treatment, rehabilitation, or other services which are required by law, (iv) family abuse has occurred and a protective order is being sought pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, or (v) an act of violence, force, or threat has occurred, a protective order is being sought pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, and either the alleged victim or the respondent is a juvenile. If any such complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to be abused, neglected, in need of services, in need of supervision, or delinquent, if the intake officer believes that probable cause does not exist, or that the authorization of a petition will not be in the best interest of the family or juvenile or that the matter may be effectively dealt with by some agency other than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written explanation of the conditions, procedures and time limits applicable to the issuance of protective orders pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective order pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written explanation of the conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be in need of supervision have utilized or attempted to utilize treatment and services available in the community and have exhausted all appropriate nonjudicial remedies which are available to them. When the intake officer determines that the parties have not attempted to utilize available treatment or services or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility, or individual to receive treatment or services, and a petition shall not be filed. Only after the intake officer determines that the parties have made a reasonable effort to utilize available community treatment or services may he permit the petition to be filed.

E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a status offense, or a misdemeanor other than Class 1, his decision is final.

Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § 16.1-256, the intake officer shall accept and file a petition founded upon the warrant.

F. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition which alleges facts of an offense which would be a felony if committed by an adult.

G. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.), the intake officer shall file a report with the division superintendent of the school division in which any student who is the subject of a petition alleging that such student who is a juvenile has committed an act, wherever committed, which would be a crime if committed by an adult, or that such student who is an adult has committed a crime and is alleged to be within the jurisdiction of the court. The report shall notify the division superintendent of the filing of the petition and the nature of the offense, if the violation involves:

1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), 6.1 (§ 18.2-307.1 et seq.), or 7 (§ 18.2-308.1 et seq.) of Chapter 7 of Title 18.2;

2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;

4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;

8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93;

9. Robbery pursuant to § 18.2-58;

10. Prohibited criminal street gang activity pursuant to § 18.2-46.2;

11. Recruitment of other juveniles for a criminal street gang activity pursuant to § 18.2-46.3; or

12. An act of violence by a mob pursuant to § 18.2-42.1.

The failure to provide information regarding the school in which the student who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

The information provided to a division superintendent pursuant to this section may be disclosed only as provided in § 16.1-305.2.

H. The filing of a petition shall not be necessary:

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws, or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew violations, animal control violations, or littering violations. In such cases the court may proceed on a summons issued by the officer investigating the violation in the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the scene of the accident or at any other location where a juvenile who is involved in such an accident may be located, proceed on a summons in lieu of filing a petition.

2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subsection H of § 16.1-241.

3. In the case of a misdemeanor violation of § 18.2-250.1, 18.2-266, 18.2-266.1, or 29.1-738, or the commission of any other alcohol-related offense, provided the juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a

parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner provided in § 16.1-278.8, 16.1-278.8:01, or 16.1-278.9. If the juvenile so charged with a violation of § 18.2-51.4, 18.2-266, 18.2-266.1, 18.2-272, or 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or 29.1-738.2, the provisions of these sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to the court in which the violation is to be tried. When a violation of § 18.2-250.1 is charged by summons, the juvenile shall be entitled to have the charge referred to intake for consideration of informal proceedings pursuant to subsection B, provided such right is exercised by written notification to the clerk not later than 10 days prior to trial. At the time such summons alleging a violation of § 18.2-250.1 is served, the officer shall also serve upon the juvenile written notice of the right to have the charge referred to intake on a form approved by the Supreme Court and make return of such service to the court. If the officer fails to make such service or return, the court shall dismiss the summons without prejudice.

4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of the jurisdiction granted it in § 16.1-241.

Drafting note: No change recommended.

§ 16.1-263. Summonses.

A. After a petition has been filed, the court shall direct the issuance of summonses, one directed to the juvenile, if the juvenile is twelve or more years of age, and another to at least one parent, guardian,

legal custodian or other person standing in loco parentis, and such other persons as appear to the court to be proper or necessary parties to the proceedings.

After a petition has been filed against an adult pursuant to subsection C or D of § 16.1-259, the court shall direct the issuance of a summons against the adult.

The summons shall require them to appear personally before the court at the time fixed to answer or testify as to the allegations of the petition. Where the custodian is summoned and such person is not a parent of the juvenile in question, a parent shall also be served with a summons. The court may direct that other proper or necessary parties to the proceedings be notified of the pendency of the case, the charge and the time and place for the hearing.

Any such summons shall be deemed a mandate of the court, and willful failure to obey its requirements shall subject any person guilty thereof to liability for punishment for contempt. Upon the failure of any person to appear as ordered in the summons, the court shall immediately issue an order for such person to show cause why he should not be held in contempt.

The parent, guardian, legal custodian, or other person standing in loco parentis shall not be summoned to appear or be punished for failure to appear in cases of adults who are brought before the court pursuant to subsection C or D of § 16.1-259 unless such person is summoned as a witness.

B. The summons shall advise the parties of their right to counsel as provided in § 16.1-266. A copy of the petition shall accompany each summons for the initial proceedings. The summons shall include notice that in the event that the juvenile is committed to the Department or to a secure local facility, at least one parent or other person legally obligated to care for and support the juvenile may be required to pay a reasonable sum for support and treatment of the juvenile pursuant to § 16.1-290. Notice of subsequent proceedings shall be provided to all parties in interest. In all cases where a party is represented by counsel and counsel has been provided with a copy of the petition and due notice as to time, date and place of the hearing, such action shall be deemed due notice to such party, unless such counsel has notified the court that he no longer represents such party.

C. The judge may endorse upon the summons an order directing a parent or parents, guardian or other custodian having the custody or control of the juvenile to bring the juvenile to the hearing.

D. A party, other than the juvenile, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

E. No such summons or notification shall be required if the judge shall certify on the record that (i) the identity of a parent or guardian is not reasonably ascertainable or (ii) in cases in which it is alleged that a juvenile has committed a delinquent act, crime, status offense or traffic infraction or is in need of services or supervision, the location, or in the case of a parent or guardian located outside of the Commonwealth the location or mailing address, of a parent or guardian is not reasonably ascertainable. An affidavit of the **mother** that the identity of the **father** is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. In cases referred to in clause (ii), an affidavit of a law-enforcement officer or juvenile probation officer that the location of a parent or guardian is not reasonably ascertainable shall be sufficient evidence of this fact, provided that there is no other evidence before the court which would refute the affidavit.

Drafting note: No change recommended.

§ 16.1-277.02. Petition for relief of care and custody.

A. Requests for petitions for relief of the care and custody of a child shall be referred initially to the local department of social services for investigation and the provision of services, if appropriate, in accordance with the provisions of § 63.2-319 or Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Upon the filing of a petition for relief of a child's care and custody pursuant to subdivision A 4 of § 16.1-241, the court shall appoint a guardian ad litem to represent the child in accordance with the provisions of § 16.1-266, and shall schedule the matter for a hearing on the petition. Such hearing on the petition may include partial or final disposition of the matter. The court shall provide notice of the hearing and a copy of the petition to the following, each of whom shall be a party entitled to participate in the proceeding:

1. The child, if he is 12 years of age or older;

2. The guardian ad litem for the child;

3. The child's parents, custodian or other person standing in loco parentis to the child. No such notification shall be required, however, if the judge certifies on the record that the identity of the parent is not reasonably ascertainable. An affidavit of the **mother** that the identity of the **father** is not reasonably

ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. The hearing on the petition shall be held pursuant to this section although a parent fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. However, in the case of a hearing to grant a petition for permanent relief of custody and terminate a parent's residual parental rights, notice to the parent whose rights may be affected shall be provided in accordance with the provisions of §§ 16.1-263 and 16.1-264; and

4. The local board of social services. Upon receiving notice of the hearing pursuant to this section, the local board of social services shall investigate the matter and provide services, as appropriate, in accordance with the provisions of § 63.2-319 or Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2.

B. At the hearing, the local board of social services, the child, the child's parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

C. At the conclusion of the hearing on the petition, the court shall make a finding, based upon a preponderance of the evidence, whether there is good cause shown for the petitioner's desire to be relieved of the child's care and custody, unless the petition seeks permanent relief of custody and termination of parental rights. If the petition seeks permanent relief of custody and termination of parental rights, the court shall make a finding, based upon clear and convincing evidence, whether termination of parental rights is in the best interest of the child. If the court makes either of these findings, the court may enter:

1. A preliminary protective order pursuant to § 16.1-253;

2. An order that requires the local board of social services to provide services to the family as required by law;

3. An order that is consistent with any of the dispositional alternatives pursuant to § 16.1-278.3; or

4. Any combination of these orders.

Any such order transferring legal custody of the child shall be made in accordance with the provisions of subdivision A 5 of § 16.1-278.2 and shall be subject to the provisions of subsection C1. This order shall include, but need not be limited to, the following findings: (i) that there is no less drastic alternative to granting the requested relief; and (ii) that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, if the order transfers legal custody of the child to a local board of social services. Any order terminating residual parental rights shall be accompanied by an order continuing or granting custody to a local board of social services, to a licensed child-placing agency or the granting of custody or guardianship to a relative or other interested individual. Such an order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto. At any time subsequent to the transfer of legal custody of the child pursuant to this section, a birth parent or parents of the child and the pre-adoptive parent or parents may enter into a written post-adoption contact and communication agreement in accordance with the provisions of § 16.1-283.1 and Article 1.1 (§ 63.2-1220.2 et seq.) of Chapter 12 of Title 63.2. The court shall not require a written post-adoption contact and communication agreement as a precondition to entry of an order in any case involving the child.

The court shall schedule a subsequent hearing within 60 days of the hearing held pursuant to this section: (a) to enter a final order of disposition pursuant to § 16.1-278.3 or (b) if the child is placed in foster care, for review of the foster care plan filed pursuant to § 16.1-281. If a party is required to be present at the subsequent hearing, and (1) is present at the hearing on the petition, the party shall be given notice of the date set for the subsequent hearing; (2) if not present, shall be summoned as provided in § 16.1-263.

C1. Any order transferring temporary custody of the child to a relative or other interested individual pursuant to subsection C shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative or other interested individual is one who (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous

relationship with the child; and (iii) is willing and has the ability to protect the child from abuse and neglect. The court's order transferring temporary custody to a relative or other interested individual should further provide for compliance with any preliminary protective order entered on behalf of the child in accordance with the provisions of § 16.1-253; and, as appropriate, ongoing provision of social services to the child and the child's custodian; and court review of the child's placement with the relative or other individual. Any final order transferring custody of the child to a relative or other interested individual pursuant to this section shall, in addition, be entered only after an investigation as directed by the court and upon a finding, stated in the court's order, that the relative or other interested individual is one who satisfies clauses (i), (ii), and (iii) and is committed to providing a permanent, suitable home for the child.

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

Drafting note: No change recommended.

§ 16.1-282. Foster care review.

A. In the case of a child who was the subject of a foster care plan filed with the court pursuant to § 16.1-281, a foster care review hearing shall be held within four months of the dispositional hearing at which the foster care plan pursuant to § 16.1-281 was reviewed if the child: (a) was placed through an agreement between the parents or guardians and the local board of social services where legal custody remains with the parents or guardians and such agreement has not been dissolved by court order; or (b) is

under the legal custody of a local board of social services or a child welfare agency and has not had a petition to terminate parental rights granted, filed or ordered to be filed on the child's behalf; has not been placed in permanent foster care; or is age 16 or over and the plan for the child is not independent living.

Any interested party, including the parent, guardian or person who stood in loco parentis prior to the board's placement of the child or the board's or child welfare agency's assumption of legal custody, may file with the court the petition for a foster care review hearing hereinafter described at any time after the initial foster care placement of the child. However, the board or child welfare agency shall file the petition within three months of the dispositional hearing at which the foster care plan was reviewed pursuant to § 16.1-281.

B. The petition shall:

1. Be filed in the court in which the foster care plan for the child was reviewed and approved. Upon the order of such court, however, the petition may be filed in the court of the county or city in which the board or child welfare agency having legal custody or having placed the child has its principal office or where the child resides;

2. State, if such is reasonably obtainable, the current address of the child's parents and, if the child was in the custody of a person or persons standing in loco parentis at the time the board or child welfare agency obtained legal custody or the board placed the child, of such person or persons;

3. Describe the placement or placements provided for the child while in foster care and the services or programs offered to the child and his parents and, if applicable, the persons previously standing in loco parentis;

4. Describe the nature and frequency of the contacts between the child and his parents and, if applicable, the persons previously standing in loco parentis;

5. Set forth in detail the manner in which the foster care plan previously filed with the court was or was not complied with and the extent to which the goals thereof have been met; and

6. Set forth the disposition sought and the grounds therefor; however, in the case of a child who has attained age 16 and for whom the plan is independent living, the foster care plan shall be included and shall address the services needed to assist the child to transition from foster care to independent living.

C. Upon receipt of the petition filed by the board, child welfare agency, or any interested party as provided in subsection B of this section, the court shall schedule a hearing to be held within 30 days if a hearing was not previously scheduled. The court shall provide notice of the hearing and a copy of the petition to the following, each of whom shall be a party entitled to participate in the proceeding:

1. The child, if he is 12 years of age or older;

2. The attorney-at-law representing the child as guardian ad litem;

3. The child's parents and, if the child was in the custody of a person standing in loco parentis at the time the department obtained custody, such person or persons. No such notification shall be required, however, if the judge certifies on the record that the identity of the parent or guardian is not reasonably ascertainable. An affidavit of the **mother** that the identity of the **father** is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. If the parent or guardian of the child did not appear at the dispositional hearing and was not noticed to return for the foster care review hearing in accordance with subsection E of § 16.1-281, the parent or guardian shall be summoned to appear at the foster care review hearing in accordance with § 16.1-263. The review hearing shall be held pursuant to this section although a parent or guardian fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent or guardian, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort;

4. The foster parent or foster parents or other care providers of the child;

5. The petitioning board or child welfare agency; and

6. Such other persons as the court, in its discretion, may direct. The local board of social services or other child welfare agency shall identify for the court such other persons as have a legitimate interest in the hearing, including, but not limited to, preadoptive parents for a child in foster care.

D. At the conclusion of the hearing, the court shall, upon the proof adduced in accordance with the best interests of the child and subject to the provisions of subsection D1, enter any appropriate order of disposition consistent with the dispositional alternatives available to the court at the time of the original

hearing. The court order shall state whether reasonable efforts, if applicable, have been made to reunite the child with his parents, guardian or other person standing in loco parentis to the child. Any order entered at the conclusion of this hearing that has the effect of achieving a permanent goal for the child by terminating residual parental rights pursuant to § 16.1-277.01, 16.1-277.02, 16.1-278.3, or 16.1-283; by placing the child in permanent foster care pursuant to subdivision A iv of § 16.1-282.1; or, if the child has attained the age of 16 years and the plan for the child is independent living, directing the board or agency to provide the necessary services to transition from foster care, pursuant to subdivision A v of § 16.1-282.1 shall state whether reasonable efforts have been made to place the child in a timely manner in accordance with the foster care plan and to complete the steps necessary to finalize the permanent placement of the child.

D1. Any order transferring custody of the child to a relative other than the child's prior family shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative should further provide for, as appropriate, any terms and conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

E. The court shall possess continuing jurisdiction over cases reviewed under this section for so long as a child remains in a foster care placement or, when a child is returned to his prior family subject to conditions imposed by the court, for so long as such conditions are effective. After the hearing required pursuant to subsection C, the court shall schedule a permanency planning hearing on the case to be held five months thereafter in accordance with § 16.1-282.1 or within 30 days upon the petition of any party entitled to notice in proceedings under this section when the judge determines there is good cause shown for such a hearing. However, in the case of a child who is the subject of an order that has the effect of achieving a permanent goal for the child by terminating residual parental rights pursuant to § 16.1-277.01,

16.1-277.02, 16.1-278.3, or 16.1-283; by placing the child in permanent foster care pursuant to subdivision A iv of § 16.1-282.1; or by directing the board or agency to provide the child with services to achieve independent living status, if the child has attained the age of 16 years, pursuant to subdivision A v of § 16.1-282.1, a permanency planning hearing within five months shall not be required and the court shall schedule a foster care review hearing to be held within 12 months of the entry of such order in accordance with the provisions of § 16.1-282.2.

Drafting note: No change recommended.

§ 17.1-275. Fees collected by clerks of circuit courts; generally.

A. A clerk of a circuit court shall, for services performed by virtue of his office, charge the following fees:

1. [Repealed.]

2. For recording and indexing in the proper book any writing and all matters therewith, or for recording and indexing anything not otherwise provided for, $16 for an instrument or document consisting of 10 or fewer pages or sheets; $30 for an instrument or document consisting of 11 to 30 pages or sheets; and $50 for an instrument or document consisting of 31 or more pages or sheets. Whenever any writing to be recorded includes plat or map sheets no larger than eight and one-half inches by 14 inches, such plat or map sheets shall be counted as ordinary pages for the purpose of computing the recording fee due pursuant to this section. A fee of $15 per page or sheet shall be charged with respect to plat or map sheets larger than eight and one-half inches by 14 inches. Only a single fee as authorized by this subdivision shall be charged for recording a certificate of satisfaction that releases the original deed of trust and any corrected or revised deeds of trust. One dollar and fifty cents of the fee collected for recording and indexing shall be designated for use in preserving the permanent records of the circuit courts. The sum collected for this purpose shall be administered by The Library of Virginia in cooperation with the circuit court clerks.

3. For appointing and qualifying any personal representative, committee, trustee, guardian, or other fiduciary, in addition to any fees for recording allowed by this section, $20 for estates not exceeding

$50,000, $25 for estates not exceeding $100,000 and $30 for estates exceeding $100,000. No fee shall be charged for estates of $5,000 or less.

4. For entering and granting and for issuing any license, other than a marriage license or a hunting and fishing license, and administering an oath when necessary, $10.

5. For issuing a marriage license, attaching certificate, administering or receiving all necessary oaths or affidavits, indexing and recording, $10. For recording an order to celebrate the rites of marriage pursuant to § 20-25, $25 to be paid by the petitioner.

6. For making out any bond, other than those under § 17.1-267 or subdivision A 4, administering all necessary oaths and writing proper affidavits, $3.

7. For all services rendered by the clerk in any garnishment or attachment proceeding, the clerk's fee shall be $15 in cases not exceeding $500 and $25 in all other cases.

8. For making out a copy of any paper, record, or electronic record to go out of the office, which is not otherwise specifically provided for herein, a fee of $0.50 for each page or, if an electronic record, each image. From such fees, the clerk shall reimburse the locality the costs of making out the copies and pay the remaining fees directly to the Commonwealth. The funds to recoup the cost of making out the copies shall be deposited with the county or city treasurer or Director of Finance, and the governing body shall budget and appropriate such funds to be used to support the cost of copies pursuant to this subdivision. For purposes of this section, the costs of making out the copies authorized under this section shall include costs included in the lease and maintenance agreements for the equipment and the technology needed to operate electronic systems in the clerk's office used to make out the copies, but shall not include salaries or related benefits. The costs of copies shall otherwise be determined in accordance with § 2.2-3704. However, there shall be no charge to the recipient of a final order or decree to send an attested copy to such party.

9. For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, the clerk shall charge $2 and for attaching the certificate of the judge, if the clerk is requested to do so, the clerk shall charge an additional $0.50.

10. In any case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk shall assess a fee of $150 for each felony conviction and each felony disposition under § 18.2-251 which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and Treatment Fund.

11. In any case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk shall assess a fee for each misdemeanor conviction and each misdemeanor disposition under § 18.2-251, which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and Treatment Fund as provided in § 17.1-275.8.

12. Upon the defendant's being required to successfully complete traffic school, a mature driver motor vehicle crash prevention course, or a driver improvement clinic in lieu of a finding of guilty, the court shall charge the defendant fees and costs as if he had been convicted.

13. In all civil actions that include one or more claims for the award of monetary damages the clerk's fee chargeable to the plaintiff shall be $100 in cases seeking recovery not exceeding $49,999; $200 in cases seeking recovery exceeding $49,999, but not exceeding $100,000; $250 in cases seeking recovery exceeding $100,000, but not exceeding $500,000; and $300 in cases seeking recovery exceeding $500,000. Ten dollars of each such fee shall be apportioned to the Courts Technology Fund established under § 17.1-132. A fee of $25 shall be paid by the plaintiff at the time of instituting a condemnation case, in lieu of any other fees. There shall be no fee charged for the filing of a cross-claim or setoff in any pending action. However, the fees prescribed by this subdivision shall be charged upon the filing of a counterclaim or a claim impleading a third-party defendant. The fees prescribed above shall be collected upon the filing of papers for the commencement of civil actions. This subdivision shall not be applicable to cases filed in the Supreme Court of Virginia.

13a. For the filing of any petition seeking court approval of a settlement where no action has yet been filed, the clerk's fee, chargeable to the petitioner, shall be $50, to be paid by the petitioner at the time of filing the petition.

14. In addition to the fees chargeable for civil actions, for the costs of proceedings for judgments by confession under §§ 8.01-432 through 8.01-440, the clerk shall tax as costs (i) the cost of registered or certified mail; (ii) the statutory writ tax, in the amount required by law to be paid on a suit for the amount of the confessed judgment; (iii) for the sheriff for serving each copy of the order entering judgment, $12; and (iv) for docketing the judgment and issuing executions thereon, the same fees as prescribed in subdivision A 17.

15. For qualifying notaries public, including the making out of the bond and any copies thereof, administering the necessary oaths, and entering the order, $10.

16. For each habeas corpus proceeding, the clerk shall receive $10 for all services required thereunder. This subdivision shall not be applicable to such suits filed in the Supreme Court of Virginia.

17. For docketing and indexing a judgment from any other court of the Commonwealth, for docketing and indexing a judgment in the new name of a judgment debtor pursuant to the provisions of § 8.01-451, but not when incident to a divorce, for noting and filing the assignment of a judgment pursuant to § 8.01-452, a fee of $5; and for issuing an abstract of any recorded judgment, when proper to do so, a fee of $5; and for filing, docketing, indexing and mailing notice of a foreign judgment, a fee of $20.

18. For all services rendered by the clerk in any court proceeding for which no specific fee is provided by law, the clerk shall charge $10, to be paid by the party filing said papers at the time of filing; however, this subdivision shall not be applicable in a divorce cause prior to and including the entry of a decree of divorce from the bond of matrimony.

19, 20. [Repealed.]

21. For making the endorsements on a forthcoming bond and recording the matters relating to such bond pursuant to the provisions of § 8.01-529, $1.

22. For all services rendered by the clerk in any proceeding pursuant to § 57-8 or 57-15, $10.

23. For preparation and issuance of a subpoena duces tecum, $5.

24. For all services rendered by the clerk in matters under § 8.01-217 relating to change of name, $20; however, this subdivision shall not be applicable in cases where the change of name is incident to a divorce.

25. For providing court records or documents on microfilm, per frame, $0.50.

26. In all divorce and separate maintenance proceedings, and all civil actions that do not include one or more claims for the award of monetary damages, the clerk's fee chargeable to the plaintiff shall be $60, $10 of which shall be apportioned to the Courts Technology Fund established under § 17.1-132 to be paid by the plaintiff at the time of instituting the suit, which shall include the furnishing of a duly certified copy of the final decree. The fees prescribed by this subdivision shall be charged upon the filing of a counterclaim or a claim impleading a third-party defendant. However, no fee shall be charged for (i) the filing of a cross-claim or setoff in any pending suit or (ii) the filing of a counterclaim or any other responsive pleading in any annulment, divorce, or separate maintenance proceeding. In divorce cases, when there is a merger of a divorce of separation a mensa et thoro into a decree of divorce a vinculo, the above mentioned fee shall include the furnishing of a duly certified copy of both such decrees.

27. For the acceptance of credit or debit cards in lieu of money to collect and secure all fees, including filing fees, fines, restitution, forfeiture, penalties and costs, the clerk shall collect from the person presenting such credit or debit card a reasonable convenience fee for the processing of such credit or debit card. Such convenience fee shall not exceed four percent of the amount paid for the transaction or a flat fee of $2 per transaction. The clerk may set a lower convenience fee for electronic filing of civil or criminal proceedings pursuant to § 17.1-258.3. Nothing herein shall be construed to prohibit the clerk from outsourcing the processing of credit and debit card transactions to a third-party private vendor engaged by the clerk. Convenience fees shall be used to cover operational expenses as defined in § 17.1-295.

28. For the return of any check unpaid by the financial institution on which it was drawn or notice is received from the credit or debit card issuer that payment will not be made for any reason, the clerk may collect a fee of $50 or 10 percent of the amount of the payment, whichever is greater.

29. For all services rendered, except in cases in which costs are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, or 17.1-275.4, in an adoption proceeding, a fee of $20, in addition to the fee imposed under § 63.2-1246, to be paid by the petitioner or petitioners. For each petition for adoption filed pursuant to § 63.2-1201, except those filed pursuant to subdivisions 5 and 6 of § 63.2-1210, an additional

$50 filing fee as required under § 63.2-1201 shall be deposited in the Virginia Birth **Father** Registry Fund pursuant to § 63.2-1249.

30. For issuing a duplicate license for one lost or destroyed as provided in § 29.1-334, a fee in the same amount as the fee for the original license.

31. For the filing of any petition as provided in §§ 33.2-1023, 33.2-1024, and 33.2-1027, a fee of $5 to be paid by the petitioner; and for the recordation of a certificate or copy thereof, as provided for in § 33.2-1021, as well as for any order of the court relating thereto, the clerk shall charge the same fee as for recording a deed as provided for in this section, to be paid by the party upon whose request such certificate is recorded or order is entered.

32. For making up, certifying and transmitting original record pursuant to the Rules of the Supreme Court, including all papers necessary to be copied and other services rendered, except in cases in which costs are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, or 17.1-275.9, a fee of $20.

33. [Repealed.]

34. For filings, etc., under the Uniform Federal Lien Registration Act (§ 55-142.1 et seq.), the fees shall be as prescribed in that Act.

35. For filing the appointment of a resident agent for a nonresident property owner in accordance with § 55-218.1, a fee of $10.

36. [Repealed.]

37. For recordation of certificate and registration of names of nonresident owners in accordance with § 59.1-74, a fee of $10.

38. For maintaining the information required under the Overhead High Voltage Line Safety Act (§ 59.1-406 et seq.), the fee as prescribed in § 59.1-411.

39. For lodging, indexing and preserving a will in accordance with § 64.2-409, a fee of $2.

40. For filing a financing statement in accordance with § 8.9A-505, the fee shall be as prescribed under § 8.9A-525.

41. For filing a termination statement in accordance with § 8.9A-513, the fee shall be as prescribed under § 8.9A-525.

42. For filing assignment of security interest in accordance with § 8.9A-514, the fee shall be as prescribed under § 8.9A-525.

43. For filing a petition as provided in §§ 64.2-2001 and 64.2-2013, the fee shall be $10.

44. For issuing any execution, and recording the return thereof, a fee of $1.50.

45. For the preparation and issuance of a summons for interrogation by an execution creditor, a fee of $5. If there is no outstanding execution, and one is requested herewith, the clerk shall be allowed an additional fee of $1.50, in accordance with subdivision A 44.

B. In accordance with § 17.1-281, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for courthouse construction, renovation or maintenance.

C. In accordance with § 17.1-278, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for services provided for the poor, without charge, by a nonprofit legal aid program.

D. In accordance with § 42.1-70, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for public law libraries.

E. All fees collected pursuant to subdivision A 27 and § 17.1-276 shall be deposited by the clerk into a special revenue fund held by the clerk, which will restrict the funds to their statutory purpose.

F. The provisions of this section shall control the fees charged by clerks of circuit courts for the services above described.

Drafting note: No change recommended.

§ 18.2-31. Capital murder defined; punishment.

The following offenses shall constitute capital murder, punishable as a Class 1 felony:

1. The willful, deliberate, and premeditated killing of any person in the commission of abduction, as defined in § 18.2-48, when such abduction was committed with the intent to extort money or a pecuniary benefit or with the intent to defile the victim of such abduction;

2. The willful, deliberate, and premeditated killing of any person by another for hire;

3. The willful, deliberate, and premeditated killing of any person by a prisoner confined in a state or local correctional facility as defined in § 53.1-1, or while in the custody of an employee thereof;

4. The willful, deliberate, and premeditated killing of any person in the commission of robbery or attempted robbery;

5. The willful, deliberate, and premeditated killing of any person in the commission of, or subsequent to, rape or attempted rape, forcible sodomy or attempted forcible sodomy or object sexual penetration;

6. The willful, deliberate, and premeditated killing of a law-enforcement officer as defined in § 9.1-101, a fire marshal appointed pursuant to § 27-30 or a deputy or an assistant fire marshal appointed pursuant to § 27-36, when such fire marshal or deputy or assistant fire marshal has police powers as set forth in §§ 27-34.2 and 27-34.2:1, an auxiliary police officer appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733, an auxiliary deputy sheriff appointed pursuant to § 15.2-1603, or any law-enforcement officer of another state or the United States having the power to arrest for a felony under the laws of such state or the United States, when such killing is for the purpose of interfering with the performance of his official duties;

7. The willful, deliberate, and premeditated killing of more than one person as a part of the same act or transaction;

8. The willful, deliberate, and premeditated killing of more than one person within a three-year period;

9. The willful, deliberate, and premeditated killing of any person in the commission of or attempted commission of a violation of § 18.2-248, involving a Schedule I or II controlled substance, when such killing is for the purpose of furthering the commission or attempted commission of such violation;

10. The willful, deliberate, and premeditated killing of any person by another pursuant to the direction or order of one who is engaged in a continuing criminal enterprise as defined in subsection I of § 18.2-248;

11. The willful, deliberate, and premeditated killing of a pregnant **woman** by one who knows that the **woman** is pregnant and has the intent to cause the involuntary termination of the **woman's** pregnancy without a live birth;

12. The willful, deliberate, and premeditated killing of a person under the age of fourteen by a person age twenty-one or older;

13. The willful, deliberate, and premeditated killing of any person by another in the commission of or attempted commission of an act of terrorism as defined in § 18.2-46.4;

14. The willful, deliberate, and premeditated killing of a justice of the Supreme Court, a judge of the Court of Appeals, a judge of a circuit court or district court, a retired judge sitting by designation or under temporary recall, or a substitute judge appointed under § 16.1-69.9:1 when the killing is for the purpose of interfering with his official duties as a judge; and

15. The willful, deliberate, and premeditated killing of any witness in a criminal case after a subpoena has been issued for such witness by the court, the clerk, or an attorney, when the killing is for the purpose of interfering with the person's duties in such case.

If any one or more subsections, sentences, or parts of this section shall be judged unconstitutional or invalid, such adjudication shall not affect, impair, or invalidate the remaining provisions thereof but shall be confined in its operation to the specific provisions so held unconstitutional or invalid.

Drafting note: No change recommended.

§ 18.2-32.1. Murder of a pregnant *woman*; penalty.

The willful and deliberate killing of a pregnant **woman** without premeditation by one who knows that the **woman** is pregnant and has the intent to cause the involuntary termination of the **woman's** pregnancy without a live birth shall be punished by a term of imprisonment of not less than ten years nor more than forty years.

Drafting note: No change recommended.

§ 18.2-51.2. Aggravated malicious wounding; penalty.

A. If any person maliciously shoots, stabs, cuts or wounds any other person, or by any means causes bodily injury, with the intent to maim, disfigure, disable or kill, he shall be guilty of a Class 2

felony if the victim is thereby severely injured and is caused to suffer permanent and significant physical impairment.

B. If any person maliciously shoots, stabs, cuts or wounds any other **woman** who is pregnant, or by any other means causes bodily injury, with the intent to maim, disfigure, disable or kill the pregnant **woman** or to cause the involuntary termination of **her** pregnancy, he shall be guilty of a Class 2 felony if the victim is thereby severely injured and is caused to suffer permanent and significant physical impairment.

C. For purposes of this section, the involuntary termination of a **woman's** pregnancy shall be deemed a severe injury and a permanent and significant physical impairment.

Drafting note: No change recommended.

§ 18.2-51.7. *Female* genital mutilation.

A. Any person who knowingly circumcises, excises, or infibulates, in whole or in any part, the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years is guilty of a Class 1 misdemeanor.

B. Any parent, guardian, or other person responsible for the care of a minor who consents to the circumcision, excision, or infibulation, in whole or in any part, of the labia majora or labia minora or clitoris of such minor is guilty of a Class 1 misdemeanor.

C. Any parent, guardian, or other person responsible for the care of a minor who knowingly removes or causes or permits the removal of such minor from the Commonwealth for the purposes of committing an offense under subsection A is guilty of a Class 1 misdemeanor.

D. A surgical operation is not a violation of this section if the operation is (i) necessary to the health of the person on whom it is performed and is performed by a person licensed in the place of its performance as a medical practitioner or (ii) performed on a person in labor who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.

E. A violation of this section shall constitute a separate and distinct offense. The provisions of this section shall not preclude prosecution under any other statute.

Drafting note: No change recommended.

§ 18.2-71. Producing abortion or miscarriage, etc.; penalty.

Except as provided in other sections of this article, if any person administer to, or cause to be taken by a **woman**, any drug or other thing, or use means, with intent to destroy **her** unborn child, or to produce abortion or miscarriage, and thereby destroy such child, or produce such abortion or miscarriage, he shall be guilty of a Class 4 felony.

Drafting note: No change recommended.

§ 18.2-71.1. Partial birth infanticide; penalty.

A. Any person who knowingly performs partial birth infanticide and thereby kills a human infant is guilty of a Class 4 felony.

B. For the purposes of this section, "partial birth infanticide" means any deliberate act that (i) is intended to kill a human infant who has been born alive, but who has not been completely extracted or expelled from its **mother**, and that (ii) does kill such infant, regardless of whether death occurs before or after extraction or expulsion from its **mother** has been completed.

The term "partial birth infanticide" shall not under any circumstances be construed to include any of the following procedures: (i) the suction curettage abortion procedure, (ii) the suction aspiration abortion procedure, (iii) the dilation and evacuation abortion procedure involving dismemberment of the fetus prior to removal from the body of the **mother**, or (iv) completing delivery of a living human infant and severing the umbilical cord of any infant who has been completely delivered.

C. For the purposes of this section, "human infant who has been born alive" means a product of human conception that has been completely or substantially expelled or extracted from its **mother**, regardless of the duration of pregnancy, which after such expulsion or extraction breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

D. For purposes of this section, "substantially expelled or extracted from its **mother**" means, in the case of a headfirst presentation, the infant's entire head is outside the body of the **mother**, or, in the case of breech presentation, any part of the infant's trunk past the navel is outside the body of the **mother**.

E. This section shall not prohibit the use by a physician of any procedure that, in reasonable medical judgment, is necessary to prevent the death of the **mother**, so long as the physician takes every medically reasonable step, consistent with such procedure, to preserve the life and health of the infant. A procedure shall not be deemed necessary to prevent the death of the **mother** if completing the delivery of the living infant would prevent the death of the **mother**.

F. The **mother** may not be prosecuted for any criminal offense based on the performance of any act or procedure by a physician in violation of this section.

Drafting note: No change recommended.

§ 18.2-72. When abortion lawful during first trimester of pregnancy.

Notwithstanding any of the provisions of § 18.2-71, it shall be lawful for any physician licensed by the Board of Medicine to practice medicine and surgery, to terminate or attempt to terminate a human pregnancy or aid or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any **woman** during the first trimester of pregnancy.

Drafting note: No change recommended.

§ 18.2-73. When abortion lawful during second trimester of pregnancy.

Notwithstanding any of the provisions of § 18.2-71 and in addition to the provisions of § 18.2-72, it shall be lawful for any physician licensed by the Board of Medicine to practice medicine and surgery, to terminate or attempt to terminate a human pregnancy or aid or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any **woman** during the second trimester of pregnancy and prior to the third trimester of pregnancy provided such procedure is performed in a hospital licensed by the State Department of Health or operated by the Department of Behavioral Health and Developmental Services.

Drafting note: No change recommended.

§ 18.2-74. When abortion or termination of pregnancy lawful after second trimester of pregnancy.

Notwithstanding any of the provisions of § 18.2-71 and in addition to the provisions of §§ 18.2-72 and 18.2-73, it shall be lawful for any physician licensed by the Board of Medicine to practice medicine and surgery to terminate or attempt to terminate a human pregnancy or aid or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any **woman** in a stage of pregnancy subsequent to the second trimester provided the following conditions are met:

(a) Said operation is performed in a hospital licensed by the Virginia State Department of Health or operated by the Department of Behavioral Health and Developmental Services.

(b) The physician and two consulting physicians certify and so enter in the hospital record of the woman, that in their medical opinion, based upon their best clinical judgment, the continuation of the pregnancy is likely to result in the death of the **woman** or substantially and irremediably impair the mental or physical health of the **woman**.

(c) Measures for life support for the product of such abortion or miscarriage must be available and utilized if there is any clearly visible evidence of viability.

Drafting note: No change recommended.

§ 18.2-74.1. Abortion, etc., when necessary to save life of *woman*.

In the event it is necessary for a licensed physician to terminate a human pregnancy or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any **woman** in order to save **her** life, in the opinion of the physician so performing the abortion or causing the miscarriage, §§ 18.2-71, 18.2-73 and 18.2-74 shall not be applicable.

Drafting note: No change recommended.

§ 18.2-76. Informed written consent required; civil penalty.

A. Before performing any abortion or inducing any miscarriage or terminating a pregnancy as provided in § 18.2-72, 18.2-73, or 18.2-74, the physician shall obtain the informed written consent of the pregnant **woman**. However, if the **woman** has been adjudicated incapacitated by any court of competent jurisdiction or if the physician knows or has good reason to believe that such **woman** is incapacitated as

adjudicated by a court of competent jurisdiction, then only after permission is given in writing by a parent, guardian, committee, or other person standing in loco parentis to the **woman**, may the physician perform the abortion or otherwise terminate the pregnancy.

B. At least 24 hours before the performance of an abortion, a qualified medical professional trained in sonography and working under the supervision of a physician licensed in the Commonwealth shall perform fetal transabdominal ultrasound imaging on the patient undergoing the abortion for the purpose of determining gestational age. If the pregnant **woman** lives at least 100 miles from the facility where the abortion is to be performed, the fetal ultrasound imaging shall be performed at least two hours before the abortion. The ultrasound image shall contain the dimensions of the fetus and accurately portray the presence of external members and internal organs of the fetus, if present or viewable. Determination of gestational age shall be based upon measurement of the fetus in a manner consistent with standard medical practice in the community for determining gestational age. When only the gestational sac is visible during ultrasound imaging, gestational age may be based upon measurement of the gestational sac. If gestational age cannot be determined by a transabdominal ultrasound, then the patient undergoing the abortion shall be verbally offered other ultrasound imaging to determine gestational age, which **she** may refuse. A print of the ultrasound image shall be made to document the measurements that have been taken to determine the gestational age of the fetus.

The provisions of this subsection shall not apply if the **woman** seeking an abortion is the victim of rape or incest, if the incident was reported to law-enforcement authorities. Nothing herein shall preclude the physician from using any ultrasound imaging that he considers to be medically appropriate pursuant to the standard medical practice in the community.

C. The qualified medical professional performing fetal ultrasound imaging pursuant to subsection B shall verbally offer the **woman** an opportunity to view the ultrasound image, receive a printed copy of the ultrasound image and hear the fetal heart tones pursuant to standard medical practice in the community, and shall obtain from the **woman** written certification that this opportunity was offered and whether or not it was accepted and, if applicable, verification that the pregnant **woman** lives at least 100 miles from the facility where the abortion is to be performed. A printed copy of the ultrasound image shall be

maintained in the **woman's** medical record at the facility where the abortion is to be performed for the longer of (i) seven years or (ii) the extent required by applicable federal or state law.

D. For purposes of this section:

"Informed written consent" means the knowing and voluntary written consent to abortion by a pregnant **woman** of any age, without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion by the physician who is to perform the abortion or his agent. The basic information to effect such consent, as required by this subsection, shall be provided by telephone or in person to the **woman** at least 24 hours before the abortion by the physician who is to perform the abortion, by a referring physician, or by a licensed professional or practical nurse working under the direct supervision of either the physician who is to perform the abortion or the referring physician; however, the information in subdivision 5 may be provided instead by a licensed health-care professional working under the direct supervision of either the physician who is to perform the abortion or the referring physician. This basic information shall include:

1. A full, reasonable and comprehensible medical explanation of the nature, benefits, and risks of and alternatives to the proposed procedures or protocols to be followed in **her** particular case;

2. An instruction that the **woman** may withdraw **her** consent at any time prior to the performance of the procedure;

3. An offer for the **woman** to speak with the physician who is to perform the abortion so that he may answer any questions that the **woman** may have and provide further information concerning the procedures and protocols;

4. A statement of the probable gestational age of the fetus at the time the abortion is to be performed and that fetal ultrasound imaging shall be performed prior to the abortion to confirm the gestational age; and

5. An offer to review the printed materials described in subsection F. If the **woman** chooses to review such materials, they shall be provided to **her** in a respectful and understandable manner, without prejudice and intended to give the woman the opportunity to make an informed choice and shall be provided to her at least 24 hours before the abortion or mailed to **her** at least 72 hours before the abortion

by first-class mail or, if the **woman** requests, by certified mail, restricted delivery. This offer for the **woman** to review the material shall advise **her** of the following: (i) the Department of Health publishes printed materials that describe the unborn child and list agencies that offer alternatives to abortion; (ii) medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials published by the Department; (iii) the **father** of the unborn child is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion, that assistance in the collection of such support is available, and that more detailed information on the availability of such assistance is contained in the printed materials published by the Department; (iv) **she** has the right to review the materials printed by the Department and that copies will be provided to **her** free of charge if **she** chooses to review them; and (v) a statewide list of public and private agencies and services that provide ultrasound imaging and auscultation of fetal heart tone services free of charge. Where the **woman** has advised that the pregnancy is the result of a rape, the information in clause (iii) may be omitted.

The information required by this subsection may be provided by telephone or in person.

E. The physician need not obtain the informed written consent of the **woman** when the abortion is to be performed pursuant to a medical emergency or spontaneous miscarriage. "Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant **woman** as to necessitate the immediate abortion of **her** pregnancy to avert **her** death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.

F. On or before October 1, 2001, the Department of Health shall publish, in English and in each language which is the primary language of two percent or more of the population of the Commonwealth, the following printed materials in such a way as to ensure that the information is easily comprehensible:

1. Geographically indexed materials designed to inform the **woman** of public and private agencies and services available to assist a **woman** through pregnancy, upon childbirth and while the child is dependent, including, but not limited to, information on services relating to (i) adoption as a positive alternative, (ii) information relative to counseling services, benefits, financial assistance, medical care and

contact persons or groups, (iii) **paternity** establishment and child support enforcement, (iv) child development, (v) child rearing and stress management, (vi) pediatric and **maternal** health care, and (vii) public and private agencies and services that provide ultrasound imaging and auscultation of fetal heart tone services free of charge. The materials shall include a comprehensive list of the names and telephone numbers of the agencies, or, at the option of the Department of Health, printed materials including a toll-free, 24-hour-a-day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer;

2. Materials designed to inform the **woman** of the probable anatomical and physiological characteristics of the human fetus at two-week gestational increments from the time when a **woman** can be known to be pregnant to full term, including any relevant information on the possibility of the fetus's survival and pictures or drawings representing the development of the human fetus at two-week gestational increments. Such pictures or drawings shall contain the dimensions of the fetus and shall be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the human fetus at the various gestational ages; and

3. Materials containing objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion, and the medical risks commonly associated with carrying a child to term.

The Department of Health shall make these materials available at each local health department and, upon request, to any person or entity, in reasonable numbers and without cost to the requesting party.

G. Any physician who fails to comply with the provisions of this section shall be subject to a $2,500 civil penalty.

Drafting note: No change recommended.

§ 18.2-130. Peeping or spying into dwelling or enclosure.

A. It shall be unlawful for any person to enter upon the property of another and secretly or furtively peep, spy or attempt to peep or spy into or through a window, door or other aperture of any building,

structure, or other enclosure of any nature occupied or intended for occupancy as a dwelling, whether or not such building, structure or enclosure is permanently situated or transportable and whether or not such occupancy is permanent or temporary, or to do the same, without just cause, upon property owned by him and leased or rented to another under circumstances that would violate the occupant's reasonable expectation of privacy.

B. It shall be unlawful for any person to use a peephole or other aperture to secretly or furtively peep, spy or attempt to peep or spy into a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth, bedroom or other location or enclosure for the purpose of viewing any nonconsenting person who is totally nude, clad in undergarments, or in a state of undress exposing the genitals, pubic area, buttocks or **female** breast and the circumstances are such that the person would otherwise have a reasonable expectation of privacy.

C. The provisions of this section shall not apply to a lawful criminal investigation or a correctional official or local or regional jail official conducting surveillance for security purposes or during an investigation of alleged misconduct involving a person committed to the Department of Corrections or to a local or regional jail.

D. As used in this section, "peephole" means any hole, crack or other similar opening through which a person can see.

E. A violation of this section is a Class 1 misdemeanor.

Drafting note: No change recommended.

§ 18.2-386.1. Unlawful creation of image of another; penalty.

A. It shall be unlawful for any person to knowingly and intentionally create any videographic or still image by any means whatsoever of any nonconsenting person if (i) that person is totally nude, clad in undergarments, or in a state of undress so as to expose the genitals, pubic area, buttocks or **female** breast in a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth, bedroom or other location; or (ii) the videographic or still image is created by placing the lens or image-gathering component of the recording device in a position directly beneath or between a person's legs for the purpose of capturing an image of the person's intimate parts or undergarments covering those intimate parts when

the intimate parts or undergarments would not otherwise be visible to the general public; and when the circumstances set forth in clause (i) or (ii) are otherwise such that the person being recorded would have a reasonable expectation of privacy.

B. The provisions of this section shall not apply to any videographic or still image created by any means whatsoever by (i) law-enforcement officers pursuant to a criminal investigation which is otherwise lawful or (ii) correctional officials and local or regional jail officials for security purposes or for investigations of alleged misconduct involving a person committed to the Department of Corrections or to a local or regional jail, or to any sound recording of an oral conversation made as a result of any videotaping or filming pursuant to Chapter 6 (§ 19.2-61 et seq.) of Title 19.2.

C. A violation of subsection A shall be punishable as a Class 1 misdemeanor.

D. A violation of subsection A involving a nonconsenting person under the age of 18 shall be punishable as a Class 6 felony.

E. Where it is alleged in the warrant, information, or indictment on which the person is convicted and found by the court or jury trying the case that the person has previously been convicted within the 10-year period immediately preceding the offense charged of two or more of the offenses specified in this section, each such offense occurring on a different date, and when such offenses were not part of a common act, transaction, or scheme, and such person has been at liberty as defined in § 53.1-151 between each conviction, he shall be guilty of a Class 6 felony.

Drafting note: No change recommended.

§ 18.2-386.2. Unlawful dissemination or sale of images of another; penalty.

A. Any person who, with the intent to coerce, harass, or intimidate, maliciously disseminates or sells any videographic or still image created by any means whatsoever that depicts another person who is totally nude, or in a state of undress so as to expose the genitals, pubic area, buttocks, or **female** breast, where such person knows or has reason to know that he is not licensed or authorized to disseminate or sell such videographic or still image is guilty of a Class 1 misdemeanor. However, if a person uses services of an Internet service provider, an electronic mail service provider, or any other information service, system, or access software provider that provides or enables computer access by multiple users to a computer

server in committing acts prohibited under this section, such provider shall not be held responsible for violating this section for content provided by another person.

B. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act occurs or where any videographic or still image created by any means whatsoever is produced, reproduced, found, stored, received, or possessed in violation of this section.

C. The provisions of this section shall not preclude prosecution under any other statute.

Drafting note: No change recommended.

§ 19.2-59.1. Strip searches prohibited; exceptions; how strip searches conducted.

A. No person in custodial arrest for a traffic infraction, Class 3 or Class 4 misdemeanor, or a violation of a city, county, or town ordinance, which is punishable by no more than thirty days in jail shall be strip searched unless there is reasonable cause to believe on the part of a law-enforcement officer authorizing the search that the individual is concealing a weapon. All strip searches conducted under this section shall be performed by persons of the same sex as the person arrested and on premises where the search cannot be observed by persons not physically conducting the search.

B. A regional jail superintendent or the chief of police or the sheriff of the county or city shall develop a written policy regarding strip searches.

C. A search of any body cavity must be performed under sanitary conditions and a search of any body cavity, other than the mouth, shall be conducted either by or under the supervision of medically trained personnel.

D. Strip searches authorized pursuant to the exceptions stated in subsection A of this section shall be conducted by a law-enforcement officer as defined in § 9.1-101.

E. The provisions of this section shall not apply when the person is taken into custody by or remanded to a law-enforcement officer pursuant to a circuit or district court order.

F. For purposes of this section, "strip search" shall mean having an arrested person remove or arrange some or all of his clothing so as to permit a visual inspection of the genitals, buttocks, anus, **female** breasts, or undergarments of such person.

G. Nothing in this section shall prohibit a sheriff or a regional jail superintendent from requiring that inmates take hot water and soap showers and be subjected to visual inspection upon assignment to the general population area of the jail or upon determination by the sheriff or regional jail superintendent that the inmate must be held at the jail by reason of his inability to post bond after reasonable opportunity to do so.

Drafting note: No change recommended.

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

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

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

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

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

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

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

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

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

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from

whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

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

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

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

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved by family day systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

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

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

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

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

17. (Effective until January 15, 2018) The Alcoholic Beverage Control Board for the conduct of investigations as set forth in § 4.1-103.1;

17. (Effective January 15, 2018) The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof and general registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

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

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

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

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

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public institutions of higher education and nonprofit private institutions of higher education for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

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

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position or requests approval as a sponsored residential service provider or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

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

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

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

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

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

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

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

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

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

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

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

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

43. The Department of Social Services and directors of local departments of social services for the purpose of screening individuals seeking to enter into a contract with the Department of Social Services or a local department of social services for the provision of child care services for which child care subsidy payments may be provided;

44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of a juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233; and

45. Other entities as otherwise provided by law.

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

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

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

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

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

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

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

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

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

furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

Drafting note: No change recommended.

§ 20-16. Issuance of marriage licenses and marriage certificates.

The clerk issuing any marriage license shall require the parties contemplating marriage to state, under oath, the information required to complete the application for marriage license. The parties shall be able to designate themselves on the application for marriage license as spouse, **bride, or groom**. The clerk shall provide the parties with two copies of the marriage certificate to be completed by the marriage officiant, who shall return the completed certificates to the clerk after the marriage ceremony of the parties. The clerk shall retain one copy of the completed marriage certificate and provide the other copy to the State Registrar of Vital Records. The clerk may provide the parties with a commemorative marriage certificate and the parties may request a certified copy of the official marriage certificate as provided in Article 7 (§ 32.1-270 et seq.) of Chapter 7 of Title 32.1. For the purposes of this section any statement made by such applicant, under oath, concerning the information to be entered on the application for marriage license is hereby declared to be a material matter or thing in any prosecution for perjury for any violation of this section.

Drafting note: No change recommended.

§ 20-31.1. When marriage legitimates children; issue of marriages prohibited by law, etc., legitimate.

If a person, having had a child, shall afterwards intermarry with the **mother or father**, such child if recognized by both of them, as their own child, jointly or separately, before or after marriage, shall be deemed legitimate.

The issue of marriages prohibited by law, deemed null or void or dissolved by a court shall nevertheless be legitimate.

Drafting note: No change recommended.

§ 20-37. Validation of certain marriages when license issued by clerk of county court.

All marriages of **females** residing within jurisdiction of a corporation court, which were solemnized prior to February 1, 1904, by virtue of a license issued by the clerk of the court of the county wherein a city was or is situated, shall be as valid as if such license had been issued by the clerk of such corporation court.

Drafting note: No change recommended.

§ 20-49.1. How parent and child relationship established.

A. The parent and child relationship between a child and a **woman** may be established prima facie by proof of her having given birth to the child, or as otherwise provided in this chapter.

B. The parent and child relationship between a child and a **man** may be established by:

1. Scientifically reliable genetic tests, including blood tests, which affirm at least a ninety-eight percent probability of **paternity**. Such genetic test results shall have the same legal effect as a judgment entered pursuant to § 20-49.8.

2. A voluntary written statement of the **father and mother** made under oath acknowledging **paternity** and confirming that prior to signing the acknowledgment, the parties were provided with a written and oral description of the rights and responsibilities of acknowledging **paternity** and the consequences arising from a signed acknowledgment, including the right to rescind. The acknowledgement may be rescinded by either party within sixty days from the date on which it was signed unless an administrative or judicial order relating to the child in an action to which the party seeking rescission was a party is entered prior to the rescission. A written statement shall have the same legal effect as a judgment entered pursuant to § 20-49.8 and shall be binding and conclusive unless, in a subsequent judicial proceeding, the person challenging the statement establishes that the statement resulted from fraud, duress or a material mistake of fact. In any subsequent proceeding in which a statement acknowledging **paternity** is subject to challenge, the legal responsibilities of any person signing it shall not be suspended during the pendency of the proceeding, except for good cause shown. Written acknowledgments of **paternity** made under oath by the **father and mother** prior to July 1, 1990, shall have the same legal effect as a judgment entered pursuant to § 20-49.8.

3. In the absence of such acknowledgment or if the probability of **paternity** is less than ninety-eight percent, such relationship may be established as otherwise provided in this chapter.

C. The parent and child relationship between a child and an adoptive parent may be established by proof of lawful adoption.

Drafting note: No change recommended.

§ 20-49.3. Admission of genetic tests.

A. In the trial of any matter in any court in which the question of parentage arises, the court, upon its own motion or upon motion of either party, may and, in cases in which child support is in issue, shall direct and order that the alleged parents and the child submit to scientifically reliable genetic tests including blood tests. The motion of a party shall be accompanied by a sworn statement either (i) alleging **paternity** and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties or (ii) denying **paternity.**

B. The court shall require the person requesting such genetic test, including a blood test, to pay the cost. However, if such person is indigent, the Commonwealth shall pay for the test. The court may, in its discretion, assess the costs of the test to the party or parties determined to be the parent or parents.

C. The results of a scientifically reliable genetic test, including a blood test, may be admitted in evidence when contained in a written report prepared and sworn to by a duly qualified expert, provided the written results are filed with the clerk of the court hearing the case at least fifteen days prior to the hearing or trial. Verified documentary evidence of the chain of custody of the blood specimens is competent evidence to establish the chain of custody. Any qualified expert performing such test outside the Commonwealth shall consent to service of process through the Secretary of the Commonwealth by filing with the clerk of the court the written results. Upon motion of any party in interest, the court may require the person making the analysis to appear as a witness and be subject to cross-examination, provided that the motion is made at least seven days prior to the hearing or trial. The court may require the person making the motion to pay into court the anticipated costs and fees of the witness or adequate security for such costs and fees.

Drafting note: No change recommended.

§ 20-49.4. Evidence relating to parentage.

The standard of proof in any action to establish parentage shall be by clear and convincing evidence. All relevant evidence on the issue of **paternity** shall be admissible. Such evidence may include, but shall not be limited to, the following:

1. Evidence of open cohabitation or sexual intercourse between the known parent and the alleged parent at the probable time of conception;

2. Medical or anthropological evidence relating to the alleged parentage of the child based on tests performed by experts. If a person has been identified by the **mother** as the putative **father** of the child, the court may, and upon request of a party shall, require the child, the known parent, and the alleged parent to submit to appropriate tests;

3. The results of scientifically reliable genetic tests, including blood tests, if available, weighted with all the evidence;

4. Evidence of the alleged parent consenting to or acknowledging, by a general course of conduct, the common use of such parent's surname by the child;

5. Evidence of the alleged parent claiming the child as his child on any statement, tax return or other document filed by him with any state, local or federal government or any agency thereof;

6. A true copy of an acknowledgment pursuant to § 20-49.5; and

7. An admission by a male between the ages of fourteen and eighteen pursuant to § 20-49.6.

Drafting note: No change recommended.

§ 20-49.5. Support of children of unwed parents by the *father*; testimony under oath.

Whenever in any legal proceedings a man voluntarily testifies under oath or affirmation that he is the **father** of a child whose parents are not married, or are not married to each other, the court may require that he complete an acknowledgment of **paternity** on a form provided by the Department of Social Services. This acknowledgment shall be sent by the clerk of the court within thirty days of completion to the Department of Social Services.

In any proceeding under this chapter, the petitioner may request a true copy of this form from the Department of Social Services and the Department shall remit such form to the court where the petition

has been filed. Such true copy of an acknowledgment of **paternity** shall then be admissible in any proceeding under this chapter.

Drafting note: No change recommended.

§ 20-49.6. Proceedings to establish *paternity* or enforce support obligations of *males* between the ages of fourteen and eighteen.

In any proceeding to establish or enforce an obligation for support and maintenance of a child of unwed parents, a **male** between the ages of fourteen and eighteen who is represented by a guardian ad litem pursuant to § 8.01-9 and who has not otherwise been emancipated shall not be deemed to be under a disability as provided in § 8.01-2. The court may enter an order establishing the **paternity** of the child based upon an admission of **paternity** by such **male** made under oath before the court or upon such other evidence as may be sufficient in law to support a finding of **paternity**. The order may provide for support and maintenance of the child by the **father** and shall be enforceable as if the **father** were an adult.

Drafting note: No change recommended.

§ 20-49.10. Relief from legal determination of *paternity*.

An individual may file a petition for relief and, except as provided herein, the court may set aside a final judgment, court order, administrative order, obligation to pay child support or any legal determination of **paternity** if a scientifically reliable genetic test performed in accordance with this chapter establishes the exclusion of the individual named as a **father** in the legal determination. The court shall appoint a guardian ad litem to represent the interest of the child. The petitioner shall pay the costs of such test. A court that sets aside a determination of **paternity** in accordance with this section shall order completion of a new birth record and may order any other appropriate relief, including setting aside an obligation to pay child support. No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for relief from a determination of **paternity**, but only from the date that notice of the petition was served on the nonfiling party.

A court shall not grant relief from determination of **paternity** if the individual named as **father** (i) acknowledged **paternity** knowing he was not the **father**, (ii) adopted the child, or (iii) knew that the child was conceived through artificial insemination.

Drafting note: No change recommended.

§ 20-60.3. Contents of support orders.

All orders directing the payment of spousal support where there are minor children whom the parties have a mutual duty to support and all orders directing the payment of child support, including those orders confirming separation agreements, entered on or after October 1, 1985, whether they are original orders or modifications of existing orders, shall contain the following:

1. Notice that support payments may be withheld as they become due pursuant to § 20-79.1 or § 20-79.2, from income as defined in § 63.2-1900, without further amendments of this order or having to file an application for services with the Department of Social Services; however, absence of such notice in an order entered prior to July 1, 1988, shall not bar withholding of support payments pursuant to § 20-79.1;

2. Notice that support payments may be withheld pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 without further amendments to the order upon application for services with the Department of Social Services; however, absence of such notice in an order entered prior to July 1, 1988, shall not bar withholding of support payments pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2;

3. The name, date of birth, and last four digits of the social security number of each child to whom a duty of support is then owed by the parent;

4. If known, the name, date of birth, and last four digits of the social security number of each parent of the child and, unless otherwise ordered, each parent's residential and, if different, mailing address, residential and employer telephone number, driver's license number, and the name and address of his or her employer; however, when a protective order has been issued or the court otherwise finds reason to believe that a party is at risk of physical or emotional harm from the other party, information other than the name of the party at risk shall not be included in the order;

5. Notice that, pursuant to § 20-124.2, support will continue to be paid for any child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the party seeking or receiving child support until such child reaches the age of 19 or graduates from high school, whichever occurs first, and that the court may also order that support be paid or continue to be

paid for any child over the age of 18 who is (a) severely and permanently mentally or physically disabled, and such disability existed prior to the child reaching the age of 18 or the age of 19 if the child met the requirements of clauses (i), (ii), and (iii); (b) unable to live independently and support himself; and (c) residing in the home of the parent seeking or receiving child support;

6. On and after July 1, 1994, notice that a petition may be filed for suspension of any license, certificate, registration or other authorization to engage in a profession, trade, business, occupation, or recreational activity issued by the Commonwealth to a parent as provided in § 63.2-1937 upon a delinquency for a period of 90 days or more or in an amount of $5,000 or more. The order shall indicate whether either or both parents currently hold such an authorization and, if so, the type of authorization held;

7. The monthly amount of support and the effective date of the order. In proceedings on initial petitions, the effective date shall be the date of filing of the petition; in modification proceedings, the effective date may be the date of notice to the responding party. The first monthly payment shall be due on the first day of the month following the hearing date and on the first day of each month thereafter. In addition, an amount shall be assessed for any full and partial months between the effective date of the order and the date that the first monthly payment is due. The assessment for the initial partial month shall be prorated from the effective date through the end of that month, based on the current monthly obligation;

8. a. An order for health care coverage, including the health insurance policy information, for dependent children pursuant to §§ 20-108.1 and 20-108.2 if available at reasonable cost as defined in § 63.2-1900, or a written statement that health care coverage is not available at a reasonable cost as defined in such section, and a statement as to whether there is an order for health care coverage for a spouse or former spouse; and

b. A statement as to whether cash medical support, as defined in § 63.2-1900, is to be paid by or reimbursed to a party pursuant to subsections D and G of § 20-108.2, and if such expenses are ordered, then the provisions governing how such payment is to be made;

9. If support arrearages exist, (i) to whom an arrearage is owed and the amount of the arrearage, (ii) the period of time for which such arrearage is calculated, and (iii) a direction that all payments are to

be credited to current support obligations first, with any payment in excess of the current obligation applied to arrearages;

10. If child support payments are ordered to be paid through the Department of Social Services or directly to the obligee, and unless the court for good cause shown orders otherwise, the parties shall give each other and the court and, when payments are to be made through the Department, the Department of Social Services at least 30 days' written notice, in advance, of any change of address and any change of telephone number within 30 days after the change;

11. If child support payments are ordered to be paid through the Department of Social Services, a provision requiring an obligor to keep the Department of Social Services informed of the name, address and telephone number of his current employer, or if payments are ordered to be paid directly to the obligee, a provision requiring an obligor to keep the court informed of the name, address and telephone number of his current employer;

12. If child support payments are ordered to be paid through the Department of Social Services, a provision requiring the party obligated to provide health care coverage to keep the Department of Social Services informed of any changes in the availability of the health care coverage for the minor child or children, or if payments are ordered to be paid directly to the obligee, a provision requiring the party obligated to provide health care coverage to keep the other party informed of any changes in the availability of the health care coverage for the minor child or children;

13. The separate amounts due to each person under the order, unless the court specifically orders a unitary award of child and spousal support due or the order affirms a separation agreement containing provision for such unitary award;

14. Notice that in determination of a support obligation, the support obligation as it becomes due and unpaid creates a judgment by operation of law. The order shall also provide, pursuant to § 20-78.2, for interest on the arrearage at the judgment rate as established by § 6.2-302 unless the obligee, in a writing submitted to the court, waives the collection of interest;

15. Notice that on and after July 1, 1994, the Department of Social Services may, pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 and in accordance with §§ 20-108.2 and 63.2-1921, initiate a review of the amount of support ordered by any court;

16. A statement that if any arrearages for child support, including interest or fees, exist at the time the youngest child included in the order emancipates, payments shall continue in the total amount due (current support plus amount applied toward arrearages) at the time of emancipation until all arrearages are paid; and

17. Notice that, in cases enforced by the Department of Social Services, the Department of Motor Vehicles may suspend or refuse to renew the driver's license of any person upon receipt of notice from the Department of Social Services that the person (i) is delinquent in the payment of child support by 90 days or in an amount of $5,000 or more or (ii) has failed to comply with a subpoena, summons, or warrant relating to **paternity** or child support proceedings.

The provisions of this section shall not apply to divorce decrees where there are no minor children whom the parties have a mutual duty to support.

Drafting note: No change recommended.

§ 20-61.3. Consequences of a putative *father* failing to appear.

If a putative **father** fails to appear after having been personally served with notice, in accordance with the provisions of subdivision 1 of § 8.01-296 or § 8.01-320, alleging that he is the **father** of a minor child, the court shall proceed in hearing the evidence in the case as provided in Chapter 3.1 (§ 20-49.1 et seq.) of Title 20 as if the putative **father** were present. The order of the court in any such proceedings shall be served upon the **father** in accordance with the provisions of Chapter 8 (§ 8.01-285 et seq.) or Chapter 9 (§ 8.01-328 et seq.) of Title 8.01.

Drafting note: No change recommended.

§ 20-88.35. Bases for jurisdiction over nonresident.

In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of the Commonwealth may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

1. The individual is personally served with process within the Commonwealth;

2. The individual submits to the jurisdiction of the Commonwealth by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

3. The individual resided with the child in the Commonwealth;

4. The individual resided in the Commonwealth and paid prenatal expenses or provided support for the child;

5. The child resides in the Commonwealth as a result of the acts or directives of the individual;

6. The individual engaged in sexual intercourse in the Commonwealth and the child may have been conceived by the act of intercourse;

7. The individual asserted parentage of a child in the Virginia Birth **Father** Registry maintained in the Commonwealth by the Department of Social Services;

8. The exercise of personal jurisdiction is authorized under subdivision A 8 of § 8.01-328.1; or

9. There is any other basis consistent with the constitutions of the Commonwealth and the United States for the exercise of personal jurisdiction.

The bases of personal jurisdiction set forth in this section or any other law of the Commonwealth may not be used to acquire personal jurisdiction for a tribunal of the Commonwealth to modify a child support order issued by a tribunal of another state unless the requirements of § 20-88.76 or 20-88.77:3 are met.

Drafting note: No change recommended.

§ 20-88.63. Establishment of support order.

A. If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of the Commonwealth with personal jurisdiction over the parties may issue a support order if (i) the individual seeking the order resides outside the Commonwealth or (ii) the support enforcement agency seeking the order is located outside the Commonwealth.

B. The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

1. A presumed **father** of the child;

2. Petitioning to have his **paternity** adjudicated;

3. Identified as the **father** of the child through genetic testing;

4. An alleged **father** who has declined to submit to genetic testing;

5. Shown by clear and convincing evidence to be the **father** of the child;

6. An acknowledged **father** as provided by applicable state law;

7. The **mother** of the child; or

8. An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

C. Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to § 20-88.48.

Drafting note: No change recommended.

§ 20-105. Permissible form for orders of publication.

Any orders of publication under the provisions of § 20-104 may be substantially in the form following:

Virginia: In the _____ Court of _____,

_____, 20_____

(Here set forth Style of Cause)

The object of this suit is to obtain (an annulment of marriage) (a divorce from bed and board) (a divorce from the bond of matrimony) from the defendant on the ground of _____,

(here set forth grounds)

_____

(here set forth other relief prayed for, if any)

_____

(here set forth the styles and objects of the suits for divorce or annulment combined)

It appearing from an affidavit (that the defendant(s) is not a resident (are not residents) of this Commonwealth,) (or) (that diligence has been used by or on behalf of plaintiff(s) to ascertain in what county or city the defendant(s) is (are), without effect,) it is ordered that the defendant appear before this court (within ten days after due publication of this notice) (before _____, 20_____) and protect (his) (**her**) (their) interests herein.

An Extract-Teste:

_____ p.q.

_____ (Clerk)

Drafting note: No change recommended.

§ 20-118. Prohibition of remarriage pending appeal from divorce decree; certain marriages validated.

On the dissolution of the bond of matrimony for any cause arising subsequent to the date of the marriage, if objections or exceptions are noted or filed to the final decree and a bond is given staying the execution thereof, the court shall decree that neither party shall remarry pending the perfecting of an appeal from said final judgment of the trial court.

Marriages heretofore celebrated in violation of any prohibition against remarriage shall not hereafter be deemed to be invalid because of the violation of such prohibition, provided that the parties to such a marriage have continued to reside together as **husband and wife** until the first day of July, 1960, or until such time as one of the parties dies prior to July 1, 1960.

Drafting note: No change recommended.

§ 20-146.1. Definitions.

In this act:

"Child" means an individual who has not attained eighteen years of age.

"Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, or modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

"Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, **paternity**, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Article 3 (§ 20-146.22 et seq.) of this chapter.

"Commencement" means the filing of the first pleading in a proceeding.

"Court" means a court of competent jurisdiction as determined by otherwise applicable Virginia law to establish, enforce, or modify a child custody determination or an entity authorized under the law of another state to establish, enforce or modify a child custody determination.

"Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

"Initial determination" means the first child custody determination concerning a particular child.

"Issuing court" means the court that makes a child custody determination for which enforcement is sought under this act.

"Issuing state" means the state in which a child custody determination is made.

"Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

"Person acting as a parent" means a person, other than a parent, who has (i) physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary

absence, within one year immediately before the commencement of a child custody proceeding and (ii) been awarded legal custody by a court or claims a right to legal custody under the laws of this Commonwealth.

"Physical custody" means the physical care and supervision of a child.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

"Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.

Drafting note: No change recommended.

§ 22.1-79.6. Employee lactation support policy.

Each local school board shall adopt a policy to set aside, in each school in the school division, a non-restroom location that is shielded from the public view to be designated as an area in which any **mother** who is employed by the local school board or enrolled as a student may take breaks of reasonable length during the school day to express milk to feed **her** child until the child reaches the age of one.

Drafting note: No change recommended.

§ 22.1-207.1. Family life education.

A. As used in this section, "abstinence education" means an educational or motivational component that has as its exclusive purpose teaching the social, psychological, and health gains to be realized by teenagers' abstaining from sexual activity before marriage.

B. The Board of Education shall develop Standards of Learning and curriculum guidelines for a comprehensive, sequential family life education curriculum in grades kindergarten through 12. Such curriculum guidelines shall include instruction as appropriate for the age of the student in family living and community relationships; the benefits, challenges, responsibilities, and value of marriage for **men, women**, children, and communities; the value of family relationships; abstinence education; the value of postponing sexual activity; the benefits of adoption as a positive choice in the event of an unwanted pregnancy; human sexuality; human reproduction; dating violence, the characteristics of abusive relationships, steps to take to deter sexual assault, and the availability of counseling and legal resources,

and, in the event of such sexual assault, the importance of immediate medical attention and advice, as well as the requirements of the law; the etiology, prevention, and effects of sexually transmitted diseases; and mental health education and awareness.

C. All such instruction shall be designed to promote parental involvement, foster positive self-concepts, and provide mechanisms for coping with peer pressure and the stresses of modern living according to the students' developmental stages and abilities. The Board shall also establish requirements for appropriate training for teachers of family life education, which shall include training in instructional elements to support the various curriculum components.

Drafting note: No change recommended.

§ 22.1-290.01. Virginia Teaching Scholarship Loan Program established; purpose; Board of Education to administer Program; eligibility requirements for scholarship and awards; collaboration and consultation with State Council of Higher Education; repayment of scholarship required.

A. With such funds as may be appropriated for this purpose and any gifts, donations, grants, bequests, and other funds that may be received on behalf of the Program by the Board of Education, there is hereby established the Virginia Teaching Scholarship Loan Program, hereinafter referred to as the "Program," to: (i) increase the number of teacher candidates pursuing careers in critical teacher shortage areas as defined in the Board of Education's Regulations Governing the Determination of Critical Teacher Shortage Areas; (ii) expand eligibility to teacher candidates, including graduate students and paraprofessionals from Virginia school divisions who are enrolled full-time or part-time in an approved teacher education program; (iii) increase the diversity of persons pursuing careers in teaching, including male teacher candidates enrolled in an elementary or middle school education program and minority teacher candidates enrolled in any teaching endorsement area; and (iv) increase the number of teacher candidates pursuing careers in career and technical education.

B. The Board of Education shall establish, in regulation, criteria for determining critical teacher shortage areas for awarding scholarships pursuant to this section. The criteria shall include such factors as the needs in teaching endorsement areas among the several school divisions of the Commonwealth,

teacher shortages at the elementary and secondary grade levels, and teacher shortages in rural and urban regions of the Commonwealth.

C. The Program shall be administered by the Board of Education. The Board may promulgate such regulations as may be necessary for the implementation of the Program. The Board shall consult with the State Council of Higher Education in the implementation of the Program.

The Program shall consist of scholarships awarded annually to teacher candidates, including graduate students and paraprofessionals from Virginia school divisions at an accredited baccalaureate private institution of higher education in the Commonwealth or baccalaureate public institution of higher education in the Commonwealth, who (i) are enrolled full-time or part-time in an approved teacher education program or are participants in another approved teacher education program; (ii) have maintained a cumulative grade point average of at least 2.7 on a 4.0 scale or its equivalent; and (iii) are nominated for such scholarship by the institution where they are enrolled. In addition, the candidates must meet one or more of the following criteria: (a) be enrolled in a program leading to an endorsement in a critical shortage area as established by the Board of Education; (b) be a **male** teacher candidate in an elementary or middle school education program; (c) be a minority teacher candidate enrolled in any teacher endorsement area; or (d) be a student in an approved teacher education program leading to an endorsement in career and technical education.

D. Before any teaching scholarship is awarded in accordance with the provisions of this section, the scholarship recipient shall sign a promissory note agreeing (i) to pursue an approved teacher education program full-time or part-time at an accredited baccalaureate private institution of higher education in the Commonwealth or baccalaureate public institution of higher education in the Commonwealth or another approved teacher education program and (ii) upon graduation, to begin teaching in the public schools of the Commonwealth in a critical teaching shortage discipline or in a career and technical education discipline or, regardless of teaching discipline, in a school with a high concentration of students eligible for free or reduced lunch or in a rural or urban region of the Commonwealth with a teacher shortage.

Upon program completion, the scholarship recipient shall begin teaching in the public schools of the Commonwealth in the first full academic year after becoming eligible for a teaching license, and shall

fulfill the teaching obligation in accordance with the promissory note by teaching continuously in Virginia for the same number of years that he was the beneficiary of such scholarship. Such scholarship recipient may fulfill the teaching obligation by accepting a teaching position (i) in one of the critical teacher shortage disciplines as established by the Board of Education; or (ii) in a career and technical education discipline; or (iii) regardless of teaching discipline, in a school with a high concentration of students eligible for free or reduced lunch; or (iv) in any discipline or at any grade level within a school division with a shortage of teachers, as defined in the Board of Education's Regulations Governing the Determination of Critical Teacher Shortage Areas; or (v) in a rural or urban region of the state with a teacher shortage.

E. The Board of Education may recover the total amount of funds awarded as a scholarship, or the appropriate proportion thereof, including any accrued interest, if the scholarship recipient fails to honor the teaching obligation.

F. There is hereby created in the Department of the Treasury a special nonreverting fund known as the Virginia Teaching Scholarship Loan Fund, hereinafter referred to as the "Fund." The Fund shall be established on the books of the Comptroller, and any moneys remaining in the Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. The Fund shall consist of such moneys as may be appropriated for the Virginia Teaching Scholarship Loan Program and such gifts, donations, grants, bequests, and other funds as may be received on its behalf by the Board of Education. The Fund shall be used solely to fund the Virginia Teaching Scholarship Loan Program. Interest earned on such moneys shall remain in the Fund and be credited to it. Moneys in the Fund shall be used solely to award scholarships pursuant to the Virginia Teaching Scholarship Loan Program as provided in this section. Disbursements from the Fund for such scholarships shall be made by the State Treasurer on warrants issued by the Comptroller upon written request of the President of the Board of Education.

G. The Board of Education and the State Council of Higher Education shall make available to parents, students, teachers, high school guidance counselors, and academic advisors and financial aid administrators at public and private institutions of higher education information concerning the Virginia Teacher Scholarship Loan Program, eligibility for the loans, and the terms and conditions under which

such loans are awarded, in order that students interested in pursuing careers in the teaching profession may be advised of the availability of such financial assistance.

Drafting note: No change recommended.

§ 32.1-2. Finding and purpose.

The General Assembly finds that the protection, improvement and preservation of the public health and of the environment are essential to the general welfare of the citizens of the Commonwealth. For this reason, the State Board of Health and the State Health Commissioner, assisted by the State Department of Health, shall administer and provide a comprehensive program of preventive, curative, restorative and environmental health services, educate the citizenry in health and environmental matters, develop and implement health resource plans, collect and preserve vital records and health statistics, assist in research, and abate hazards and nuisances to the health and to the environment, both emergency and otherwise, thereby improving the quality of life in the Commonwealth.

This comprehensive program of preventive, curative, restorative, and environmental health services shall include prevention and education activities focused on **women's** health, including, but not limited to, osteoporosis, breast cancer, and other conditions unique to or more prevalent among **women**.

Drafting note: No change recommended.

§ 32.1-11.6. Virginia Pregnant *Women* Support Fund; purpose; guidelines.

A. There is hereby created the Virginia Pregnant **Women** Support Fund (the Fund) as a special nonreverting fund to be administered by the Board of Health to support **women** and families who are facing unplanned pregnancy.

B. The Board of Health shall have authority to solicit and accept gifts, donations, and bequests and to apply for grants on behalf of the Fund from any source and to deposit all moneys received in the Fund. The Council shall submit to the Governor an annual report of all gifts, donations, grants and bequests accepted; the names of the donors; and the respective amounts contributed by each donor.

C. The Fund shall be established on the books of the Comptroller. All moneys received from any source pursuant to subsection B shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in

the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of carrying out the activities enumerated below:

1. Purchasing or upgrading ultrasound equipment;

2. Creating a separate program for domestic violence, dating violence, sexual assault and stalking screening against pregnant **women** and new **mothers**;

3. Conducting a public campaign to increase public awareness;

4. Providing support services for students of institutions of higher education;

5. Providing funds to allow early childhood education programs to work with pregnant or parenting teens to complete high school and provide job training education; or

6. Providing for teenage or first-time **mothers** education on the health needs of their infants through free home visits by registered nurses.

D. The Board of Health shall establish an application process and related procedures for community health centers, migrant health centers, homeless health centers, and public-housing centers seeking grants from the Fund. A grant may be made only if an application for the grant is submitted to the Board of Health and the application is in such a form, is made in such a manner, and contains such agreements, assurances, and information as the Board determines to be necessary to carry out its functions.

Drafting note: No change recommended.

§ 32.1-19. Duties prescribed by Board.

A. The Commissioner shall perform such duties as the Board may require, in addition to the duties required by law.

B. The Commissioner shall, along with the Superintendent of Public Instruction, work to combat childhood obesity and other chronic health conditions that affect school-age children.

C. The Commissioner shall ensure, in the licensure of health care facilities, that quality of care, patient safety, and patient privacy are the overriding goals of such licensure and related enforcement efforts.

D. The Commissioner shall coordinate the Department's emergency preparedness and response efforts.

E. The Commissioner shall ensure that prevention of disease and protection of public health remain the Department's overriding goals.

F. The Commissioner shall designate a senior staff member of the Department, who shall be a licensed physician, to oversee minority health efforts of the Department.

G. The Commissioner shall designate a senior official of the Department, who shall be a licensed physician or nurse practitioner, to coordinate all **women's** health efforts in the Department including, but not limited to, the "Every **Woman's** Life Program," and other efforts to prevent, detect, and treat breast cancer, cervical cancer, and other diseases that primarily affect **women**.

Drafting note: No change recommended.

§ 32.1-46. Immunization of patients against certain diseases.

A. The parent, guardian or person standing in loco parentis of each child within this Commonwealth shall cause such child to be immunized in accordance with the Immunization Schedule developed and published by the Centers for Disease Control and Prevention (CDC), Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP). The required immunizations for attendance at a public or private elementary, middle or secondary school, child care center, nursery school, family day care home or developmental center shall be those set forth in the State Board of Health Regulations for the Immunization of School Children. The Board's regulations shall at a minimum require:

1. A minimum of three properly spaced doses of hepatitis B vaccine (HepB).

2. A minimum of three or more properly spaced doses of diphtheria toxoid. One dose shall be administered on or after the fourth birthday.

3. A minimum of three or more properly spaced doses of tetanus toxoid. One dose shall be administered on or after the fourth birthday.

4. A minimum of three or more properly spaced doses of acellular pertussis vaccine. One dose shall be administered on or after the fourth birthday. A booster dose shall be administered prior to entry into the sixth grade.

5. Two or three primary doses of Haemophilus influenzae type b (Hib) vaccine, depending on the manufacturer, for children up to 60 months of age.

6. Two properly spaced doses of live attenuated measles (rubeola) vaccine. The first dose shall be administered at age 12 months or older.

7. One dose of live attenuated rubella vaccine shall be administered at age 12 months or older.

8. One dose of live attenuated mumps vaccine shall be administered at age 12 months or older.

9. All children born on and after January 1, 1997, shall be required to have one dose of varicella vaccine on or after 12 months.

10. Three or more properly spaced doses of oral polio vaccine (OPV) or inactivated polio vaccine (IPV). One dose shall be administered on or after the fourth birthday. A fourth dose shall be required if the three dose primary series consisted of a combination of OPV and IPV.

11. One to four doses, dependent on age at first dose, of properly spaced pneumococcal conjugate (PCV) vaccine for children up to 60 months of age.

12. Three doses of properly spaced human papillomavirus (HPV) vaccine for **females**. The first dose shall be administered before the child enters the sixth grade.

The parent, guardian or person standing in loco parentis may have such child immunized by a physician, physician assistant, nurse practitioner, registered nurse, or licensed practical nurse, or a pharmacist who administers pursuant to a valid prescription, or may present the child to the appropriate local health department, which shall administer the vaccines required by the State Board of Health Regulations for the Immunization of School Children without charge to the parent of or person standing in loco parentis to the child if (i) the child is eligible for the Vaccines for Children Program or (ii) the child is eligible for coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare), Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (Medicaid), Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq. (CHIP), or 10 U.S.C. § 1071 et seq. (CHAMPUS).

In all cases in which a child is covered by a health carrier, Medicare, Medicaid, CHIP, or CHAMPUS, the Department shall seek reimbursement from the health carrier, Medicare, Medicaid, CHIP, or CHAMPUS for all allowable costs associated with the provision of the vaccine. For the purposes of this section, the Department shall be deemed a participating provider with a managed care health insurance plan as defined in § 32.1-137.1.

B. A physician, physician assistant, nurse practitioner, registered nurse, licensed practical nurse, pharmacist, or local health department administering a vaccine required by this section shall provide to the person who presents the child for immunizations a certificate that shall state the diseases for which the child has been immunized, the numbers of doses given, the dates when administered and any further immunizations indicated.

C. The vaccines required by this section shall meet the standards prescribed in, and be administered in accordance with, regulations of the Board.

D. The provisions of this section shall not apply if:

1. The parent or guardian of the child objects thereto on the grounds that the administration of immunizing agents conflicts with his religious tenets or practices, unless an emergency or epidemic of disease has been declared by the Board;

2. The parent or guardian presents a statement from a physician licensed to practice medicine in Virginia, a licensed nurse practitioner, or a local health department that states that the physical condition of the child is such that the administration of one or more of the required immunizing agents would be detrimental to the health of the child; or

3. Because the human papillomavirus is not communicable in a school setting, a parent or guardian, at the parent's or guardian's sole discretion, may elect for the parent's or guardian's child not to receive the human papillomavirus vaccine, after having reviewed materials describing the link between the human papillomavirus and cervical cancer approved for such use by the Board.

E. For the purpose of protecting the public health by ensuring that each child receives age-appropriate immunizations, any physician, physician assistant, nurse practitioner, licensed institutional health care provider, local or district health department, the Virginia Immunization Information System,

and the Department of Health may share immunization and patient locator information without parental authorization, including, but not limited to, the month, day, and year of each administered immunization; the patient's name, address, telephone number, birth date, and social security number; and the parents' names. The immunization information; the patient's name, address, telephone number, birth date, and social security number; and the parents' names shall be confidential and shall only be shared for the purposes set out in this subsection.

F. The State Board of Health shall review this section annually and make recommendations for revision by September 1 to the Governor, the General Assembly, and the Joint Commission on Health Care.

Drafting note: No change recommended.

§ 32.1-60. Prenatal tests required.

Every physician, physician assistant, or nurse practitioner attending a pregnant **woman** during gestation shall examine and test such **woman** for such venereal diseases as the Board may designate within 15 days after beginning such attendance. Every other person permitted by law to attend upon pregnant **women** but not permitted by law to make such examinations and tests, shall cause such examinations and tests to be made by a licensed physician, licensed nurse practitioner, or clinic. Serological tests required by this section may be performed by the Department of General Services, Division of Consolidated Laboratory Services (DCLS).

Drafting note: No change recommended.

§ 32.1-69.3. Virginia Cord Blood Bank Initiative established.

A. There is hereby established the Virginia Cord Blood Bank Initiative (hereinafter referred to as the Initiative) as a public resource for the treatment of patients with life-threatening diseases or debilitating conditions, for use in advancing basic and clinical research, and, in the event of a terrorist attack, to be used in the treatment of the injured.

The Initiative shall be established as a nonprofit legal entity to collect, screen for infectious and genetic diseases, perform tissue typing on, cryopreserve, and store umbilical cord blood as a public resource and shall be formed as a collaborative consortium that covers all geographical regions of Virginia.

B. The State Health Commissioner shall develop or shall arrange for or contract with a nonprofit entity for the development of the collaborative consortium to be known as the Initiative, which may consist of any entity having the expertise or experience or willingness to develop the expertise or experience necessary to participate in the Initiative.

C. In developing the consortium, the Commissioner shall ensure that all geographical areas of the Commonwealth are included in the Initiative. To accomplish this goal, the Commissioner shall contact Eastern Virginia Medical School and its participating hospitals, Virginia Commonwealth University School of Medicine, Virginia Commonwealth University Health System, the University of Virginia School of Medicine, the University of Virginia Health System, and other entities located in Virginia, such as hospitals and hospital systems, biotechnology companies, regional blood banks, laboratories, or other health care providers or medical researchers, or local coalitions of health care providers that could provide coverage of the various geographical regions of Virginia, to request their participation in the Initiative consortium and assist in the design and implementation of the Initiative.

D. Any nonprofit entity having an arrangement or contract with the Commissioner for the development of the Initiative and any medical school, hospital, or other health care provider choosing to participate in the Initiative shall submit an estimate of the costs of implementing the Initiative for the region in which it is located. The Commissioner shall assist in the development of the cost estimates, compare and evaluate such estimates, and negotiate with the various entities to implement the Initiative.

Further, the Commissioner shall coordinate (i) appropriate contact with pregnant **women** to provide information about umbilical cord blood donations; (ii) the development of procedures for obtaining informed consent for cord blood donations; (iii) the design of the Initiative, including the period of years for storage of the cord blood to ensure the integrity of the cells; (iv) a system for recycling the blood at the end of the established storage period that provides for the sale or transfer of the cord blood samples being taken out of storage to be used in basic or clinical research development at reasonable rates and fees for cord blood products.

E. The entities joining the Initiative shall work collaboratively, each with the community resources in its local or regional area. The Initiative participants shall align their outreach programs and activities to

all geographic areas and ethnic and racial groups of the Commonwealth, and shall conduct specific and culturally appropriate outreach and research to identify potential donors among all ethnic and racial groups.

F. The Commissioner shall disseminate information about the Initiative, focusing on hospitals, birthing facilities, physicians, midwives, and nurses, and providing information through local health departments.

Initiative consortium participants shall also be encouraged to disseminate information about the Initiative.

In addition, the Director of the Department of Medical Assistance Services shall include information about the Initiative in printed materials distributed by the Department to recipients of medical assistance services and persons enrolled in the Family Access to Medical Insurance Security Plan.

G. Any **woman** admitted to a hospital or birthing facility for obstetrical services may be offered the opportunity to donate umbilical cord blood to the Initiative. However, no **woman** shall be required to make a cord blood donation.

H. Any health care facility or health care provider receiving financial remuneration for the collection of umbilical cord blood shall, prior to harvesting the umbilical cord blood, disclose this information in writing to any **woman** postpartum or to the parent of a newborn from whom the umbilical cord blood is to be collected.

I. This section shall not be construed to require participation in the Initiative on the part of any health care facility or health care provider who objects to transfusion or transplantation of blood on the basis of bona fide religious beliefs.

J. The Initiative shall be implemented with such funds as may be appropriated or otherwise provided for its purpose. Upon implementation, the Commissioner shall initiate the development of a nonprofit entity to assume the operation and administration of the Initiative and may seek federal, state, and private grant funds for its continuation.

Drafting note: No change recommended.

§ 32.1-69.4. Publication of information regarding cord blood education.

In addition to the requirements of § 32.1-69.3, the Commissioner shall make publicly available, by posting on the public website of the Department of Health, resources relating to umbilical cord blood that have been developed by the Parent's Guide to Cord Blood Foundation and include the following information:

1. An explanation of the potential value and uses of umbilical cord blood, including cord blood cells and stem cells, for individuals who are, as well as individuals who are not, biologically related to a **mother** or **her** newborn child.

2. An explanation of the differences between using one's own cord blood cells and using related or unrelated cord blood stem cells in the treatment of disease.

3. An explanation of the differences between public and private umbilical cord blood banking.

4. The options available to a **mother** relating to stem cells that are contained in the umbilical cord blood after the delivery of **her** newborn, including (i) donating the stem cells to a public umbilical cord blood bank where facilities are available; (ii) storing the stem cells in a private family umbilical cord blood bank for use by immediate and extended family members; (iii) storing the stem cells for immediate or extended family members through a family or sibling donor banking program that provides free collection, processing, and storage where there is an existing medical need; and (iv) discarding the stem cells.

5. The medical processes involved in the collection of cord blood.

6. Medical or family history criteria that can impact a family's consideration of umbilical cord blood banking, including the likelihood of using a baby's cord blood to serve as a match for a family member who has a medical condition.

7. Options for ownership and future use of donated umbilical cord blood.

8. The average cost of public and private umbilical cord blood banking.

9. The availability of public and private cord blood banks to Virginians, including (i) a list of public cord blood banks and the hospitals served by such banks; (ii) a list of private cord blood banks that are available; and (iii) the availability of free family banking and sibling donor programs where there is an existing medical need by a family member.

10. An explanation of which racial and ethnic groups are in particular need of publicly donated cord blood samples based upon medical data developed by the U.S. Health Resources and Services Administration.

Drafting note: No change recommended.

§ 32.1-77. State plans for *maternal* and child health services and children's specialty services.

A. The Board is authorized to prepare, amend from time to time and submit to the Secretary of the United States Department of Health and Human Services, state plans for **maternal** and child health services and children's specialty services pursuant to Title V of the United States Social Security Act and any amendments thereto.

B. The Commissioner is authorized to administer such plans and to receive and expend federal funds for the administration thereof in accordance with applicable federal and state laws and regulations.

Drafting note: No change recommended.

§ 32.1-92.1. Funding of certain abortions where pregnancy results from rape or incest.

From the moneys appropriated to the Department from the general fund, the Board shall fund abortions for **women** who otherwise meet the financial eligibility criteria of the State Medical Assistance Plan in any case in which a pregnancy occurs as a result of rape or incest and which is reported to a law-enforcement or public health agency.

Drafting note: No change recommended.

§ 32.1-92.2. Funding of certain abortions where fetus is believed to have incapacitating physical deformity or mental deficiency; physician's certificate.

From the moneys appropriated to the Department from the general fund, the Board shall fund abortions for **women** who otherwise meet the financial eligibility criteria of the State Medical Assistance Plan in any case in which a physician who is trained and qualified to perform such tests certifies in writing, after appropriate tests have been performed, that he believes the fetus will be born with a gross and totally incapacitating physical deformity or with a gross and totally incapacitating mental deficiency.

Drafting note: No change recommended.

§ 32.1-123. Definitions.

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

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

"Children's hospital" means a hospital (i) whose inpatients are predominantly under 18 years of age and (ii) which is excluded from the Medicare prospective payment system pursuant to the Social Security Act.

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

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

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

"Immediate and serious threat" means a situation or condition having a high probability that serious harm or injury to patients could occur at any time, or already has occurred, and may occur again, if patients are not protected effectively from the harm, or the threat is not removed.

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

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

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

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

Drafting note: No change recommended.

§ 32.1-134. Family planning information in hospitals providing *maternity* care.

Every hospital providing **maternity** care shall, prior to releasing each **maternity** patient, make available to such patient family planning information and a list of family planning clinics located in the Commonwealth, unless medically contraindicated; provided, however, that any such hospital operated under the auspices of a religious institution objecting to distributing lists of family planning clinics on religious grounds shall not be required to distribute them. Such information and lists may include, but need not be limited to, such information and lists as shall be furnished by the Department.

Drafting note: No change recommended.

§ 32.1-134.02. Infants; blood sample provided to parents.

Every hospital providing **maternity** care shall offer to obtain a sample of blood from an infant born at the hospital and provide that sample to the **mother** of the infant.

Drafting note: No change recommended.

§ 32.1-162.19. Human research review committees.

A. Each institution or agency which conducts or which proposes to conduct or authorize human research shall establish a human research review committee. The committee shall be composed of representatives of varied backgrounds to ensure the competent, complete, and professional review of human research activities conducted or proposed to be conducted or authorized by the institution or agency. No member of the committee shall be directly involved in the proposed human research or have administrative approval authority over the proposed human research except in connection with his responsibilities as a member of the committee.

B. No human research shall be conducted or authorized by such institution or agency unless the committee has reviewed and approved the proposed human research project giving consideration to (i) the adequacy of the description of the potential benefits and risks involved and the adequacy of the methodology of the research; (ii) if the research is nontherapeutic, whether it presents more than a minimal risk to the human subjects; (iii) whether the rights and welfare of the human subjects involved are adequately protected; (iv) whether the risks to the human subjects are outweighed by the potential benefits to them; (v) whether the risks to subjects are minimized by using procedures that are consistent with sound research design and that do not unnecessarily expose subjects to risk and, whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes; (vi) when some or all of the subjects are likely to be incapable of making an informed decision regarding consent or are otherwise vulnerable to coercion or undue influence, such as children, prisoners, pregnant **women**, mentally disabled persons, or economically or educationally disadvantaged persons, whether additional safeguards have been included in the study to protect the rights and welfare of these subjects; (vii) whether the informed consent is to be obtained by methods that are adequate and appropriate and whether the written consent form is adequate and appropriate in both content and language for the particular research; (viii) whether the persons proposing to conduct the particular human research are appropriately competent and qualified; and (ix) whether the criteria for selection of subjects are equitable. The committee shall require periodic reports from each existing human research project to ensure that the project is being carried out in conformity with the proposal as approved.

C. The regulations of an institution or agency may authorize the committee to conduct an expedited review of a human research project which involves no more than minimal risk to the subjects if (i) another institution's or agency's human research review committee has reviewed and approved the project or (ii) the review involves only minor changes in previously approved research and the changes occur during the approved project period.

D. Every person engaged in the conduct of human research or proposing to conduct human research shall affiliate himself with an institution or agency having a research review committee, and the human research which he conducts or proposes to conduct shall be subject to review and approval by such committee in the manner set forth in this section.

E. Each human research review committee of a state institution or agency shall ensure that an overview of approved human research projects and the results of such projects are made public on the institution's or agency's website unless otherwise exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

Drafting note: No change recommended.

§ 32.1-249. Definitions.

As used in this chapter:

1."Dead body" means a human body or such parts of such human body from the condition of which it reasonably may be concluded that death recently occurred.

2. "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, regardless of the duration of pregnancy; death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

a. "Induced termination of pregnancy" means the intentional interruption of pregnancy with the intention to produce other than a live-born infant or to remove a dead fetus and which does not result in a live birth.

b. "Spontaneous fetal death" means the expulsion or extraction of a product of human conception resulting in other than a live birth and which is not an induced termination of pregnancy.

3. "File" means the presentation of a vital record provided for in this chapter for registration by the Department.

4. "Final disposition" means the burial, interment, cremation, removal from the Commonwealth or other authorized disposition of a dead body or fetus.

5. "Institution" means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial or domiciliary care, or to which persons are committed by law.

6. "Live birth" means the complete or substantial expulsion or extraction from its **mother** of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

"Substantial expulsion or extraction" means, in the case of a headfirst presentation, the infant's entire head is outside the body of the **mother** or, in the case of a breech delivery, when any part of the infant's trunk past the navel is outside the body of the **mother**.

7. "Physician" means a person authorized or licensed to practice medicine or osteopathy in this Commonwealth.

8. "Registration" means the acceptance by the Department and the incorporation of vital records as provided for in this chapter into its official records.

9. "System of vital records" means the registration, collection, preservation, amendment, and certification of vital records; the collection of other reports required by this chapter; and related activities.

10. "Vital records" means certificates or reports of births, deaths, fetal deaths, adoptions, marriages, divorces or annulments and amendment data related thereto.

Drafting note: No change recommended.

§ 32.1-261. New birth certificate established on proof of adoption, legitimation or determination of *paternity*.

A. The State Registrar shall establish a new certificate of birth for a person born in the Commonwealth upon receipt of the following:

1. An adoption report as provided in § 32.1-262, a report of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person if 18 years of age or older.

2. A request that a new certificate be established and such evidence as may be required by regulation of the Board proving that such person has been legitimated or that a court of the Commonwealth has, by final order, determined the **paternity** of such person. The request shall state that no appeal has been taken from the final order and that the time allowed to perfect an appeal has expired.

3. An order entered pursuant to subsection D of § 20-160. The order shall contain sufficient information to identify the original certificate of birth and to establish a new certificate of birth in the names of the intended parents.

4. A surrogate consent and report form as authorized by § 20-162. The report shall contain sufficient information to identify the original certificate of birth and to establish a new certificate of birth in the names of the intended parents.

B. When a new certificate of birth is established pursuant to subsection A, the actual place and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption, **paternity** or legitimation shall be sealed and filed and not be subject to inspection except upon order of a court of the Commonwealth or in accordance with § 32.1-252. However, upon receipt of notice of a decision or order granting an adult adopted person access to identifying information regarding his birth parents from the Commissioner of Social Services or a circuit court, and proof of identification and payment, the State Registrar shall mail an adult adopted person a copy of the original certificate of birth.

C. Upon receipt of a report of an amended decree of adoption, the certificate of birth shall be amended as provided by regulation.

D. Upon receipt of notice or decree of annulment of adoption, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of a court of the Commonwealth or in accordance with § 32.1-252.

E. The State Registrar shall, upon request, establish and register a Virginia certificate of birth for a person born in a foreign country (i) upon receipt of a report of adoption for an adoption finalized pursuant to the laws of the foreign country as provided in subsection B of § 63.2-1200.1, or (ii) upon receipt of a report or final order of adoption entered in a court of the Commonwealth as provided in § 32.1-262; however, a Virginia certificate of birth shall not be established or registered if so requested by the court decreeing the adoption, the adoptive parents or the adopted person if 18 years of age or older. If a circuit court of the Commonwealth corrects or establishes a date of birth for a person born in a foreign country during the adoption proceedings or upon a petition to amend a certificate of foreign birth, the State Registrar shall issue a certificate showing the date of birth established by the court. After registration of the birth certificate in the new name of the adopted person, the State Registrar shall seal and file the report of adoption which shall not be subject to inspection except upon order of a court of the Commonwealth or in accordance with § 32.1-252. The birth certificate shall (i) show the true or probable foreign country of birth and (ii) state that the certificate is not evidence of United States citizenship for the child for whom it is issued or for the adoptive parents. However, for any adopted person who has attained United States citizenship, the State Registrar shall, upon request and receipt of evidence demonstrating such citizenship, establish and register a new certificate of birth that does not contain the statement required by clause (ii).

F. If no certificate of birth is on file for the person for whom a new certificate is to be established under this section, a delayed certificate of birth shall be filed with the State Registrar as provided in § 32.1-259 or 32.1-260 before a new certificate of birth is established, except that when the date and place of birth and parentage have been established in the adoption proceedings, a delayed certificate shall not be required.

G. When a new certificate of birth is established pursuant to subdivision A 1, the State Registrar shall issue along with the new certificate of birth a document, furnished by the Department of Social Services pursuant to § 63.2-1220, listing all post-adoption services available to adoptive families.

Drafting note: No change recommended.

§ 32.1-264. Reports of fetal deaths; medical certification; investigation by the Office of the Chief Medical Examiner; confidentiality of information concerning abortions.

A. A fetal death report for each fetal death which occurs in this Commonwealth shall be filed, on a form furnished by the State Registrar, with the registrar of the district in which the delivery occurred or the abortion was performed within three days after such delivery or abortion and shall be registered with such registrar if it has been completed and filed in accordance with this section, provided that:

1. If the place of fetal death is unknown, a fetal death report shall be filed in the registration district in which a dead fetus was found within three days after discovery of such fetus; and

2. If a fetal death occurs in a moving conveyance, a fetal death report shall be filed in the registration district in which the fetus was first removed from such conveyance.

B. The funeral director or person who first assumes custody of a dead fetus or, in the absence of a funeral director or such person, the hospital representative who first assumes custody of a fetus shall file the fetal death report; in the absence of such a person, the physician or other person in attendance at or after the delivery or abortion shall file the report of fetal death. The person completing the forms shall obtain the personal data from the next of kin or the best qualified person or source available, and he shall obtain the medical certification of cause of death from the person responsible for preparing the same as provided in this section. In the case of induced abortion, such forms shall not identify the patient by name.

C. The medical certification portion of the fetal death report shall be completed and signed within 24 hours after delivery or abortion by the physician in attendance at or after delivery or abortion except when inquiry or investigation by the Office of the Chief Medical Examiner is required.

D. When a fetal death occurs without medical attendance upon the **mother** at or after the delivery or abortion or when inquiry or investigation by the Office of the Chief Medical Examiner is required, the Chief Medical Examiner shall cause an investigation of the cause of fetal death to be made and the medical certification portion of the fetal death report to be completed and signed within 24 hours after being notified of a fetal death.

E. The reports required pursuant to this section are statistical reports to be used only for medical and health purposes and shall not be incorporated into the permanent official records of the system of vital records. A schedule for the disposition of these reports may be provided by regulation.

F. The physician or facility attending an individual who has delivered a dead fetus shall maintain a copy of the fetal death report for one year and, upon written request by the individual and payment of an appropriate fee, shall furnish the individual a copy of such report.

Drafting note: No change recommended.

§ 32.1-269. Amending vital records; change of name; acknowledgment of *paternity*; change of sex.

A. A vital record registered under this chapter, with the exception of a death certificate, may be amended only in accordance with this section and such regulations as may be adopted by the Board to protect the integrity and accuracy of such vital records. Such regulations shall specify the minimum evidence required for a change in any such vital record.

B. Except in the case of an amendment provided for in subsection D, a vital record that is amended under this section shall be marked "amended" and the date of amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the vital record. The Board shall prescribe by regulation the conditions under which omissions or errors on certificates, including designation of sex, may be corrected within one year after the date of the event without the certificate being marked amended. In a case of hermaphroditism or pseudo-hermaphroditism, the certificate of birth may be corrected at any time without being considered as amended upon presentation to the State Registrar of such medical evidence as the Board may require by regulation.

C. Upon receipt of a certified copy of a court order changing the name of a person as listed in a vital record and upon request of such person or his parent, guardian, or legal representative or the registrant, the State Registrar shall amend such vital records to reflect the new name.

D. Upon written request of both parents and receipt of a sworn acknowledgment of **paternity** executed subsequent to the birth and signed by both parents of a child born out of wedlock, the State Registrar shall amend the certificate of birth to show such **paternity** if **paternity** is not shown on the birth

certificate. Upon request of the parents, the surname of the child shall be changed on the certificate to that of the **father**.

E. Upon receipt of a certified copy of an order of a court of competent jurisdiction indicating that the sex of an individual has been changed by medical procedure and upon request of such person, the State Registrar shall amend such person's certificate of birth to show the change of sex and, if a certified copy of a court order changing the person's name is submitted, to show a new name.

F. When an applicant does not submit the minimum documentation required by regulation to amend a vital record or when the State Registrar finds reason to question the validity or sufficiency of the evidence, the vital record shall not be amended and the State Registrar shall so advise the applicant. An aggrieved applicant may petition the circuit court of the county or city in which he resides or the Circuit Court of the City of Richmond, Division I, for an order compelling the State Registrar to amend the vital record; an aggrieved applicant who was born in Virginia, but is currently residing out of State, may petition any circuit court in the Commonwealth for such an order. The State Registrar or his authorized representative may appear and testify in such proceeding.

Drafting note: No change recommended.

§ 32.1-276.7:1. All-Payer Claims Database created; purpose; reporting requirements.

A. The Virginia All-Payer Claims Database is hereby created to facilitate data-driven, evidence-based improvements in access, quality, and cost of health care and to promote and improve the public health through the understanding of health care expenditure patterns and operation and performance of the health care system.

B. The Commissioner, in cooperation with the Bureau of Insurance, may collect paid claims data for covered benefits, pursuant to data submission and use agreements as specified in subsection C, from entities electing to participate as data suppliers, which may include:

1. Issuers of individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; corporations providing individual or group accident and sickness subscription contracts; and health maintenance organizations providing a health care plan for health care services;

2. Third-party administrators and any other entities that receive or collect charges, contributions, or premiums for, or adjust or settle health care claims for, Virginia residents;

3. The Department of Medical Assistance Services with respect to services provided under programs administered pursuant to Titles XIX and XXI of the Social Security Act; and

4. Federal health insurance plans, if available, including but not limited to Medicare, TRICARE, and the Federal Employees Health Benefits Plan.

C. The Commissioner shall ensure that the nonprofit organization executes a standard data submission and use agreement with each entity listed in subsection B that submits paid claims data to the All-Payer Claims Database and each entity that subscribes to data products and reports. Such agreements shall include procedures for submission, collection, aggregation, and distribution of specified data and shall provide for, at a minimum:

1. Protection of patient privacy and data security pursuant to provisions of this chapter and state and federal privacy laws, including the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq., as amended); Titles XIX and XXI of the Social Security Act; § 32.1-127.1:03; Chapter 6 (§ 38.2-600 et seq.) of Title 38.2; and the Health Information Technology for Economic and Clinical Health (HITECH) Act, as included in the American Recovery and Reinvestment Act (P.L. 111-5, 123 Stat. 115);

2. Identification of the type of paid claims to be collected by the All-Payer Claims Database, and the entities that are subject to the submission of such claims as well as identification of specific data elements from existing claims systems to be submitted and collected, including but not limited to patient demographics, diagnosis and procedure codes, provider information, plan payments, member payment responsibility, and service dates;

3. Geographic, demographic, economic, and peer group comparisons;

4. Identification and comparison of health plans by public and private health care purchasers, providers, employers, consumers, health plans, health insurers, and data analysts, health insurers, and providers with regard to their provision of safe, cost-effective, and high-quality health care services;

5. Use of existing national data collection standards and methods, including the electronic Uniform Medical Claims Payer Reporting Standard, as adopted by The Accredited Standards Committee X12 (ASC X12) and APCD Council, to establish and maintain the database in a cost-effective manner and to facilitate uniformity among various all-payer claims databases of other states and specification of data fields to be included in the submitted claims, consistent with such national standards, allowing for exemptions when submitting entities do not collect the specified data or pay on a per-claim basis, such exemption process to be managed by the advisory committee created pursuant to subsection D;

6. Prohibition on disclosure or reporting of provider-specific, facility-specific, or carrier-specific reimbursement information, and of information capable of being reverse-engineered, combined, or otherwise used to calculate or derive such reimbursement information, from the All-Payer Claims Database;

7. Responsible use of claims data to improve health care value and preserve the integrity and utility of the All-Payer Claims Database; and

8. Stipulation that analyses comparing providers or health plans using data from the All-Payer Claims Database use national standards, or, when such national standards are unavailable, provide full transparency to providers or health plans of the alternative methodology used.

D. The Commissioner shall appoint an advisory committee to assist in the formation and operation of the All-Payer Claims Database. Such committee shall include a balanced representation of all the stakeholders serving on the governing board of the nonprofit organization as well as individuals with expertise in public health and specific expertise in health care performance measurement and reporting. Each stakeholder on the board of the nonprofit organization shall nominate a member and an alternate member to serve on the committee. The meetings of the advisory committee shall be open to all nominating member organizations and to the public.

E. The nonprofit organization shall implement the All-Payer Claims Database, consistent with the provisions of this chapter, to include:

1. The reporting of data that can be used to improve public health surveillance and population health, including reports on (i) injuries; (ii) chronic diseases, including but not limited to asthma, diabetes,

cardiovascular disease, hypertension, arthritis, and cancer; (iii) health conditions of pregnant **women**, infants, and children; and (iv) geographic and demographic information for use in community health assessment, prevention education, and public health improvement. This data shall be developed in a format that allows comparison of information in the All-Payer Claims Database with other nationwide data programs and that allows employers to compare their employee health plans statewide and between and among regions of the Commonwealth and nationally.

2. The reporting of data that health care purchasers, including employers and consumers, may use to compare quality and efficiency of health care, including development of information on utilization patterns and information that permits comparison of providers statewide between and among regions of the Commonwealth. The advisory committee created pursuant to subsection D shall make recommendations to the nonprofit organization on the appropriate level of specificity of reported data in order to protect patient privacy and to accurately attribute services and resource utilization rates to providers.

3. The reporting of data that permits design and evaluation of alternative delivery and payment models.

F. Reporting of data shall not commence until such data has been processed and verified at levels of accuracy consistent with existing nonprofit organization data standards. Prior to release of any report specifically naming any provider or payer, the nonprofit organization shall provide affected entities with notice of the pending report and allow for a 60-day period of review to ensure accuracy. During this period, affected entities may seek explanations of results and correction of data that they prove to be inaccurate. The nonprofit organization shall make these corrections prior to any release of the report. At the end of the review period, upon completion of all necessary corrections, the report may be released.

G. The Commissioner and the nonprofit organization shall develop recommendations for elimination of existing state health care data submission and reporting requirements, including those imposed by this chapter, that may be replaced by All-Payer Claims Database submissions and reports. In addition, the Commissioner and the nonprofit organization shall consider and recommend, as appropriate,

integration of new data sources into the All-Payer Claims Database, based on the findings and recommendations of the workgroup established pursuant to § 32.1-276.9:1.

H. Information acquired pursuant to this section shall be confidential and shall be exempt from disclosure by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

I. No person shall assess costs or charge a fee to any health care practitioner related to formation or operation of the All-Payer Claims Database. However, a reasonable fee may be charged to health care practitioners who voluntarily subscribe to access the database for purposes other than data verification.

J. As used in this section, "provider" means a hospital or physician as defined in this chapter or any other health care practitioner licensed, certified, or authorized under state law to provide covered services represented in claims reported pursuant to this section.

K. The board of directors of the nonprofit organization shall develop short-term and long-term funding strategies for the creation and operation of the All-Payer Claims Database that may include public and private grant funding, subscriptions for access to data reports, and revenue for specific data projects.

L. The Department of Health shall have access to data reported by the All-Payer Claims Database pursuant to this section at no cost for the purposes of public health improvement research and activities.

Drafting note: No change recommended.

§ 32.1-283.1. State Child Fatality Review Team; membership; access to and maintenance of records; confidentiality; etc.

A. There is hereby created the State Child Fatality Review Team, referred to in this section as "the Team," which shall develop and implement procedures to ensure that child deaths occurring in Virginia are analyzed in a systematic way. The Team shall review (i) violent and unnatural child deaths, (ii) sudden child deaths occurring within the first 18 months of life, and (iii) those fatalities for which the cause or manner of death was not determined with reasonable medical certainty. No child death review shall be initiated by the Team until conclusion of any law-enforcement investigation or criminal prosecution. The Team shall (i) develop and revise as necessary operating procedures for the review of child deaths, including identification of cases to be reviewed and procedures for coordination among the agencies and professionals involved, (ii) improve the identification, data collection, and record keeping of the causes

of child death, (iii) recommend components for prevention and education programs, (iv) recommend training to improve the investigation of child deaths, and (v) provide technical assistance, upon request, to any local child fatality teams that may be established. The operating procedures for the review of child deaths shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 17 of § 2.2-4002.

B. The 16-member Team shall be chaired by the Chief Medical Examiner and shall be composed of the following persons or their designees: the Commissioner of Behavioral Health and Developmental Services; the Director of Child Protective Services within the Department of Social Services; the Superintendent of Public Instruction; the State Registrar of Vital Records; and the Director of the Department of Criminal Justice Services. In addition, one representative from each of the following entities shall be appointed by the Governor to serve for a term of three years: local law-enforcement agencies, local fire departments, local departments of social services, the Medical Society of Virginia, the Virginia College of Emergency Physicians, the Virginia Pediatric Society, local emergency medical services personnel, attorneys for the Commonwealth, and community services boards.

C. Upon the request of the Chief Medical Examiner in his capacity as chair of the Team, made after the conclusion of any law-enforcement investigation or prosecution, information and records regarding a child whose death is being reviewed by the Team may be inspected and copied by the Chief Medical Examiner or his designee, including, but not limited to, any report of the circumstances of the event maintained by any state or local law-enforcement agency or medical examiner, and information or records maintained on such child by any school, social services agency or court. Information, records, or reports maintained by any attorney for the Commonwealth shall be made available for inspection and copying by the Chief Medical Examiner pursuant to procedures which shall be developed by the Chief Medical Examiner and the Commonwealth's Attorneys' Services Council established by § 2.2-2617. Any presentence report prepared pursuant to § 19.2-299 for any person convicted of a crime that led to the death of the child shall be made available for inspection and copying by the Office of the Chief Medical Examiner pursuant to procedures which shall be developed by the Chief Medical Examiner. In addition, the Office of the Chief Medical Examiner may inspect and copy from any Virginia health care provider,

on behalf of the Team, (i) without obtaining consent, the health and mental health records of the child and those perinatal medical records of the child's **mother** that related to such child and (ii) upon obtaining consent from each adult regarding his personal records, or from a parent regarding the records of a minor child, the health and mental health records of the child's family. All such information and records shall be confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 7 of § 2.2-3705.5. Upon the conclusion of the child death review, all information and records concerning the child and the child's family shall be shredded or otherwise destroyed by the Office of the Chief Medical Examiner in order to ensure confidentiality. Such information or records shall not be subject to subpoena or discovery or be admissible in any criminal or civil proceeding. If available from other sources, however, such information and records shall not be immune from subpoena, discovery, or introduction into evidence when obtained through such other sources solely because the information and records were presented to the Team during a child death review. Further, the findings of the Team may be disclosed or published in statistical or other form which shall not identify individuals. The portions of meetings in which individual child death cases are discussed by the Team shall be closed pursuant to subdivision A 21 of § 2.2-3711. In addition to the requirements of § 2.2-3712, all team members, persons attending closed team meetings, and persons presenting information and records on specific child deaths to the Team during closed meetings shall execute a sworn statement to honor the confidentiality of the information, records, discussions, and opinions disclosed during any closed meeting to review a specific child death. Violations of this subsection are punishable as a Class 3 misdemeanor.

D. Upon notification of a child death, any state or local government agency maintaining records on such child or such child's family which are periodically purged shall retain such records for the longer of 12 months or until such time as the State Child Fatality Review Team has completed its child death review of the specific case.

E. The Team shall compile annual data which shall be made available to the Governor and the General Assembly as requested. These statistical data compilations shall not contain any personally identifying information and shall be public records.

Drafting note: No change recommended.

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

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

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

2. A provision for determining eligibility for benefits for medically needy individuals which disregards from countable resources an amount not in excess of $3,500 for the individual and an amount not in excess of $3,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by (i) the face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources and (ii) the amount of any other revocable or irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial expenses;

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

the principal residence and all contiguous property essential to the operation of the home regardless of value;

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

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

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

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

8. A provision for payment of medical assistance for high-dose chemotherapy and bone marrow transplants on behalf of individuals over the age of 21 who have been diagnosed with lymphoma, breast cancer, myeloma, or leukemia and have been determined by the treating health care provider to have a

performance status sufficient to proceed with such high-dose chemotherapy and bone marrow transplant. Appeals of these cases shall be handled in accordance with the Department's expedited appeals process;

9. A provision identifying entities approved by the Board to receive applications and to determine eligibility for medical assistance, which shall include a requirement that such entities (i) obtain accurate contact information, including the best available address and telephone number, from each applicant for medical assistance, to the extent required by federal law and regulations, and (ii) provide each applicant for medical assistance with information about advance directives pursuant to Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title 54.1, including information about the purpose and benefits of advance directives and how the applicant may make an advance directive;

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

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

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

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

14. A requirement that certificates of medical necessity for durable medical equipment and any supporting verifiable documentation shall be signed, dated, and returned by the physician, physician assistant, or nurse practitioner and in the durable medical equipment provider's possession within 60 days from the time the ordered durable medical equipment and supplies are first furnished by the durable medical equipment provider;

15. A provision for payment of medical assistance to (i) persons age 50 and over and (ii) persons age 40 and over who are at high risk for prostate cancer, according to the most recent published guidelines of the American Cancer Society, for one PSA test in a 12-month period and digital rectal examinations, all in accordance with American Cancer Society guidelines. For the purpose of this subdivision, "PSA testing" means the analysis of a blood sample to determine the level of prostate specific antigen;

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

17. A provision, when in compliance with federal law and regulation and approved by the Centers for Medicare & Medicaid Services (CMS), for payment of medical assistance services delivered to Medicaid-eligible students when such services qualify for reimbursement by the Virginia Medicaid program and may be provided by school divisions;

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

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

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

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

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

23. A provision for the coordinated administration, including outreach, enrollment, re-enrollment and services delivery, of medical assistance services provided to medically indigent children pursuant to this chapter, which shall be called Family Access to Medical Insurance Security (FAMIS) Plus and the

FAMIS Plan program in § 32.1-351. A single application form shall be used to determine eligibility for both programs;

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

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

B. In preparing the plan, the Board shall:

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

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

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

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

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

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

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

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

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

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

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

3. Refuse to enter into or renew an agreement or contract, or elect to terminate an existing agreement or contract, with any provider who has been convicted of or otherwise pled guilty to a felony, or pursuant to 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 C.F.R. § 1002.212.

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

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

6. (Expires January 1, 2020) Provide payments or transfers pursuant to § 457 of the Internal Revenue Code to the deferred compensation plan described in § 51.1-602 on behalf of an individual who is a dentist or an oral and maxillofacial surgeon providing services as an independent contractor pursuant to a Medicaid agreement or contract under this section. Notwithstanding the provisions of § 51.1-600, an "employee" for purposes of Chapter 6 (§ 51.1-600 et seq.) of Title 51.1 shall include an independent contractor as described in this subdivision.

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

E. In any case in which a Medicaid agreement or contract is terminated or denied to a provider pursuant to subsection D, the provider shall be entitled to appeal the decision pursuant to 42 C.F.R. § 1002.213 and to a post-determination or post-denial hearing in accordance with the Administrative

Process Act (§ 2.2-4000 et seq.). All such requests shall be in writing and be received within 15 days of the date of receipt of the notice.

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

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

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

H. The Department of Medical Assistance Services shall:

1. Include in its provider networks and all of its health maintenance organization contracts a provision for the payment of medical assistance on behalf of individuals up to the age of 21 who have special needs and who are Medicaid eligible, including individuals who have been victims of child abuse and neglect, for medically necessary assessment and treatment services, when such services are delivered

by a provider which specializes solely in the diagnosis and treatment of child abuse and neglect, or a provider with comparable expertise, as determined by the Director.

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

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

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

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

Drafting note: No change recommended.

§ 32.1-351. Family Access to Medical Insurance Security Plan established.

A. The Department of Medical Assistance Services shall amend the Virginia Children's Medical Security Insurance Plan to be renamed the Family Access to Medical Insurance Security (FAMIS) Plan. The Department of Medical Assistance Services shall provide coverage under the Family Access to Medical Insurance Security Plan for individuals under the age of 19 when such individuals (i) have family incomes at or below 200 percent of the federal poverty level or were enrolled on the date of federal approval of Virginia's FAMIS Plan in the Children's Medical Security Insurance Plan (CMSIP); such individuals shall continue to be enrolled in FAMIS for so long as they continue to meet the eligibility requirements of CMSIP; (ii) are not eligible for medical assistance services pursuant to Title XIX of the

Social Security Act, as amended; (iii) are not covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Service Act (42 U.S.C. § 300gg-91 (a) and (b)(1)); and (iv) meet both the requirements of Title XXI of the Social Security Act, as amended, and the Family Access to Medical Insurance Security Plan. Eligible children, residing in Virginia, whose family income does not exceed 200 percent of the federal poverty level during the enrollment period shall receive 12 continuous months of coverage as permitted by Title XXI of the Social Security Act.

B. The Department of Medical Assistance Services shall also provide coverage for children and pregnant **women** who meet the criteria set forth in clauses (i) through (iv) of subsection A during the first five years of lawful residence in the United States, pursuant to § 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (P.L. 111-3).

C. Family Access to Medical Insurance Security Plan participants shall participate in cost-sharing to the extent allowed under Title XXI of the Social Security Act, as amended, and as set forth in the Virginia Plan for Title XXI of the Social Security Act. The annual aggregate cost-sharing for all eligible children in a family above 150 percent of the federal poverty level shall not exceed five percent of the family's gross income or as allowed by federal law and regulations. The annual aggregate cost-sharing for all eligible children in a family at or below 150 percent of the federal poverty level shall not exceed 2.5 percent of the family's gross income. The nominal copayments for all eligible children in a family shall not be less than those in effect on January 1, 2003. Cost-sharing shall not be required for well-child and preventive services including age-appropriate child immunizations.

D. The Family Access to Medical Insurance Security Plan shall provide comprehensive health care benefits to program participants, including well-child and preventive services, to the extent required to comply with federal requirements of Title XXI of the Social Security Act. These benefits shall include comprehensive medical, dental, vision, mental health, and substance abuse services, and physical therapy, occupational therapy, speech-language pathology, and skilled nursing services for special education students. The mental health services required herein shall include intensive in-home services, case management services, day treatment, and 24-hour emergency response. The services shall be provided in

the same manner and with the same coverage and service limitations as they are provided to children under the State Plan for Medical Assistance Services.

E. The Virginia Plan for Title XXI of the Social Security Act shall include a provision that participants in the Family Access to Medical Insurance Security Plan who have access to employer-sponsored health insurance coverage, as defined in § 32.1-351.1, may, but shall not be required to, enroll in an employer's health plan, and the Department of Medical Assistance Services or its designee shall make premium payments to such employer's plan on behalf of eligible participants if the Department of Medical Assistance Services or its designee determines that such enrollment is cost-effective, as defined in § 32.1-351.1.

F. The Family Access to Medical Insurance Security Plan shall ensure that coverage under this program does not substitute for private health insurance coverage.

G. The health care benefits provided under the Family Access to Medical Insurance Security Plan shall be through existing Department of Medical Assistance Services' contracts with health maintenance organizations and other providers, or through new contracts with health maintenance organizations, health insurance plans, other similarly licensed entities, or other entities as deemed appropriate by the Department of Medical Assistance Services, or through employer-sponsored health insurance. All eligible individuals, insofar as feasible, shall be enrolled in health maintenance organizations.

H. The Department of Medical Assistance Services may establish a centralized processing site for the administration of the program to include responding to inquiries, distributing applications and program information, and receiving and processing applications. The Family Access to Medical Insurance Security Plan shall include a provision allowing a child's application to be filed by a parent, legal guardian, authorized representative or any other adult caretaker relative with whom the child lives. The Department of Medical Assistance Services may contract with third-party administrators to provide any additional administrative services. Duties of the third-party administrators may include, but shall not be limited to, enrollment, outreach, eligibility determination, data collection, premium payment and collection, financial oversight and reporting, and such other services necessary for the administration of the Family Access to Medical Insurance Security Plan. Any centralized processing site shall determine a child's eligibility for

either Title XIX or Title XXI and shall enroll eligible children in Title XIX or Title XXI. A single application form shall be used to determine eligibility for Title XIX or Title XXI of the Social Security Act, as amended, and outreach, enrollment, re-enrollment and services delivery shall be coordinated with the FAMIS Plus program pursuant to § 32.1-325. In the event that an application is denied, the applicant shall be notified of any services available in his locality that can be accessed by contacting the local department of social services.

I. The Virginia Plan for Title XXI of the Social Security Act, as amended, shall include a provision that, in addition to any centralized processing site, local social services agencies shall provide and accept applications for the Family Access to Medical Insurance Security Plan and shall assist families in the completion of applications. Contracting health plans, providers, and others may also provide applications for the Family Access to Medical Insurance Security Plan and may assist families in completion of the applications.

J. The Department of Medical Assistance Services shall develop and submit to the federal Secretary of Health and Human Services an amended Title XXI plan for the Family Access to Medical Insurance Security Plan and may revise such plan as may be necessary. Such plan and any subsequent revisions shall comply with the requirements of federal law, this chapter, and any conditions set forth in the appropriation act. In addition, the plan shall provide for coordinated implementation of publicity, enrollment, and service delivery with existing local programs throughout the Commonwealth that provide health care services, educational services, and case management services to children. In developing and revising the plan, the Department of Medical Assistance Services shall advise and consult with the Joint Commission on Health Care.

K. Funding for the Family Access to Medical Insurance Security Plan shall be provided through state and federal appropriations and shall include appropriations of any funds that may be generated through the Virginia Family Access to Medical Insurance Security Plan Trust Fund.

L. The Board of Medical Assistance Services, or the Director, as the case may be, shall adopt, promulgate, and enforce such regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.)

as may be necessary for the implementation and administration of the Family Access to Medical Insurance Security Plan.

M. Children enrolled in the Virginia Plan for Title XXI of the Social Security Act prior to implementation of these amendments shall continue their eligibility under the Family Access to Medical Insurance Security Plan and shall be given reasonable notice of any changes in their benefit packages. Continuing eligibility in the Family Access to Medical Insurance Security Plan for children enrolled in the Virginia Plan for Title XXI of the Social Security Act prior to implementation of these amendments shall be determined in accordance with their regularly scheduled review dates or pursuant to changes in income status. Families may select among the options available pursuant to subsections D and F of this section.

N. The provisions of Chapter 9 (§ 32.1-310 et seq.) of this title relating to the regulation of medical assistance shall apply, mutatis mutandis, to the Family Access to Medical Insurance Security Plan.

O. In addition, in any case in which any provision set forth in Title 38.2 excludes, exempts or does not apply to the Virginia plan for medical assistance services established pursuant to Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (Medicaid), such exclusion, exemption or carve out of application to Title XIX of the Social Security Act (Medicaid) shall be deemed to subsume and thus to include the Family Access to Medical Insurance Security (FAMIS) Plan, established pursuant to Title XXI of the Social Security Act, upon approval of FAMIS by the federal Centers for Medicare & Medicaid Services as Virginia's State Children's Health Insurance Program.

Drafting note: No change recommended.

§ 32.1-369. Uses of Breast and Cervical Cancer Prevention and Treatment Fund.

Moneys deposited to the Breast and Cervical Cancer Prevention and Treatment Fund shall be used to support the treatment of breast and cervical cancer for **women** under Medicaid pursuant to the federal Breast and Cervical Cancer Prevention and Treatment Act of 2000, P.L. 106-354. Up to 10 percent of the Fund may be used annually to conduct screening activities for breast and cervical cancer under the Every Woman's Life Program administered by the Virginia Department of Health.

Drafting note: No change recommended.

§ 32.1-370. Right to breastfeed.

A **mother** may breastfeed in any place where the **mother** is lawfully present, including any location where **she** would otherwise be allowed on property that is owned, leased, or controlled by the Commonwealth in accordance with § 2.2-1147.1.

Drafting note: No change recommended.

§ 36-106. Violation a misdemeanor; civil penalty.

A. It shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any Code provisions, to violate any such provisions. Any such violation shall be deemed a misdemeanor and any owner or any other person, firm or corporation convicted of such a violation shall be punished by a fine of not more than $2,500. In addition, each day the violation continues after conviction or the court-ordered abatement period has expired shall constitute a separate offense. If the violation remains uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in order to comply with the Code. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within six months of the date of conviction. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. Any person convicted of a second offense committed within less than five years after a first offense under this chapter shall be punished by a fine of not less than $1,000 nor more than $2,500. Any person convicted of a second offense committed within a period of five to 10 years of a first offense under this chapter shall be punished by a fine of not less than $500 nor more than $2,500. Any person convicted of a third or subsequent offense involving the same property committed within 10 years of an offense under this chapter after having been at least twice previously convicted shall be punished by confinement in jail for not more than 10 days and a fine of not less than $2,500 nor more than $5,000, either or both. No portion of the fine imposed for such third or subsequent offense committed within 10 years of an offense under this chapter shall be suspended.

B. Violations of any provision of the Building Code, adopted and promulgated pursuant to § 36-103, that results in a dwelling not being a safe, decent and sanitary dwelling, as defined in § 25.1-400, in a locality where the local governing body has taken official action to enforce such provisions, shall be

deemed a misdemeanor and any owner or any other person, firm, or corporation convicted of such a violation shall be punished by a fine of not more than $2,500. In addition, each day the violation continues after conviction or the expiration of the court-ordered abatement period shall constitute a separate offense. If the violation remains uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in order to comply with the Code. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within six months of the date of conviction. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. Any person convicted of a second offense, committed within less than five years after a first offense under this chapter shall be punished by confinement in jail for not more than five days and a fine of not less than $1,000 nor more than $2,500, either or both. Provided, however, that the provision for confinement in jail shall not be applicable to any person, firm, or corporation, when such violation involves a multiple-family dwelling unit. Any person convicted of a second offense committed within a period of five to 10 years of a first offense under this chapter shall be punished by a fine of not less than $500 nor more than $2,500. Any person convicted of a third or subsequent offense involving the same property, committed within 10 years of an offense under this chapter after having been at least twice previously convicted, shall be punished by confinement in jail for not more than 10 days and a fine of not less than $2,500 nor more than $5,000, either or both. No portion of the fine imposed for such third or subsequent offense committed within 10 years of an offense under this chapter shall be suspended.

C. Any locality may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specified provisions of the Code which are not abated, or otherwise remedied through hazard control, promptly after receipt of notice of violation from the local enforcement officer.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than $100 for the initial summons and not more than $350 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and a series of specified

violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of $4,000. Designation of a particular Code violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons, such designation shall preclude the prosecution of a violation as a misdemeanor.

Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the locality prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court. As a condition of waiver of trial, admission of liability, and payment of a civil penalty, the violator and a representative of the locality shall agree in writing to terms of abatement or remediation of the violation within six months after the date of payment of the civil penalty.

If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

If the violation concerns a residential unit, and if the violation remains uncorrected at the time of assessment of the civil penalty, the court shall order the violator to abate, or otherwise remedy through hazard control, the violation in order to comply with the Code. Except as otherwise provided by the court for good cause shown, any such violator shall abate, or otherwise remedy through hazard control, the violation within six months of the date of the assessment of the civil penalty.

If the violation concerns a nonresidential building or structure, and if the violation remains uncorrected at the time of assessment of the civil penalty, the court may order the violator to abate, or otherwise remedy through hazard control, the violation in order to comply with the Code. Any such violator so ordered shall abate, or otherwise remedy through hazard control, the violation within the time specified by the court.

D. Any owner or any other person, firm or corporation violating any Code provisions relating to lead hazard controls that poses a hazard to the health of pregnant **women** and children under the age of six years who occupy the premises shall, upon conviction, be guilty of a misdemeanor and shall be subject to a fine of not more than $2,500. If the court convicts pursuant to this subsection and sets a time by which such hazard must be controlled, each day the hazard remains uncontrolled after the time set for the lead hazard control has expired shall constitute a separate violation of the Uniform Statewide Building Code.

The landlord shall maintain the painted surfaces of the dwelling unit in compliance with the International Property Maintenance Code of the Uniform Statewide Building Code. The landlord's failure to do so shall be enforceable in accordance with the Uniform Statewide Building Code and shall entitle the tenant to terminate the rental agreement.

Termination of the rental agreement or any other action in retaliation against the tenant after written notification of (i) a lead hazard in the dwelling unit or (ii) that a child of the tenant, who is an authorized occupant in the dwelling unit, has an elevated blood lead level, shall constitute retaliatory conduct in violation of § 55-248.39.

E. Nothing in this section shall be construed to prohibit a local enforcement officer from issuing a summons or a ticket for violation of any Code provision to the lessor or sublessor of a residential dwelling unit, provided a copy of the notice is served on the owner.

F. Any prosecution under this section shall be commenced within the period provided for in § 19.2-8.

Drafting note: No change recommended.

§ 37.2-407. Regulations for treatment of pregnant women with substance abuse.

The Board shall adopt regulations that ensure that providers licensed to offer substance abuse services develop policies and procedures for the timely and appropriate treatment of pregnant **women** with substance abuse.

Drafting note: No change recommended.

§ 38.2-1369. Computation of minimum standard.

Except as otherwise provided in §§ 38.2-1370, 38.2-1371, and 38.2-1378, the minimum standard for the valuation of all policies and contracts issued on or after the operative date stated in § 38.2-3214 shall be the Commissioners reserve valuation methods defined in §§ 38.2-1372, 38.2-1373, 38.2-1376, and 38.2-1378, three and one-half percent interest, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after July 1, 1975, four percent interest for policies issued prior to July 1, 1979, five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other policies issued on and after July 1, 1979, and the following tables:

1. For ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies: The Commissioners 1941 Standard Ordinary Mortality Table for policies issued prior to the operative date of § 38.2-3215; the Commissioners 1958 Standard Ordinary Mortality Table for policies issued on or after the operative date of § 38.2-3215 and prior to the operative date of § 38.2-3209, provided that for any category of policies issued on **female** risks, all modified net premiums and present values referred to in this article may be calculated according to an age not more than six years younger than the actual age of the insured; and for policies issued on or after the operative date of § 38.2-3209:

a. The Commissioners 1980 Standard Ordinary Mortality Table;

b. At the election of the insurer for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; or

c. Any ordinary mortality table, adopted after 1980 by the NAIC, that is approved by regulation adopted by the Commission for use in determining the minimum standard of valuation for those policies;

2. For industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in those policies: The 1941 Standard Industrial Mortality Table for policies issued prior to the operative date of § 38.2-3216, and for policies issued on or after the operative date of § 38.2-3216, the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table adopted after 1980 by the NAIC and approved by regulation adopted by the Commission for use in determining the minimum standard of valuation for the policies;

3. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in those contracts: The 1937 Standard Annuity Mortality Table or, at the insurer's option, the Annuity Mortality Table for 1949 Ultimate, or any modification of either of these tables approved by the Commission;

4. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in those contracts: The Group Annuity Mortality Table for 1951, any modification of that table approved by the Commission, or, at the insurer's option, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

5. For total and permanent disability benefits in or supplementary to ordinary policies or contracts: For policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after 1980 by the NAIC, and approved by regulation adopted by the Commission for use in determining the minimum standard of valuation for those policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either those tables or, at the insurer's option, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

6. For accidental death benefits in or supplementary to policies issued on or after January 1, 1966: The 1959 Accidental Death Benefits Table or any accidental death benefits table adopted after 1980 by the NAIC and approved by regulation adopted by the Commission for use in determining the minimum standard of valuation for those policies; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either that table or, at the insurer's option, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table for calculating the reserves for life insurance policies; and

7. For group life insurance, life insurance issued on the substandard basis, and other special benefits: Any table approved by the Commission.

Drafting note: No change recommended.

§ 38.2-3206. Same; tables used for calculations.

Except as otherwise provided in §§ 38.2-3207 and 38.2-3208, all adjusted premiums and present values referred to in §§ 38.2-3202 through 38.2-3205 shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table. However, for any category of ordinary insurance issued on **female** risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured and the calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding 3 1/2 percent per year, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. However, in calculating the present value of any paid-up term insurance with any accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130 percent of the rates of mortality according to the applicable table. For insurance issued on a substandard basis, the calculation of any adjusted premiums and present values may be based on any other table of mortality specified by the insurer and approved by the Commission.

Drafting note: No change recommended.

§ 38.2-3207. Same; use of new mortality table; ordinary policies.

The provisions of this section shall not apply to ordinary policies issued on or after the operative date as defined in § 38.2-3209. In the case of ordinary policies issued on or after the operative date of § 38.2-3215, all adjusted premiums and present values referred to in §§ 38.2-3202 through 38.2-3205 shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. However, the rate of interest shall not exceed (i) 3 1/2 percent per year for policies issued before July 1, 1975, (ii) four percent per year for policies issued on or after July 1, 1975, and prior to July 1, 1979, and (iii) 5 1/2 percent per year for policies issued on or after July 1, 1979. Notwithstanding the foregoing

provisions of this section, the rate of interest for any single premium whole life or endowment insurance policy issued on or after July 1, 1979, may be a rate not exceeding 6 1/2 percent per year. For any category of ordinary insurance issued on **female** risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured. In calculating the present value of any paid-up term insurance with any accompanying pure endowment offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table. For insurance issued on a substandard basis the calculation of any adjusted premiums and present values may be based on any other table of mortality specified by the insurer and approved by the Commission.

Drafting note: No change recommended.

§ 38.2-3407.11. Access to obstetrician-gynecologists.

A. Each (i) insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical or major medical coverage on an expense incurred basis, (ii) corporation providing individual or group accident and sickness subscription contracts, and (iii) health maintenance organization providing a health care plan for health care services, whose policies, contracts or plans, including any certificate or evidence of coverage issued in connection with such policies, contracts or plans, include coverage for obstetrical or gynecological services, shall permit any **female** of age 13 or older covered thereunder direct access, as provided in subsection B, to the health care services of a participating obstetrician-gynecologist (a) authorized to provide services under such policy, contract or plan and (b) selected by such **female.**

B. An annual examination, and routine health care services incident to and rendered during an annual visit, may be performed without prior authorization from the primary care physician. However, additional health care services may be provided subject to the following:

1. Consultation, which may be by telephone or electronically, with the primary care physician for follow-up care or subsequent visits;

2. Prior consultation and authorization by the primary care physician before the patient may be directed to another specialty provider; and

3. Prior authorization by the insurer, corporation, or health maintenance organization for proposed inpatient hospitalization or outpatient surgical procedures.

C. For the purpose of this section, "health care services" means the full scope of medically necessary services provided by the obstetrician-gynecologist in the care of or related to the female reproductive system and breasts and in performing annual screening and immunization for disorders and diseases in accordance with the most current published recommendations of the American College of Obstetricians and Gynecologists. The term includes services provided by nurse practitioners, physician assistants, and certified nurse midwives in collaboration with the obstetrician-gynecologists providing care to individuals covered under any such policies, contracts or plans.

D. Nothing contained herein shall prohibit an insurer, corporation, or health maintenance organization from requiring a participating obstetrician-gynecologist to provide written notification to the covered **female's** primary care physician of any visit to such obstetrician-gynecologist. Such notification may include a description of the health care services rendered at the time of the visit.

E. Each insurer, corporation or health maintenance organization subject to the provisions of this section shall inform subscribers of the provisions of this section. Such notice shall be provided in writing.

F. The requirements of this section shall apply to all insurance policies, contracts, and plans delivered, issued for delivery, reissued, renewed, or extended or at any time when any term of any such policy, contract, or plan is changed or any premium adjustment is made. The provisions of this section shall not apply to short-term travel or accident-only policies, or to short-term nonrenewable policies of not more than six months' duration.

G. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ 38.2-3438 et seq.) of Chapter 34.

Drafting note: No change recommended.

§ 38.2-3418. Coverage for victims of rape or incest.

Each hospital expense, medical-surgical expense, major medical expense or hospital confinement indemnity insurance policy issued by an insurer, each individual and group subscription contract providing hospital, medical, or surgical benefits issued by a corporation, and each contract issued by a health

maintenance organization which provide benefits as a result of an "accident" or "accidental injury" shall be construed to include benefits for pregnancy following an act of rape of an insured or subscriber which was reported to the police within seven days following its occurrence, to the same extent as any other covered accident. The 7-day requirement shall be extended to 180 days in the case of an act of rape or incest of a **female** under 13 years of age.

Drafting note: No change recommended.

§ 38.2-3418.3. Coverage for hemophilia and congenital bleeding disorders.

A. Notwithstanding the provisions of § 38.2-3419, each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each corporation providing individual or group accident and sickness subscription contracts; and each health maintenance organization providing a health care plan for health care services shall provide coverage for hemophilia and congenital bleeding disorders under such policy, contract or plan delivered, issued for delivery or renewed in this Commonwealth on and after July 1, 1998.

B. For the purpose of this section:

"Blood infusion equipment" includes, but is not limited to, syringes and needles.

"Blood product" includes, but is not limited to, Factor VII, Factor VIII, Factor IX, and cryoprecipitate.

"Hemophilia" means a lifelong hereditary bleeding disorder usually affecting males that results in prolonged bleeding primarily into joints and muscles.

"Home treatment program" means a program where individuals or family members are trained to provide infusion therapy at home in order to achieve optimal health and cost effectiveness.

"State-approved hemophilia treatment center" means a hospital or clinic which receives federal or state **Maternal** and Child Health Bureau, and/or Centers for Disease Control funds to conduct comprehensive care for persons with hemophilia and other congenital bleeding disorders.

C. The benefits to be provided shall include coverage for expenses incurred in connection with the treatment of routine bleeding episodes associated with hemophilia and other congenital bleeding disorders.

The benefits to be provided shall include coverage for the purchase of blood products and blood infusion equipment required for home treatment of routine bleeding episodes associated with hemophilia and other congenital bleeding disorders when the home treatment program is under the supervision of the state-approved hemophilia treatment center.

D. The provisions of this section shall not apply to short-term travel, accident only, limited or specified disease policies, policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or to any other similar coverage under state or federal governmental plans, or to short-term nonrenewable policies of not more than six months' duration.

Drafting note: No change recommended.

§ 38.2-3442. Preventive services.

A. Notwithstanding any provision of § 38.2-3406.1, 38.2-3411.1, or any other section of this title to the contrary, a health carrier shall provide coverage for all of the following items and services, and shall not impose any cost-sharing requirements such as a copayment, coinsurance, or deductible with respect to the following items and services:

1. Evidence-based items or services that have in effect a rating of A or B in the recommendations of the U.S. Preventive Services Task Force, with respect to the individual involved;

2. Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention with respect to the individual involved. For purposes of this subdivision, a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention is considered in effect after it has been adopted by the Director of the Centers for Disease Control and Prevention, and a recommendation is considered to be for routine use if it is listed on the Immunization Schedules of the Centers for Disease Control and Prevention;

3. With respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in comprehensive guidelines supported by the Health Resources and Services Administration; and

4. With respect to **women**, evidence-informed preventive care and screenings recommended in comprehensive guidelines supported by the Health Resources and Services Administration.

B. A health carrier is not required to provide coverage for any items or services specified in any recommendation or guideline described in subsection A after the recommendation or guideline is no longer in effect.

C. A health carrier shall at least annually at the beginning of each new plan year or policy year revise the preventive services covered under its health benefit plans pursuant to this section consistent with the most current recommendations of the U.S. Preventive Services Task Force, the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and the guidelines with respect to infants, children, adolescents, and women evidence-based preventive care and screenings by the Health Resources and Services Administration in effect at the time.

D. 1. A health carrier may impose cost-sharing requirements with respect to an office visit if an item or service is billed separately or is tracked as individual encounter data separately from the office visit.

2. A health carrier shall not impose cost-sharing requirements with respect to an office visit if an item or service is not billed separately or is not tracked as individual encounter data separately from the office visit and the primary purpose of the office visit is the delivery of the item or service.

3. A health carrier may impose cost-sharing requirements with respect to an office visit if an item or service is not billed separately or is not tracked as individual encounter data separately from the office visit and the primary purpose of the office visit is not the delivery of the item or service.

E. Nothing in this section shall preclude a health carrier that has a network of providers from imposing cost-sharing requirements for items or services that are delivered by an out-of-network provider.

F. This section shall apply to any health carrier providing individual or group health insurance coverage, except for any grandfathered plan.

Drafting note: No change recommended.

§ 38.2-3443. Choice of a health care professional.

A. Notwithstanding any provision of § 38.2-3407.11, 38.2-4312.3, or any other section of this title to the contrary, if a health carrier providing individual or group health insurance coverage requires or provides for the designation by a covered person of a participating primary care health care professional, the health carrier shall permit each covered person to designate any participating primary care health care professional who is available to accept the covered person. For a child, a participating health care professional who specializes in pediatrics and is available to accept the child may be designated as the child's primary care health care professional.

B. If a health carrier provides for obstetrical or gynecological care and requires the designation by a covered person of a participating primary care health care professional, the health carrier shall not require any person's prior authorization or referral in the case of a **female** covered person who seeks coverage for obstetrical or gynecological care provided by a participating health care professional who specializes in obstetrics or gynecology. The provision of obstetrical and gynecological care, and the ordering of related items and services, shall be treated the same as an authorization from a primary care health care professional.

C. A health carrier shall provide notice to a covered person of the terms and conditions of the plan related to the designation of a participating health care professional.

1. Such notice shall be included whenever the health carrier provides a covered person with a summary plan description, policy, certificate, or contract of health insurance.

2. The health carrier may use the model language found in 45 C.F.R. § 147.138(a)(4)(iii) for such notice.

D. This section shall apply to any health carrier providing individual or group health insurance coverage, except for any grandfathered plan.

Drafting note: No change recommended.

§ 38.2-3450. Genetic information and testing.

A. A health carrier offering a health benefit plan providing individual and group health insurance coverage shall not adjust premium or contribution amounts for a covered person under such plan on the basis of genetic information.

B. A health carrier shall not request or require a covered person to undergo a genetic test, or require or purchase genetic information for underwriting purposes. A health carrier shall not request, require, or purchase genetic information with respect to any covered person prior to the covered person's enrollment under the health benefit plan.

C. Genetic information may be obtained under the following circumstances:

1. A health care professional who is providing health care services to a covered person may request that the covered person undergo a genetic test.

a. A health carrier may obtain and use the results of a genetic test in making a determination regarding payment of a claim.

b. A health carrier may request only the minimum amount of information necessary to accomplish the intended purpose.

2. A health carrier may request, but not require, that a covered person undergo a genetic test if all of the following conditions are met:

a. The request is made pursuant to research that complies with Part 46 of Title 45 of the Code of Federal Regulations or equivalent federal regulations and any applicable state or local law or regulation for the protection of human subjects in research;

b. The health carrier clearly indicates to the covered person, or in the case of a minor child, to the legal guardian of the child, to whom the request is made that:

(1) Compliance with the request is voluntary; and

(2) Noncompliance will have no effect on enrollment status or premium or contribution amounts;

c. No genetic information collected or acquired under this subsection shall be used for underwriting purposes;

d. The health carrier notifies the federal Secretary of Health and Human Services in writing that the health carrier is conducting activities pursuant to the exception provided in this subsection, including a description of all the activities conducted; and

e. The health carrier complies with such other conditions as the Secretary may by regulation require for activities conducted under this subsection.

D. Any reference in this section to genetic information concerning a covered person shall:

1. With respect to the covered person who is a pregnant **woman**, include genetic information of any fetus carried by the pregnant **woman**; and

2. With respect to a covered person utilizing an assisted reproductive technology, include genetic information of any embryo legally held by the covered person.

E. This section shall apply to any health carrier providing individual or group health insurance coverage, including any grandfathered plan.

Drafting note: No change recommended.

§ 38.2-3451. Essential health benefits.

A. Notwithstanding any provision of § 38.2-3431 or any other section of this title to the contrary, a health carrier offering a health benefit plan providing individual or small group health insurance coverage shall provide that such coverage includes the essential health benefits as required by § 1302(a) of the PPACA. The essential health benefits package may also include associated cost-sharing requirements or limitations. No qualified health insurance plan that is sold or offered for sale through an exchange established or operating in the Commonwealth shall provide coverage for abortions, regardless of whether such coverage is provided through the plan or is offered as a separate optional rider thereto, provided that such limitation shall not apply to an abortion performed (i) when the life of the **mother** is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or (ii) when the pregnancy is the result of an alleged act of rape or incest.

B. The provisions of subsection A regarding the inclusion of the PPACA-required minimum essential pediatric oral health benefits shall be deemed to be satisfied for health benefit plans made available in the small group market or individual market in the Commonwealth outside an exchange, as defined in § 38.2-3455, issued for policy or plan years beginning on or after January 1, 2015, that do not include the PPACA-required minimum essential pediatric oral health benefits if the health carrier has obtained reasonable assurance that such pediatric oral health benefits are provided to the purchaser of the

health benefit plan. The health carrier shall be deemed to have obtained reasonable assurance that such pediatric oral health benefits are provided to the purchaser of the health benefit plan if:

1. At least one qualified dental plan, as defined in § 38.2-3455, (i) offers the minimum essential pediatric oral health benefits that are required under the PPACA and (ii) is available for purchase by the small group or individual purchaser; and

2. The health carrier prominently discloses, in a form approved by the Commission, at the time that it offers the health benefit plan that the plan does not provide the PPACA-required minimum essential pediatric oral health benefits.

Drafting note: No change recommended.

§ 38.2-3723. Reserves.

A. Each insurer licensed to write credit life insurance in the Commonwealth shall establish and maintain reserves on all its credit life insurance. The minimum standard for the valuation for such reserves:

1. For both **male and female** insureds shall be the 2001 Commissioners' Standard Ordinary (CSO) **Male** Composite Ultimate Mortality Table as adopted by the National Association of Insurance Commissioners;

2. Where the credit life policy or certificate insures two lives shall be twice the 2001 CSO Male Composite Ultimate Mortality Table based on the age of the older insured;

3. Shall use, for the interest rate calculation, the calendar year statutory valuation interest rates determined pursuant to § 38.2-1371; and

4. Shall use, as the method of valuation, the Commissioners reserve valuation method set forth in § 38.2-1372.

Reserves may be calculated on an annual or a monthly basis with a reasonable assumption, subject to statistical proof, as to average ages at issue or at expiration.

B. Each insurer licensed to write credit accident and sickness insurance in the Commonwealth shall establish and maintain reserves on all its credit accident and sickness insurance. For contracts other than single premium credit disability contracts, the minimum standard for the valuation of such reserves shall be the total gross unearned premiums calculated by the actuarial method, but not less than the

aggregate amounts calculated as of the valuation date by the refund formulas approved for the policies by the Commission pursuant to subsection C of § 38.2-3729. For single premium credit disability contracts, the minimum standard for valuation of such reserves:

1. For plans having less than a 15-day elimination period, the morbidity standard shall be the 1985 Commissioners' Individual Disability Table A as adopted by the NAIC (85CIDA) with claim incidence rates increased by 12 percent;

2. For plans having a greater than 14-day elimination period, the morbidity standard shall be the 85CIDA for a 14-day elimination period with claim incidence rates increased by 12 percent; and

3. The interest rate used shall be the calendar year statutory valuation interest rate for valuation of whole life insurance determined pursuant to § 38.2-1371.

It may be assumed that all business written in any calendar month was written as of the fifteenth of such month.

C. For all credit life and disability contracts in the aggregate, if the net premium refund liability exceeds the aggregate recorded contract reserve, the insurer shall establish an additional reserve liability that is equal to the excess of the net refund liability over the contract reserve recorded. The net refund liability may include consideration of commission, premium tax, and other expenses recoverable. In all cases, such amounts shall be evaluated for probability of recovery.

D. In no event shall the aggregate reserves for all policies, contracts and benefits be less than the aggregate reserves determined by a qualified actuary to be necessary to support fully the insurer's obligations under its policies, certificates and contracts.

Drafting note: No change recommended.

§ 38.2-4125. Valuations.

A. The report of valuation shall show, as reserve liabilities, the difference between the present midyear value of the promised benefits provided in the certificates of the society in force and the present midyear value of the future net premiums as they are in practice actually collected, not including any value for the right to make extra assessments and not including any amount by which the present midyear value of future net premiums exceeds the present midyear value of promised benefits on individual certificates.

At the option of any society, the valuation may show the net tabular value instead of the above value. The net tabular value as to certificates issued prior to June 28, 1969, shall be determined in accordance with the provisions of law applicable prior to June 28, 1968, and as to certificates issued on or after June 28, 1969, shall not be less than the reserves determined according to the Commissioners' reserve valuation method as defined in subsection C of this section. If the premium charged is less than the tabular net premium according to the basis of valuation used, an additional reserve equal to the present value of the deficiency in the premiums shall be set up and maintained as a liability. The reserve liabilities shall be properly adjusted in the event that the midyear or tabular values are not appropriate.

B. A society may value its certificates in accordance with valuation standards authorized by the laws of this Commonwealth for the valuation of policies issued by life insurers.

C. Reserves according to the Commissioners' reserve valuation method, for the life insurance and endowment benefits of certificates providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be any excess of the present value, at the date of valuation, of the future guaranteed benefits provided for by those certificates, over the then present value of any future modified net premiums therefor. The modified net premiums for any such certificate shall be a uniform percentage of the respective contract premiums for the benefits that the present value, at the date of issue of the certificate, of all modified net premiums shall equal the sum of the then present value of the benefits provided for by the certificate and the excess of 1 over 2, as follows:

1. A net-level premium equal to the present value, at the date of issue, of the benefits provided for after the first certificate year, divided by the present value, at the date of issue, of an annual annuity of one dollar payable on each anniversary of the certificate on which a premium falls due. However, the net-level annual premium shall not exceed the net-level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at any age one year higher than the age at issue of the certificate; and

2. A net one-year term premium for the benefits provided for in the first certificate year. Reserves according to the Commissioners' reserve valuation method for (i) life insurance benefits for varying amounts of benefits or requiring the payment of varying premiums, (ii) annuity and pure endowment

benefits, (iii) disability and accidental death benefits in all certificates and contracts, and (iv) all other benefits except life insurance and endowment benefits, shall be calculated by a method consistent with the principles of this subsection.

D. The present value of deferred payments due under incurred claims or matured certificates shall be deemed a liability of the society and shall be computed upon mortality and interest standards prescribed in subsections E through G of this section.

E. The valuation and underlying data shall be certified by a competent actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

F. The minimum standards of valuation for certificates issued prior to June 28, 1969, shall be those provided by the law applicable immediately prior to June 28, 1968, but not lower than the standards used in the calculating of rates for those certificates.

G. The minimum standard of valuation for certificates issued after June 28, 1969, shall be 3 1/2 percent interest and the following tables:

1. For certificates of life insurance, American Men Ultimate Table of Mortality, with Bowerman's or Davis' Extension thereof or with the consent of the Commission, the Commissioners 1941 Standard Ordinary Mortality Table, the Commissioners 1941 Standard Industrial Mortality Table or the Commissioners 1958 Standard Ordinary Mortality Table, using actual age of the insured for male risks and an age not more than three years younger than the actual age of the insured for **female** risks;

2. For annuity and pure endowment certificates, excluding any disability and accidental death benefits in the certificates, the 1937 Standard Annuity Mortality Table or the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the Commission;

3. For total and permanent disability benefits in or supplementary to life insurance certificates, Hunter's Disability Table, or the Class III Disability Table (1926) modified to conform to the contractual waiting period, or the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries with due regard to the type of benefit. Any of these tables shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance certificates;

4. For accidental death benefits in or supplementary to life insurance certificates, The Inter-Company Double Indemnity Mortality Table or the 1959 Accidental Death Benefits Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance certificates; and

5. For noncancellable accident and health benefits, the Class III Disability Table (1926) with conference modifications or, with the consent of the Commission, tables based upon the society's own experience.

H. The Commission may, in its discretion, accept other standards for valuation if it finds that the reserves produced by those standards will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard prescribed in this section. The Commission may, in its discretion, vary the standards of mortality applicable to all certificates of insurance on substandard lives or other extra hazardous lives by any society licensed to do business in this Commonwealth. Whenever the mortality experience under all certificates valued on the same mortality table exceeds the expected mortality according to that table for a period of three consecutive years, the Commission may require additional reserves that it deems necessary on account of the certificates.

I. Any society, with the consent of the commissioner of insurance of the state of domicile of the society and under any conditions he may impose, may establish and maintain reserves on its certificates in excess of the reserves required by the state. However, the contractual rights of any insured member shall not be affected by the excess reserves.

Drafting note: No change recommended.

§ 38.2-4300. Definitions.

As used in this chapter:

"Acceptable securities" means securities that (i) are legal investments under the laws of the Commonwealth for public sinking funds or for other public funds, (ii) are not in default as to principal or interest, (iii) have a current market value of not less than $50,000 nor more than $500,000, and (iv) are issued pursuant to a system of book-entry evidencing ownership interests of the securities with transfers

of ownership effected on the records of the depository and its participants pursuant to rules and procedures established by the depository.

"Basic health care services" means in and out-of-area emergency services, inpatient hospital and physician care, outpatient medical services, laboratory and radiologic services, mental health and substance use disorder benefits, and preventive health services. In the case of a health maintenance organization that has contracted with the Commonwealth to furnish basic health services to recipients of medical assistance under Title XIX of the United States Social Security Act pursuant to § 38.2-4320, the basic health services to be provided by the health maintenance organization to program recipients may differ from the basic health services required by this section to the extent necessary to meet the benefit standards prescribed by the state plan for medical assistance services authorized pursuant to § 32.1-325.

"Copayment" means an amount an enrollee is required to pay in order to receive a specific health care service.

"Deductible" means an amount an enrollee is required to pay out-of-pocket before the health care plan begins to pay the costs associated with health care services.

"Emergency services" means those health care services that are rendered by affiliated or nonaffiliated providers after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent layperson who possesses an average knowledge of health and medicine to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment of the individual's bodily functions, (iii) serious dysfunction of any of the individual's bodily organs, or (iv) in the case of a pregnant **woman**, serious jeopardy to the health of the fetus. Emergency services provided within the plan's service area shall include covered health care services from nonaffiliated providers only when delay in receiving care from a provider affiliated with the health maintenance organization could reasonably be expected to cause the enrollee's condition to worsen if left unattended.

"Enrollee" or "member" means an individual who is enrolled in a health care plan.

"Evidence of coverage" means any certificate or individual or group agreement or contract issued in conjunction with the certificate, agreement or contract, issued to a subscriber setting out the coverage and other rights to which an enrollee is entitled.

"Excess insurance" or "stop loss insurance" means insurance issued to a health maintenance organization by an insurer licensed in the Commonwealth, on a form approved by the Commission, or a risk assumption transaction acceptable to the Commission, providing indemnity or reimbursement against the cost of health care services provided by the health maintenance organization.

"Health care plan" means any arrangement in which any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services. A significant part of the arrangement shall consist of arranging for or providing health care services, including emergency services and services rendered by nonparticipating referral providers, as distinguished from mere indemnification against the cost of the services, on a prepaid basis. For purposes of this section, a significant part shall mean at least 90 percent of total costs of health care services.

"Health care services" means the furnishing of services to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

"Health maintenance organization" means any person who undertakes to provide or arrange for one or more health care plans.

"Limited health care services" means dental care services, vision care services, and such other services as may be determined by the Commission to be limited health care services. Limited health care services shall not include hospital, medical, surgical, or emergency services except as such services are provided incident to the limited health care services set forth in the preceding sentence.

"Net worth" or "capital and surplus" means the excess of total admitted assets over the total liabilities of the health maintenance organization, provided that surplus notes shall be reported and accounted for in accordance with guidance set forth in the National Association of Insurance Commissioners (NAIC) accounting practice and procedures manuals.

"Nonparticipating referral provider" means a provider who is not a participating provider but with whom a health maintenance organization has arranged, through referral by its participating providers, to

provide health care services to enrollees. Payment or reimbursement by a health maintenance organization for health care services provided by nonparticipating referral providers may exceed five percent of total costs of health care services, only to the extent that any such excess payment or reimbursement over five percent shall be combined with the costs for services which represent mere indemnification, with the combined amount subject to the combination of limitations set forth in this definition and in this section's definition of health care plan.

"Participating provider" means a provider who has agreed to provide health care services to enrollees and to hold those enrollees harmless from payment with an expectation of receiving payment, other than copayments or deductibles, directly or indirectly from the health maintenance organization.

"Provider" or "health care provider" means any physician, hospital, or other person that is licensed or otherwise authorized in the Commonwealth to furnish health care services.

"Subscriber" means a contract holder, an individual enrollee, or the enrollee in an enrolled family who is responsible for payment to the health maintenance organization or on whose behalf such payment is made.

Drafting note: No change recommended.

§ 38.2-5001. (Effective until January 1, 2018) Definitions.

As used in this chapter:

"Birth-related neurological injury" means injury to the brain or spinal cord of an infant caused by the deprivation of oxygen or mechanical injury occurring in the course of labor, delivery or resuscitation necessitated by a deprivation of oxygen or mechanical injury that occurred in the course of labor or delivery, in a hospital which renders the infant permanently motorically disabled and (i) developmentally disabled or (ii) for infants sufficiently developed to be cognitively evaluated, cognitively disabled. In order to constitute a "birth-related neurological injury" within the meaning of this chapter, such disability shall cause the infant to be permanently in need of assistance in all activities of daily living. This definition shall apply to live births only and shall not include disability or death caused by genetic or congenital abnormality, degenerative neurological disease, or **maternal** substance abuse. The definition provided here shall apply retroactively to any child born on and after January 1, 1988, who suffers from an injury

to the brain or spinal cord caused by the deprivation of oxygen or mechanical injury occurring in the course of labor, delivery or resuscitation in the immediate postdelivery period in a hospital.

"Claimant" means any person who files a claim pursuant to § 38.2-5004 for compensation for a birth-related neurological injury to an infant. Such claims may be filed by any legal representative on behalf of an injured infant; and, in the case of a deceased infant, the claim may be filed by an administrator, executor, or other legal representative.

"Commission" means the Virginia Workers' Compensation Commission.

"Participating hospital" means a general hospital licensed in Virginia which at the time of the injury (i) had in force an agreement with the Commissioner of Health or his designee, in a form prescribed by the Commissioner, whereby the hospital agreed to participate in the development of a program to provide obstetrical care to patients eligible for Medical Assistance Services and to patients who are indigent, and upon approval of such program by the Commissioner of Health, to participate in its implementation, (ii) had in force an agreement with the State Department of Health whereby the hospital agreed to submit to review of its obstetrical service, as required by subsection C of § 38.2-5004, and (iii) had paid the participating hospital assessment pursuant to § 38.2-5020 for the period of time in which the birth-related neurological injury occurred. The term also includes employees of such hospitals, excluding physicians or nurse-midwives who are eligible to qualify as participating physicians, acting in the course of and in the scope of their employment.

"Participating physician" means a physician licensed in Virginia to practice medicine, who practices obstetrics or performs obstetrical services either full or part time or, as authorized in the plan of operation, a licensed nurse-midwife who performs obstetrical services, either full or part time, within the scope of such licensure and who at the time of the injury (i) had in force an agreement with the Commissioner of Health or his designee, in a form prescribed by the Commissioner, whereby the physician agreed to participate in the development of a program to provide obstetrical care to patients eligible for Medical Assistance Services and to patients who are indigent, and upon approval of such program by the Commissioner of Health, to participate in its implementation, (ii) had in force an agreement with the Board of Medicine whereby the physician agreed to submit to review by the Board of

Medicine as required by subsection B of § 38.2-5004, and (iii) had paid the participating physician assessment pursuant to § 38.2-5020 for the period of time in which the birth-related neurological injury occurred. The term "participating physician" includes a partnership, corporation, professional corporation, professional limited liability company or other entity through which the participating physician practices.

"Program" means the Virginia Birth-Related Neurological Injury Compensation Program established by this chapter.

Drafting note: No change recommended.

§ 38.2-5001. (Effective January 1, 2018) Definitions.

As used in this chapter:

"Birth-related neurological injury" means injury to the brain or spinal cord of an infant caused by the deprivation of oxygen or mechanical injury occurring in the course of labor, delivery or resuscitation necessitated by a deprivation of oxygen or mechanical injury that occurred in the course of labor or delivery, in a hospital which renders the infant permanently motorically disabled and (i) developmentally disabled or (ii) for infants sufficiently developed to be cognitively evaluated, cognitively disabled. In order to constitute a "birth-related neurological injury" within the meaning of this chapter, such disability shall cause the infant to be permanently in need of assistance in all activities of daily living. This definition shall apply to live births only and shall not include disability or death caused by genetic or congenital abnormality, degenerative neurological disease, or **maternal** substance abuse.

"Claimant" means any person who files a claim pursuant to § 38.2-5004 for compensation for a birth-related neurological injury to an infant. Such claims may be filed by any legal representative on behalf of an injured infant; and, in the case of a deceased infant, the claim may be filed by an administrator, executor, or other legal representative.

"Commission" means the Virginia Workers' Compensation Commission.

"Participating hospital" means a general hospital licensed in Virginia which at the time of the injury (i) had in force an agreement with the Commissioner of Health or his designee, in a form prescribed by the Commissioner, whereby the hospital agreed to participate in the development of a program to provide obstetrical care to patients eligible for Medical Assistance Services and to patients who are

indigent, and upon approval of such program by the Commissioner of Health, to participate in its implementation, (ii) had in force an agreement with the State Department of Health whereby the hospital agreed to submit to review of its obstetrical service, as required by subsection C of § 38.2-5004, and (iii) had paid the participating hospital assessment pursuant to § 38.2-5020 for the period of time in which the birth-related neurological injury occurred. The term also includes employees of such hospitals, excluding physicians or nurse-midwives who are eligible to qualify as participating physicians, acting in the course of and in the scope of their employment.

"Participating physician" means a physician licensed in Virginia to practice medicine, who practices obstetrics or performs obstetrical services either full or part time or, as authorized in the plan of operation, a licensed nurse-midwife who performs obstetrical services, either full or part time, within the scope of such licensure and who at the time of the injury (i) had in force an agreement with the Commissioner of Health or his designee, in a form prescribed by the Commissioner, whereby the physician agreed to participate in the development of a program to provide obstetrical care to patients eligible for Medical Assistance Services and to patients who are indigent, and upon approval of such program by the Commissioner of Health, to participate in its implementation, (ii) had in force an agreement with the Board of Medicine whereby the physician agreed to submit to review by the Board of Medicine as required by subsection B of § 38.2-5004, and (iii) had paid the participating physician assessment pursuant to § 38.2-5020 for the period of time in which the birth-related neurological injury occurred. The term "participating physician" includes a partnership, corporation, professional corporation, professional limited liability company or other entity through which the participating physician practices.

"Program" means the Virginia Birth-Related Neurological Injury Compensation Program established by this chapter.

Drafting note: No change recommended.

§ 38.2-5002. Virginia Birth-Related Neurological Injury Compensation Program; exclusive remedy; exception.

A. There is hereby established the Virginia Birth-Related Neurological Injury Compensation Program.

B. Except as provided in subsection D, the rights and remedies herein granted to an infant on account of a birth-related neurological injury shall exclude all other rights and remedies of such infant, his personal representative, parents, dependents or next of kin, at common law or otherwise arising out of or related to a medical malpractice claim with respect to such injury to the infant, including any claims by the infant's personal representative, parents, dependents or next of kin that, by substantive law, are derivative of the medical malpractice claim with respect to the infant's injury, including but not limited to claims of emotional distress proximately related to the infant's injury. This subsection shall not be construed to exclude other rights and remedies available to the infant's **mother** arising out of or related to a physical injury, separate and distinct from an injury to the infant, that is suffered by the infant's **mother** during the course of the infant's delivery.

C. Notwithstanding anything to the contrary in this section, a civil action shall not be foreclosed against a physician or a hospital where there is clear and convincing evidence that such physician or hospital intentionally or willfully caused or intended to cause a birth-related neurological injury, provided that such suit is filed prior to and in lieu of payment of an award under this chapter. Such suit shall be filed before the award of the Commission becomes conclusive and binding as provided for in § 38.2-5011.

D. Notwithstanding anything to the contrary in this section, a civil action arising out of or related to a birth-related neurological injury under this chapter, brought by an infant, his personal representative, parents, dependents, or next of kin, shall not be foreclosed against a nonparticipating physician or hospital, provided that (i) no participating physician or hospital shall be made a party to any such action or related action, and (ii) the commencement of any such action, regardless of its outcome, shall constitute an election of remedies, to the exclusion of any claim under this chapter; provided that if claim is made, accepted and benefits are provided by the Fund established under this Virginia Birth-Related Neurological Injury Compensation Program, the Fund shall have the right, and be subrogated, to all of the common law rights, based on negligence or malpractice, which the said infant, his personal representative, parents, dependents or next of kin may have or may have had against the non-participating physician or hospital, as the case may be.

Drafting note: No change recommended.

§ 38.2-5004.1. Notification of possible beneficiaries.

A. Each physician, hospital, and nurse midwife shall disclose in writing to their obstetrical patients, at such time or times and in such detail as the board of directors of the Program shall determine to be appropriate, whether such physician, hospital or nurse midwife is or is not a participating provider under the Program.

B. In addition to any other postpartum materials provided to the **mother** or other appropriate person, every hospital shall provide for each infant who was hospitalized in a neonatal intensive care unit an informational brochure prepared or approved by the board of directors of the Program. The brochure shall describe the rights and limitations under the Program, including the Program's exclusive remedy provision under subsection B of § 38.2-5002.

C. When a claim is made to an insurance company, as described in § 38.2-5020.1, licensed to do business in the Commonwealth of Virginia or to any self-insurer, alleging that a possible birth-related neurological injury or a severe adverse outcome related to a birth has occurred, such insurance company or self-insurer shall report such claim to the Program on a form provided by the Program. Upon receipt of such report, the Program shall inform the parent or parents or guardians of the child on whose behalf such claim has been made of the Program's existence and eligibility requirements.

D. No liability or inference of liability or eligibility shall attach to the making of such report. The making of such report shall not be admissible in any court.

Drafting note: No change recommended.

§ 46.2-221.1. Registration with Selective Service required for issuance of learner's permits, driver's licenses, commercial driver's licenses, and special identification cards to certain applicants.

A. Every **male** applicant for a learner's permit, driver's license, commercial driver's license, special identification card, or renewal of any such permit, license, or card who is less than twenty-six years old and is either a citizen of the United States or an immigrant shall, at the time of his application, be registered in compliance with the requirement of section 3 of the Military Selective Service Act, 50 U.S.C. § 3801 et seq. The application for a learner's permit, driver's license, commercial driver's license, special identification card, or renewal of any such permit, license, or card submitted by any such person shall

indicate either (i) that he is already registered with the Selective Service or (ii) that he authorizes the Department to forward to the Selective Service System the personal information necessary for such registration. This personal information shall be forwarded by the Department to the Selective Service System in an electronic format. The Department shall include on its application forms notice to affected persons that their submission of the application grants their consent to be registered with the Selective Service System, if required to so register by federal law.

Data received by the Selective Service System under this subsection that pertains to any persons less than eighteen years old shall not be used to register that person with the Selective Service until that person is eighteen years old.

B. If the applicant for a learner's permit, driver's license, commercial driver's license, special identification card, or renewal of any such permit, license, or card is a male less than eighteen years old, his application shall be signed by his parent or by the guardian having custody of him. If he has no parent or guardian, then no learner's permit, driver's license, commercial driver's license, or special identification card shall be issued to him or renewed by the Department unless his application is signed by the judge of the juvenile and domestic relations district court of the city or county in which he resides. If the minor making the application is married or otherwise emancipated, in lieu of any parent's, guardian's or judge's signature, the minor may present proper evidence of the solemnization of the marriage or the order of emancipation and sign the application himself. By signing the application as required in this subsection, the parent, guardian, or judge, or emancipated minor shall be deemed to authorize the Department to register the applicant with the Selective Service System as provided in subsection A.

C. If any male applicant for a learner's permit, driver's license, commercial driver's license, special identification card, or renewal of any such permit, license, or card who is required by subsection A to be registered with the Selective Service System declines, refuses, or fails to do so, his application shall be denied.

Drafting note: No change recommended.

§ 46.2-320.1. Other grounds for suspension; nonpayment of child support.

A. The Commissioner may enter into an agreement with the Department of Social Services whereby the Department may suspend or refuse to renew the driver's license of any person upon receipt of notice from the Department of Social Services that the person (i) is delinquent in the payment of child support by 90 days or more or in an amount of $5,000 or more or (ii) has failed to comply with a subpoena, summons, or warrant relating to **paternity** or child support proceedings. A suspension or refusal to renew authorized pursuant to this section shall not be effective until 30 days after service on the delinquent obligor of notice of intent to suspend or refusal to renew. The notice of intent shall be served on the obligor by the Department of Social Services (a) by certified mail, return receipt requested, or by electronic means, sent to the obligor's last known addresses as shown in the records of the Department or the Department of Social Services or (b) pursuant to § 8.01-296, or service may be waived by the obligor in accordance with procedures established by the Department of Social Services. The obligor shall be entitled to a judicial hearing if a request for a hearing is made, in writing, to the Department of Social Services within 10 days from service of the notice of intent. Upon receipt of the request for a hearing, the Department of Social Services shall petition the court that entered or is enforcing the order, requesting a hearing on the proposed suspension or refusal to renew. The court shall authorize the suspension or refusal to renew only if it finds that the obligor's noncompliance with the child support order was willful. Upon a showing by the Department of Social Services that the obligor is delinquent in the payment of child support by 90 days or more or in an amount of $5,000 or more, the burden of proving that the delinquency was not willful shall rest upon the obligor. The Department shall not suspend or refuse to renew the driver's license until a final determination is made by the court.

B. At any time after service of a notice of intent, the person may petition the juvenile and domestic relations district court in the jurisdiction where he resides for the issuance of a restricted license to be used if the suspension or refusal to renew becomes effective. Upon such petition and a finding of good cause, the court may provide that such person be issued a restricted permit to operate a motor vehicle for any of the purposes set forth in subsection E of § 18.2-271.1. A restricted license issued pursuant to this subsection shall not permit any person to operate a commercial motor vehicle as defined in § 46.2-341.4. The court shall order the surrender of the person's license to operate a motor vehicle, to be disposed of in

accordance with the provisions of § 46.2-398, and shall forward to the Commissioner a copy of its order entered pursuant to this subsection. The order shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify him.

C. The Department shall not renew a driver's license or terminate a license suspension imposed pursuant to this section until it has received from the Department of Social Services a certification that the person has (i) paid the delinquency in full; (ii) reached an agreement with the Department of Social Services to satisfy the delinquency within a period not to exceed 10 years, and at least one payment representing at least five percent of the total delinquency or $600, whichever is greater, has been made pursuant to the agreement; (iii) complied with a subpoena, summons, or warrant relating to a **paternity** or child support proceeding; or (iv) completed or is successfully participating in an intensive case monitoring program for child support as ordered by a juvenile and domestic relations district court or as administered by the Department of Social Services. Certification by the Department of Social Services shall be made by electronic or telephonic communication and shall be made on the same work day that payment required by clause (i) or (ii) is made.

D. If a person who has entered into an agreement with the Department of Social Services pursuant to clause (ii) of subsection C fails to comply with the requirements of the agreement, the Department of Social Services shall notify the Department of the person's noncompliance and the Department shall suspend or refuse to renew the driver's license of the person until it has received from the Department of Social Services a certification that the person has paid the delinquency in full or has entered into a subsequent agreement with the Department of Social Services to satisfy the delinquency within a period not to exceed seven years and has made at least one payment of $1,200 or five percent of the total delinquency, whichever is greater, pursuant to the agreement. If the person fails to comply with the terms of a subsequent agreement reached with the Department of Social Services pursuant to this section, without further notice to the person as provided in the subsequent agreement, the Department of Social Services shall notify the Department of the person's noncompliance, and the Department shall suspend or refuse to renew the driver's license of the person. A person who has failed to comply with the terms of a

second or subsequent agreement pursuant to this subsection may be granted a new agreement with the Department of Social Services if the person has made at least one payment of $1,800 or five percent of the total delinquency, whichever is greater, and agrees to a repayment schedule of not more than seven years. Upon receipt of certification from the Department of Social Services of the person's satisfaction of these conditions, the Department shall issue a driver's license to the person or reinstate the person's driver's license. Certification by the Department of Social Services shall be made by electronic or telephonic communication and shall be made on the same work day that payment required by this subsection is made.

Drafting note: No change recommended.

§ 51.1-1110. Short-term disability benefit.

A. Except as provided in subsection D of § 51.1-1103, short-term disability benefits for participating employees shall commence upon the expiration of a seven-calendar-day waiting period. The waiting period shall commence the first day of a disability or of **maternity** leave. If an employee returns to work for one day or less during the seven-calendar-day waiting period but cannot continue to work, the periods worked shall not be considered to have interrupted the seven-calendar-day waiting period. Additionally, the seven-calendar-day waiting period shall not be considered to be interrupted if the employee works 20 hours or less during the waiting period. Short-term disability benefits payable as the result of a catastrophic disability or major chronic condition shall not require a waiting period.

B. Except as provided in subsections C and E of this section and § 51.1-1131, short-term disability coverage shall provide income replacement for a percentage of a participating employee's creditable compensation during the period specified below that an employee is disabled, on **maternity** leave, or takes periodic absences due to a major chronic condition, as determined by the Board or its designee, based on the number of months of state service as an eligible employee, as follows:

a		Work days of 100%	Work days of 80%	Work days of 60%
b	Months of	replacement of	replacement of	replacement of
c	state service	creditable compensation	creditable compensation	creditable compensation
d	Less than 60	5	20	100
e	60 to 119	25	25	75

f	120 to 179	25	50	50
g	180 or more	25	75	25

C. For all eligible employees commencing employment or reemployment on or after July 1, 2009, except as provided in subsections B and E of this section and § 51.1-1131, short-term disability coverage shall provide income replacement for (i) 60 percent of a participating employee's creditable compensation for the first 60 months of continuous state service after employment or reemployment and (ii) thereafter, a percentage of a participating employee's creditable compensation during the periods that he is disabled, on **maternity** leave, or takes periodic absences due to a major chronic condition, based on the number of months of continuous state service, as determined by the Board or its designee, as follows:

a		Work days of 100%	Work days of 80%	Work days of 60%
b	Months of	replacement of	replacement of	replacement of
c	state service	creditable compensation	creditable compensation	creditable compensation
d	60 to 119	25	25	75
e	120 to 179	25	50	50
f	180 or more	25	75	25

D. Creditable compensation during periods an employee receives short-term disability benefits shall include general salary increases awarded during the period of short-term disability coverage.

E. An employee's disability credits may be used, on a day for day basis, to extend the period an employee receives short-term disability benefits paid at 100 percent of replacement of creditable compensation.

F. Short-term disability benefits shall be payable only during periods of (i) total disability, (ii) partial disability, (iii) **maternity** leave, or (iv) periodic absences due to a major chronic condition as defined by the Board or its designee.

Drafting note: No change recommended.

§ 51.1-1121. Supplemental short-term disability benefit.

A. Payments of supplemental short-term disability benefits payable under this article shall be reduced by an amount equal to any benefits paid to the employee under the Act, or which the employee is entitled to receive under the Act, excluding any payments for medical, legal or rehabilitation expenses.

B. Supplemental short-term disability benefits for participating employees shall commence upon the expiration of a seven-calendar-day waiting period. The waiting period shall commence the first day of a disability. If an employee returns to work for one day or less during the seven calendar days following the commencement of a disability but cannot continue to work, the periods worked shall not be considered to have interrupted the seven-calendar-day waiting period. Additionally, the seven-calendar-day waiting period shall not be considered to be interrupted if the employee works 20 hours or less during the waiting period. Short-term disability benefits payable as the result of a catastrophic disability or major chronic condition shall not require a waiting period.

C. Except as provided in subsections D and F and §§ 9.1-401.1 and 51.1-1131, supplemental short-term disability coverage shall provide income replacement for a percentage of a participating employee's creditable compensation during the period specified below that an employee is disabled or takes periodic absences due to a major chronic condition, as determined by the Board or its designee, based on the number of months of state service as an eligible employee, as follows:

	Months of state service	Work days of 100% replacement of creditable compensation	Work days of 80% replacement of creditable compensation	Work days of 60% replacement of creditable compensation
d	Less than 60	65	25	35
e	60 to 119	85	25	15
f	120 or more	85	40	0

D. For all eligible employees commencing employment or reemployment on or after July 1, 2009, except as provided in subsection F and §§ 9.1-401.1 and 51.1-1131, short-term disability coverage shall provide income replacement for (i) 60 percent of a participating employee's creditable compensation for the first 60 months of continuous state service after employment or reemployment and (ii) thereafter, a percentage of a participating employee's creditable compensation during the periods specified below, based on the number of months of continuous state service attained by an employee who is disabled, on **maternity** leave, or takes periodic absences due to a major chronic condition, as determined by the Board or its designee, as follows:

a		Work days of 100%	Work days of 80%	Work days of 60%
b	Months of	replacement of	replacement of	replacement of
c	state service	creditable compensation	creditable compensation	creditable compensation
d	60 to 119	85	25	15
e	120 or more	85	40	0

E. Creditable compensation during periods an employee receives supplemental short-term disability benefits shall include salary increases awarded during the period of short-term disability coverage.

F. An employee's disability credits may be used, on a day for day basis, to extend the period an employee receives supplemental short-term disability benefits paid at 100 percent of replacement of creditable compensation.

G. Supplemental short-term disability benefits shall be payable only during periods of (i) total disability, (ii) partial disability as determined by the Board or its designee, or (iii) periodic absences due to a major chronic condition as defined by the Board or its designee.

Drafting note: No change recommended.

§ 51.1-1155. Short-term disability benefit.

A. Except as provided in subsection B of § 51.1-1153, short-term disability benefits for participating employees shall commence upon the expiration of a seven-calendar-day waiting period. The waiting period shall commence the first day of a disability or of **maternity** leave. If an employee returns to work for one day or less during the seven-calendar-day waiting period but cannot continue to work, the periods worked shall not be considered to have interrupted the seven-calendar-day waiting period. Additionally, the seven-calendar-day waiting period shall not be considered to be interrupted if the employee works 20 hours or less during the waiting period. Short-term disability benefits payable as the result of a catastrophic disability or major chronic condition shall not require a waiting period.

B. Except as provided in § 51.1-1171, short-term disability coverage shall provide income replacement for (i) 60 percent of a participating employee's creditable compensation for the first 60 months of continuous service and (ii) thereafter, a percentage of a participating employee's creditable compensation during the periods specified below, based on the number of months of continuous service

attained by an employee who is disabled, on **maternity** leave, or takes periodic absences due to a major chronic condition, as determined by the Board or its designee, as follows:

	Months of Continuous Service	Work Days of 100% Replacement of Creditable Compensation	Work Days of 80% Replacement of Creditable Compensation	Work Days of 60% Replacement of Creditable Compensation
b	60-119	25	25	75
c	120-179	25	50	50
d	180 or more	25	75	25

C. Creditable compensation during periods an employee receives short-term disability benefits shall include salary increases awarded during the period covered by short-term disability benefits.

D. Short-term disability benefits shall be payable only during periods of (i) total disability, (ii) partial disability, (iii) **maternity** leave, or (iv) periodic absences due to a major chronic condition as defined by the Board or its designee.

Drafting note: No change recommended.

§ 51.1-1163. Supplemental short-term disability benefit.

A. Payments of supplemental short-term disability benefits payable under this article shall be reduced by an amount equal to any benefits paid to the employee under the Act, or which the employee is entitled to receive under the Act, excluding any payments for medical, legal or rehabilitation expenses.

B. Supplemental short-term disability benefits for participating employees shall commence upon the expiration of a seven-calendar-day waiting period. The waiting period shall commence the first day of a disability. If an employee returns to work for one day or less during the seven calendar days following the commencement of a disability but cannot continue to work, the periods worked shall not be considered to have interrupted the seven-calendar-day waiting period. Additionally, the seven-calendar-day waiting period shall not be considered to be interrupted if the employee works 20 hours or less during the waiting period. Short-term disability benefits payable as the result of a catastrophic disability or major chronic condition shall not require any waiting period.

C. Except as provided in § 51.1-1171, supplemental short-term disability coverage shall provide income replacement for (i) 60 percent of a participating employee's creditable compensation for the first 60 months of continuous participation in the program and (ii) thereafter, a percentage of a participating employee's creditable compensation during the periods specified below, based on the number of months

of continuous participation in the program attained by an employee who is disabled, on **maternity** leave, or takes periodic absences due to a major chronic condition, as determined by the Board or its designee, as follows:

	Months of Continuous Participation	Work Days of 100% Replacement of Creditable Compensation	Work Days of 80% Replacement of Creditable Compensation	Work Days of 60% Replacement of Creditable Compensation
b	60 to 119	85	25	15
c	120 or more	85	40	0

D. Creditable compensation during periods an employee receives supplemental short-term disability benefits shall include salary increases awarded during the period of short-term disability coverage.

E. Supplemental short-term disability benefits shall be payable only during periods of total disability, partial disability, or periodic absences due to a major chronic condition as defined by the Board or its designee.

Drafting note: No change recommended.

§ 54.1-512. Exemptions from licensure.

A. In an emergency, the Board may, at its discretion, waive the requirement for asbestos contractor's, supervisor's and worker's licenses.

B. Any employer, and any employee of such employer, who conducts an asbestos project on premises owned or leased by such employer shall be exempt from licensure.

C. Notwithstanding the provisions of the Virginia Tort Claims Act (§ 8.01-195.1 et seq.), neither the Commonwealth nor any agency or employee of the Commonwealth shall be subject to any liability as the result of a determination made by the Board hereunder.

D. Nothing in this chapter shall be construed as requiring the licensure of a contractor who contracts to undertake a project, a portion of which constitutes an asbestos or lead abatement project or renovation, if all of the asbestos or lead abatement work or renovation is subcontracted to a person licensed to perform such work in accordance with the provisions of this chapter.

E. This chapter shall not apply to any person who performs lead-based paint activities within residences which they own, unless the residence is occupied by a person or persons other than the owner

or the owner's immediate family while these activities are being conducted or a child is residing in the property and has been identified as having an elevated blood-lead level.

F. This chapter shall not apply to renovations of owner-occupied housing constructed before 1978, provided the person performing renovations obtains a statement signed by the owner providing that (i) no child under the age of six or pregnant **woman** resides in the structure, (ii) the residence is not a child-occupied facility, and (iii) the owner acknowledges that renovations may not include all of the lead-safe work practices contained in the EPA Lead Renovation, Repair, and Painting Program final rule.

G. This chapter shall not apply to any person who performs renovations on (i) housing constructed after January 1, 1978, (ii) housing for the elderly or persons with disabilities, unless a child under the age of six resides or is expected to reside in the structure, or (iii) a structure that does not have bedrooms.

Drafting note: No change recommended.

§ 54.1-2403.01. Routine component of prenatal care.

A. As a routine component of prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, shall inform every pregnant **woman** who is his patient that human immunodeficiency virus (HIV) screening is recommended for all pregnant patients and that **she** will receive an HIV test as part of the routine panel of prenatal tests unless **she** declines (opt-out screening). The practitioner shall offer the pregnant **woman** oral or written information that includes an explanation of HIV infection, a description of interventions that can reduce HIV transmission from **mother** to infant, and the meaning of positive and negative test results. The confidentiality provisions of § 32.1-36.1, test result disclosure conditions, and appropriate counseling requirements of § 32.1-37.2 shall apply to any HIV testing conducted pursuant to this section. Practitioners shall counsel all pregnant **women** with HIV-positive test results about the dangers to the fetus and the advisability of receiving treatment in accordance with the then current Centers for Disease Control and Prevention recommendations for HIV-positive pregnant **women**. Any pregnant **woman** shall have the right to refuse testing for HIV infection and any recommended treatment. Documentation of such refusal shall be maintained in the patient's medical record.

B. As a routine component of prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, upon receipt of a positive test result from a prenatal test for Down syndrome or other prenatally diagnosed conditions performed on a patient, the health care provider involved may provide the patient with information about the Virginia Department of Health genetics program website and shall provide the patient with up-to-date, scientific written information concerning the life expectancy, clinical course, and intellectual and functional development and treatment options for an unborn child diagnosed with or child born with Down syndrome or other prenatally diagnosed conditions. He may also provide a referral to support services providers, including information hotlines specific to Down syndrome or other prenatally diagnosed conditions, resource centers or clearinghouses, and other education and support programs. For the purposes of this section, "prenatally diagnosed condition" means any fetal health condition identified by prenatal genetic testing or prenatal screening procedures.

Drafting note: No change recommended.

§ 54.1-2403.02. Prenatal education; cord blood banking.

Every practitioner licensed pursuant to this subtitle who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, shall, prior to the beginning of his patient's third trimester of pregnancy or, if later, at the first visit of such pregnant **woman** to the provider, make available to the patient information developed pursuant to subsection A of § 32.1-69.4 relating to the **women's** options with respect to umbilical cord blood banking.

Drafting note: No change recommended.

§ 54.1-2403.1. Protocol for certain medical history screening required.

A. As a routine component of every pregnant **woman's** prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, shall establish and implement a medical history protocol for screening pregnant **women** for substance abuse to determine the need for a specific substance abuse evaluation. The medical history protocol shall include, but need not be limited to, a description of

the screening device and shall address abuse of both legal and illegal substances. The medical history screening may be followed, as necessary and appropriate, with a thorough substance abuse evaluation.

B. The results of such medical history screening and of any specific substance abuse evaluation which may be conducted shall be confidential and, if the **woman** is enrolled in a treatment program operated by any facility receiving federal funds, shall only be released as provided in federal law and regulations. However, if the **woman** is not enrolled in a treatment program or is not enrolled in a program operated by a facility receiving federal funds, the results may only be released to the following persons:

1. The subject of the medical history screening or **her** legally authorized representative.

2. Any person designated in a written release signed by the subject of the medical history screening or **her** legally authorized representative.

3. Health care providers for the purposes of consultation or providing care and treatment to the person who was the subject of the medical history screening.

C. The results of the medical history screening required by this section or any specific substance abuse evaluation which may be conducted as part of the prenatal care shall not be admissible in any criminal proceeding.

D. Practitioners shall advise their patients of the results of the medical history screening and specific substance abuse evaluation, and shall provide such information to third-party payers as may be required for reimbursement of the costs of medical care. However, such information shall not be admissible in any criminal proceedings. Practitioners shall advise all pregnant **women** whose medical history screenings and specific substance abuse evaluations are positive for substance abuse of appropriate treatment and shall inform such **women** of the potential for poor birth outcomes from substance abuse.

Drafting note: No change recommended.

§ 54.1-2722. License; application; qualifications; practice of dental hygiene.

A. No person shall practice dental hygiene unless he possesses a current, active, and valid license from the Board of Dentistry. The licensee shall have the right to practice dental hygiene in the Commonwealth for the period of his license as set by the Board, under the direction of any licensed dentist.

B. An application for such license shall be made to the Board in writing and shall be accompanied by satisfactory proof that the applicant (i) is of good moral character, (ii) is a graduate of a dental hygiene program accredited by the Commission on Dental Accreditation and offered by an accredited institution of higher education, (iii) has passed the dental hygiene examination given by the Joint Commission on Dental Examinations, and (iv) has successfully completed a clinical examination acceptable to the Board.

C. The Board may grant a license to practice dental hygiene to an applicant licensed to practice in another jurisdiction if he (i) meets the requirements of subsection B; (ii) holds a current, unrestricted license to practice dental hygiene in another jurisdiction in the United States; (iii) has not committed any act that would constitute grounds for denial as set forth in § 54.1-2706; and (iv) meets other qualifications as determined in regulations promulgated by the Board.

D. A licensed dental hygienist may, under the direction or general supervision of a licensed dentist and subject to the regulations of the Board, perform services that are educational, diagnostic, therapeutic, or preventive. These services shall not include the establishment of a final diagnosis or treatment plan for a dental patient. Pursuant to subsection V of § 54.1-3408, a licensed dental hygienist may administer topical oral fluorides under an oral or written order or a standing protocol issued by a dentist or a doctor of medicine or osteopathic medicine.

A dentist may also authorize a dental hygienist under his direction to administer Schedule VI nitrous oxide and oxygen inhalation analgesia and, to persons 18 years of age or older, Schedule VI local anesthesia. In its regulations, the Board of Dentistry shall establish the education and training requirements for dental hygienists to administer such controlled substances under a dentist's direction.

For the purposes of this section, "general supervision" means that a dentist has evaluated the patient and prescribed authorized services to be provided by a dental hygienist; however, the dentist need not be present in the facility while the authorized services are being provided.

The Board shall provide for an inactive license for those dental hygienists who hold a current, unrestricted license to practice in the Commonwealth at the time of application for an inactive license and who do not wish to practice in Virginia. The Board shall promulgate such regulations as may be necessary

to carry out the provisions of this section, including requirements for remedial education to activate a license.

E. For the purposes of this subsection, "remote supervision" means that a public health dentist has regular, periodic communications with a public health dental hygienist regarding patient treatment, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.

Notwithstanding any provision of law, a dental hygienist employed by the Virginia Department of Health who holds a license issued by the Board of Dentistry may provide educational and preventative dental care in the Commonwealth under the remote supervision of a dentist employed by the Department of Health. A dental hygienist providing such services shall practice pursuant to a protocol adopted by the Commissioner of Health on September 23, 2010, having been developed jointly by (i) the medical directors of the Cumberland Plateau, Southside, and Lenowisco Health Districts; (ii) dental hygienists employed by the Department of Health; (iii) the Director of the Dental Health Division of the Department of Health; (iv) one representative of the Virginia Dental Association; and (v) one representative of the Virginia Dental Hygienists' Association. Such protocol shall be adopted by the Board as regulations.

A report of services provided by dental hygienists pursuant to such protocol, including their impact upon the oral health of the citizens of the Commonwealth, shall be prepared and submitted by the Department of Health to the Virginia Secretary of Health and Human Resources annually. Nothing in this section shall be construed to authorize or establish the independent practice of dental hygiene.

F. For the purposes of this subsection, "remote supervision" means that a supervising dentist is accessible and available for communication and consultation with a dental hygienist during the delivery of dental hygiene services, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.

Notwithstanding any other provision of law, a dental hygienist may practice dental hygiene under the remote supervision of a dentist who holds an active license by the Board and who has a dental practice

physically located in the Commonwealth. No dental hygienist shall practice under remote supervision unless he has (i) completed a continuing education course designed to develop the competencies needed to provide care under remote supervision offered by an accredited dental education program or from a continuing education provider approved by the Board and (ii) at least two years of clinical experience, consisting of at least 2,500 hours of clinical experience. A dental hygienist practicing under remote supervision shall have professional liability insurance with policy limits acceptable to the supervising dentist. A dental hygienist shall only practice under remote supervision at a federally qualified health center; charitable safety net facility; free clinic; long-term care facility; elementary or secondary school; Head Start program; or **women**, infants, and children (WIC) program.

A dental hygienist practicing under remote supervision may (a) obtain a patient's treatment history and consent, (b) perform an oral assessment, (c) perform scaling and polishing, (d) perform all educational and preventative services, (e) take X-rays as ordered by the supervising dentist or consistent with a standing order, (f) maintain appropriate documentation in the patient's chart, (g) administer topical oral fluorides under an oral or written order or a standing protocol issued by a dentist or a doctor of medicine or osteopathic medicine pursuant to subsection V of § 54.1-3408, and (h) perform any other service ordered by the supervising dentist or required by statute or Board regulation. No dental hygienist practicing under remote supervision shall administer local anesthetic or nitrous oxide.

Prior to providing a patient dental hygiene services, a dental hygienist practicing under remote supervision shall obtain (1) the patient's or the patient's legal representative's signature on a statement disclosing that the delivery of dental hygiene services under remote supervision is not a substitute for the need for regular dental examinations by a dentist and (2) verbal confirmation from the patient that he does not have a dentist of record whom he is seeing regularly.

After conducting an initial oral assessment of a patient, a dental hygienist practicing under remote supervision may provide further dental hygiene services following a written practice protocol developed and provided by the supervising dentist. Such written practice protocol shall consider, at a minimum, the medical complexity of the patient and the presenting signs and symptoms of oral disease.

A dental hygienist practicing under remote supervision shall inform the supervising dentist of all findings for a patient. A dental hygienist practicing under remote supervision may continue to treat a patient for 90 days. After such 90-day period, the supervising dentist, absent emergent circumstances, shall either conduct an examination of the patient or refer the patient to another dentist to conduct an examination. The supervising dentist shall develop a diagnosis and treatment plan for the patient, and either the supervising dentist or the dental hygienist shall provide the treatment plan to the patient. The supervising dentist shall review a patient's records at least once every 10 months.

Nothing in this subsection shall prevent a dental hygienist from practicing dental hygiene under general supervision whether as an employee or as a volunteer.

Drafting note: No change recommended.

§ 54.1-2957.03. Certified nurse midwives; required disclosures; liability.

A. As used in this section, "birthing center" means a facility outside a hospital that provides maternity services.

B. A certified nurse midwife who provides health care services to a patient outside of a hospital or birthing center shall disclose to that patient, when appropriate, information on health risks associated with births outside of a hospital or birthing center, including but not limited to risks associated with vaginal births after a prior cesarean section, breech births, births by **women** experiencing high-risk pregnancies, and births involving multiple gestation.

C. The certified nurse midwife who provided health care to a patient shall be liable for the midwife's negligent, grossly negligent, or willful and wanton acts or omissions. Except as otherwise provided by law, any (i) doctor of medicine or osteopathy who did not collaborate or consult with the midwife regarding the patient and who has not previously treated the patient for this pregnancy, (ii) nurse, (iii) prehospital emergency medical personnel, or (iv) hospital as defined in § 32.1-123 or agents thereof, who provides screening and stabilization health care services to a patient as a result of a certified nurse midwife's negligent, grossly negligent, or willful and wanton acts or omissions, shall be immune from liability for acts or omissions constituting ordinary negligence.

Drafting note: No change recommended.

§ 54.1-2957.7. Licensed midwife and practice of midwifery; definitions.

"Midwife" means any person who provides primary maternity care by affirmative act or conduct prior to, during, and subsequent to childbirth, and who is not licensed as a doctor of medicine or osteopathy or certified nurse midwife.

"Practicing midwifery" means providing primary maternity care that is consistent with a midwife's training, education, and experience to **women** and their newborns throughout the childbearing cycle, and identifying and referring **women** or their newborns who require medical care to an appropriate practitioner.

Drafting note: No change recommended.

§ 54.1-2957.9. Regulation of the practice of midwifery.

The Board shall adopt regulations governing the practice of midwifery, upon consultation with the Advisory Board on Midwifery. The regulations shall (i) address the requirements for licensure to practice midwifery, including the establishment of standards of care, (ii) be consistent with the North American Registry of Midwives' current job description for the profession and the National Association of Certified Professional Midwives' standards of practice, except that prescriptive authority and the possession and administration of controlled substances shall be prohibited, (iii) ensure independent practice, (iv) require midwives to disclose to their patients, when appropriate, options for consultation and referral to a physician and evidence-based information on health risks associated with birth of a child outside of a hospital or birthing center, as defined in § 54.1-2957.03, including risks associated with vaginal births after a prior cesarean section, breech births, births by **women** experiencing high-risk pregnancies, and births involving multiple gestation, (v) provide for an appropriate license fee, and (vi) include requirements for licensure renewal and continuing education. Such regulations shall not (a) require any agreement, written or otherwise, with another health care professional or (b) require the assessment of a **woman** who is seeking midwifery services by another health care professional.

License renewal shall be contingent upon maintaining a Certified Professional Midwife certification.

Drafting note: No change recommended.

§ 54.1-2959. Supervised training programs; students enrolled in schools of medicine or chiropractic schools allowed to engage in certain activities; prohibition of unauthorized pelvic exams.

A. Students enrolled in schools of medicine may (i) participate in preceptorship programs that are a part of the training program of the medical school or (ii) practice in clinics, hospitals, educational institutions, private medical offices, or other health facilities, in a program approved by the school, under the direct tutorial supervision of a licensed physician who holds an appointment on the faculty of a school of medicine approved by the Board.

B. Students enrolled in chiropractic schools may (i) participate in preceptorship programs that are a part of the training program of the chiropractic school or (ii) practice in clinics, hospitals, educational institutions, private medical offices, or other health facilities, in a program approved by the school, under the direct tutorial supervision of a licensed chiropractor who holds an appointment on the faculty of a chiropractic school approved by the Board.

C. Students participating in a course of professional instruction or clinical training program shall not perform a pelvic examination on an anesthetized or unconscious **female** patient unless the patient or **her** authorized agent gives informed consent to such examination, the performance of such examination is within the scope of care ordered for the patient, or in the case of a patient incapable of giving informed consent, the examination is necessary for diagnosis or treatment of such patient.

Drafting note: No change recommended.

§ 54.1-2969. Authority to consent to surgical and medical treatment of certain minors.

A. Whenever any minor who has been separated from the custody of his parent or guardian is in need of surgical or medical treatment, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, as follows:

1. Upon judges with respect to minors whose custody is within the control of their respective courts.

2. Upon local directors of social services or their designees with respect to (i) minors who are committed to the care and custody of the local board by courts of competent jurisdiction, (ii) minors who

are taken into custody pursuant to § 63.2-1517, and (iii) minors who are entrusted to the local board by the parent, parents or guardian, when the consent of the parent or guardian cannot be obtained immediately and, in the absence of such consent, a court order for such treatment cannot be obtained immediately.

3. Upon the Director of the Department of Corrections or the Director of the Department of Juvenile Justice or his designees with respect to any minor who is sentenced or committed to his custody.

4. Upon the principal executive officers of state institutions with respect to the wards of such institutions.

5. Upon the principal executive officer of any other institution or agency legally qualified to receive minors for care and maintenance separated from their parents or guardians, with respect to any minor whose custody is within the control of such institution or agency.

6. Upon any person standing in loco parentis, or upon a conservator or custodian for his ward or other charge under disability.

B. Whenever the consent of the parent or guardian of any minor who is in need of surgical or medical treatment is unobtainable because such parent or guardian is not a resident of the Commonwealth or his whereabouts is unknown or he cannot be consulted with promptness reasonable under the circumstances, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, upon judges of juvenile and domestic relations district courts.

C. Whenever delay in providing medical or surgical treatment to a minor may adversely affect such minor's recovery and no person authorized in this section to consent to such treatment for such minor is available within a reasonable time under the circumstances, no liability shall be imposed upon qualified emergency medical services personnel as defined in § 32.1-111.1 at the scene of an accident, fire or other emergency, a licensed health professional, or a licensed hospital by reason of lack of consent to such medical or surgical treatment. However, in the case of a minor 14 years of age or older who is physically capable of giving consent, such consent shall be obtained first.

D. Whenever delay in providing transportation to a minor from the scene of an accident, fire or other emergency prior to hospital admission may adversely affect such minor's recovery and no person

authorized in this section to consent to such transportation for such minor is available within a reasonable time under the circumstances, no liability shall be imposed upon emergency medical services personnel as defined in § 32.1-111.1, by reason of lack of consent to such transportation. However, in the case of a minor 14 years of age or older who is physically capable of giving consent, such consent shall be obtained first.

E. A minor shall be deemed an adult for the purpose of consenting to:

1. Medical or health services needed to determine the presence of or to treat venereal disease or any infectious or contagious disease that the State Board of Health requires to be reported;

2. Medical or health services required in case of birth control, pregnancy or family planning except for the purposes of sexual sterilization;

3. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for substance abuse as defined in § 37.2-100; or

4. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for mental illness or emotional disturbance.

A minor shall also be deemed an adult for the purpose of accessing or authorizing the disclosure of medical records related to subdivisions 1 through 4.

F. Except for the purposes of sexual sterilization, any minor who is or has been married shall be deemed an adult for the purpose of giving consent to surgical and medical treatment.

G. A pregnant minor shall be deemed an adult for the sole purpose of giving consent for **herself** and **her** child to surgical and medical treatment relating to the delivery of **her** child when such surgical or medical treatment is provided during the delivery of the child or the duration of the hospital admission for such delivery; thereafter, the minor **mother** of such child shall also be deemed an adult for the purpose of giving consent to surgical and medical treatment for **her** child.

H. Any minor 16 years of age or older may, with the consent of a parent or legal guardian, consent to donate blood and may donate blood if such minor meets donor eligibility requirements. However, parental consent to donate blood by any minor 17 years of age shall not be required if such minor receives

no consideration for his blood donation and the procurer of the blood is a nonprofit, voluntary organization.

I. Any judge, local director of social services, Director of the Department of Corrections, Director of the Department of Juvenile Justice, or principal executive officer of any state or other institution or agency who consents to surgical or medical treatment of a minor in accordance with this section shall make a reasonable effort to notify the minor's parent or guardian of such action as soon as practicable.

J. Nothing in subsection G shall be construed to permit a minor to consent to an abortion without complying with § 16.1-241.

K. Nothing in subsection E shall prevent a parent, legal guardian or person standing in loco parentis from obtaining (i) the results of a minor's nondiagnostic drug test when the minor is not receiving care, treatment or rehabilitation for substance abuse as defined in § 37.2-100 or (ii) a minor's other health records, except when the minor's treating physician or the minor's treating clinical psychologist has determined, in the exercise of his professional judgment, that the disclosure of health records to the parent, legal guardian, or person standing in loco parentis would be reasonably likely to cause substantial harm to the minor or another person pursuant to subsection B of § 20-124.6.

Drafting note: No change recommended.

§ 54.1-2971.1. Disclosure for certain treatment of infertility.

Before a physician commences treatment of a patient by in vitro fertilization, gamete intrafallopian tube transfer, or zygote intrafallopian tube transfer, including the administration of drugs for the stimulation or suppression of ovulation prefatory thereto, a disclosure form shall have been executed by the patient which includes, but need not be limited to, the rates of success for the particular procedure at the clinic or hospital where the procedure is to be performed. The information disclosed to the patient shall include the testing protocol used to ensure that gamete donors are free from known infection with human immunodeficiency viruses, the total number of live births, the number of live births as a percentage of completed retrieval cycles, and the rates for clinical pregnancy and delivery per completed retrieval cycle bracketed by age groups consisting of **women** under thirty years of age, **women** aged thirty through

thirty-four years, **women** aged thirty-five through thirty-nine years, and **women** aged forty years and older.

Drafting note: No change recommended.

§ 54.1-3900. Practice of law; student internship program; definition.

Persons who hold a license or certificate to practice law under the laws of this Commonwealth and have paid the license tax prescribed by law may practice law in the Commonwealth.

Any person authorized and practicing as counsel or attorney in any state or territory of the United States, or in the District of Columbia, may for the purpose of attending to any case he may occasionally have in association with a practicing attorney of this Commonwealth practice in the courts of this Commonwealth, in which case no license fee shall be chargeable against such nonresident attorney.

Nothing herein shall prohibit the limited practice of law by military legal assistance attorneys who are employed by a military program providing legal services to low-income military clients and their dependents pursuant to rules promulgated by the Supreme Court of Virginia.

Nothing herein shall prohibit a limited practice of law under the supervision of a practicing attorney by (i) third-year law students or (ii) persons who are in the final year of a program of study as authorized in § 54.1-3926, pursuant to rules promulgated by the Supreme Court of Virginia.

Nothing herein shall prohibit an employee of a state agency in the course of his employment from representing the interests of his agency in administrative hearings before any state agency, such representation to be limited to the examination of witnesses at administrative hearings relating to personnel matters and the adoption of agency standards, policies, rules and regulations.

Nothing herein shall prohibit designated nonattorney employees of the Department of Social Services from completing, signing and filing petitions and motions relating to the establishment, modification, or enforcement of support on forms approved by the Supreme Court of Virginia in Department cases in the juvenile and domestic relations district courts.

Nothing herein shall prohibit designated nonattorney employees of a local department of social services from appearing before an intake officer to initiate a case in accordance with subsection A of § 16.1-260 on behalf of the local department of social services.

Nothing herein shall prohibit designated nonattorney employees of a local department of social services from completing, signing, and filing with the clerk of the juvenile and domestic relations district court, on forms approved by the Supreme Court of Virginia, petitions for foster care review, petitions for permanency planning hearings, petitions to establish **paternity**, motions to establish or modify support, motions to amend or review an order, or motions for a rule to show cause.

As used in this chapter "attorney" means attorney-at-law.

Drafting note: No change recommended.

§ 55-47.1. Tangible personal property.

No presumption of ownership of tangible personal property shall arise by operation of law to prefer one spouse of a marriage over the other if such presumption is based solely on the **sex of the spouse**.

Drafting note: No change recommended.

§ 57-1. Act for religious freedom recited.

The General Assembly, on January 16, 1786, passed an act in the following words:

"Whereas, Almighty God hath created the mind free; that all attempts to influence it by temporal punishment, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who, being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, have established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical, and even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards which, proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors, for

the instruction of mankind; that our civil rights have no dependence on our religious opinions any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow citizens, he has a natural right; that it tends only to corrupt the principles of that religion it is meant to encourage, by bribing, with a monopoly of worldly honors and emoluments, those who will externally profess and conform to it; that though, indeed, those are criminal who do not withstand such temptation, yet, neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he, being of course judge of that tendency, will make his opinions the rules of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government, for its officers to interfere, when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail, if left to **herself**; that **she** is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of **her** natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them:

"Be it enacted by the General Assembly, That no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall be enforced, restrained, molested or burthened, in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities.

"And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding assemblies constituted with powers equal to our own, and that, therefore, to declare this act to be irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind; and

that if any act shall be hereafter passed to repeal the present, or to narrow its operation, such act will be an infringement of natural right."

Drafting note: No change recommended.

§ 58.1-1505. Exemptions.

A. Any aircraft sold to or used by (i) the United States or any of the governmental agencies thereof, (ii) the Commonwealth of Virginia or any political subdivision thereof, (iii) any air carrier operating in intrastate, interstate or foreign commerce providing scheduled air service as defined in § 58.1-1501, (iv) any nonprofit charitable organization that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and that is organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air transportation services using an emergency medical services vehicle for low-income medical patients in the Commonwealth, or (v) an organization that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and that is organized for the primary purpose of distributing food, clothing, medicines and other necessities of life to, and providing shelter for, needy persons in the United States and throughout the world shall be exempt from the tax imposed by this chapter.

B. Aircraft that are (i) considered Warbirds, manufactured and intended for military use, excluding those manufactured after 1954, and (ii) used only for (a) exhibit or display to the general public and otherwise used for educational purposes (including such flights as are necessary for testing, maintaining, or preparing such aircraft for safe operation), or (b) airshow and flight demonstrations (including such flights necessary for testing, maintaining, or preparing such aircraft for safe operation), but not including any aircraft used for commercial purposes, including transportation and other services for a fee, shall be exempt from the tax imposed by this chapter.

C. Beginning July 1, 2011, and ending December 31, 2014, any aircraft purchased or used by a qualified company shall be exempt from the tax imposed by this chapter. For purposes of this subsection, a qualified company shall be an aviation-related company, limited liability company, partnership, or a combination of such entities that have a common ownership interest through a parent, as a direct or indirect subsidiary of a parent, or as affiliated **brother-sister** entities that (i) is headquartered in the

Commonwealth, (ii) between January 1, 2010, and December 31, 2014, makes a new capital investment of at least $4 million in aviation-related real estate and real estate improvements in the Commonwealth on publicly-owned, public-use airports, (iii) between January 1, 2010, and December 31, 2014, creates in the Commonwealth at least 50 new jobs that pay at least one and a half times the prevailing average wage in the locality in which the jobs are located, (iv) owns or uses aircraft that are used primarily for intrastate, interstate, or foreign commerce, and (v) has entered into a memorandum of understanding with the Virginia Economic Development Partnership, after consultation with the Virginia Department of Aviation, on or before December 31, 2014, that at a minimum provides the details for determining the amount of capital investment made and the number of new jobs created, the timeline for achieving the capital investment and new job goals, the repayment obligations should those goals not be achieved, and any conditions under which repayment by the qualifying person claiming the exemption may be required.

D. Any aircraft sold in the Commonwealth as evidenced by Federal Aviation Administration Bill of Sale AC Form 8050-2 and registered outside of the Commonwealth as evidenced by Federal Aviation Administration Aircraft Registration AC Form 8050-1 shall be exempt from the sales tax imposed by this chapter, so long as the aircraft is removed from the Commonwealth within 60 days of the date of purchase on the Bill of Sale. If the aircraft is removed from the Commonwealth within 60 days of the date of purchase, the time between the date of purchase and the removal of the aircraft shall not be counted for purposes of determining whether the aircraft is subject to the use tax imposed by this chapter on aircraft that are based in the Commonwealth for over 60 days in any 12-month period.

Drafting note: No change recommended.

§ 58.1-3833. County food and beverage tax.

A. Any county is hereby authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed four percent of the amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold through vending machines or by (i) boardinghouses that do not accommodate transients; (ii) cafeterias operated by industrial plants for employees only; (iii) restaurants to their employees as part of their compensation when no charge is made to the employee; (iv) volunteer fire departments and

volunteer emergency medical services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations the first three times per calendar year and, beginning with the fourth time, on the first $100,000 of gross receipts per calendar year from sales of food and beverages (excluding gross receipts from the first three times), as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (v) churches that serve meals for their members as a regular part of their religious observances; (vi) public or private elementary or secondary schools or institutions of higher education to their students or employees; (vii) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (viii) day care centers; (ix) homes for the aged, infirm, handicapped, battered **women**, narcotic addicts, or alcoholics; or (x) age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees. Also, the tax shall not be levied on food and beverages: (a) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; or (b) provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations; or (c) provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.

Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.

This tax shall be levied only if the tax is approved in a referendum within the county which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on the filing of a petition signed by a number of registered voters of the county equal in number to 10 percent of the number of voters registered in the county, as appropriate on January 1 of the year in which the petition is filed with the court of such county. However, no referendum initiated by a resolution of the

board of supervisors shall be authorized in a county in the three calendar years subsequent to the electoral defeat of any referendum held pursuant to this section in such county. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such resolution of the board of supervisors or such petition states for what projects and/or purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum shall include language stating for what projects and/or purposes the revenues collected from the tax are to be used.

Any referendum held for the purpose of approving a county food and beverage tax pursuant to this section shall, in the language of the ballot question presented to voters, contain the following text in a paragraph unto itself: "If this food and beverage tax is adopted and a maximum tax rate of four percent is imposed, then the total tax imposed on all prepared food and beverage shall be..." followed by the total, expressed as a percentage, of all existing ad valorem taxes applicable to the transaction added to the four percent county food and beverage tax to be approved by the referendum.

The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.). Collection of such tax shall be in a manner prescribed by the governing body.

B. Notwithstanding the provisions of subsection A, Roanoke County, Rockbridge County, Frederick County, Arlington County, and Montgomery County, are hereby authorized to levy a tax on food and beverages sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as modified in subsection A above and subject to the same exemptions, not to exceed four percent of the amount charged for such food and beverages, provided that the governing body of the respective county holds a public hearing before adopting a local food and beverage tax, and the governing body by unanimous vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe.

C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax. The wrongful and fraudulent use of such collections other than remittance of the same as provided by law shall constitute embezzlement pursuant to § 18.2-111.

D. No county which has heretofore adopted an ordinance pursuant to subsection A shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

E. Notwithstanding any other provision of this section, no locality shall levy any tax under this section upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price, but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the sales price; or (iii) alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

Drafting note: No change recommended.

§ 59.1-310.4. Warning signs.

A. A tanning facility shall post a warning sign in a conspicuous location where it is readily readable by persons entering the establishment. The sign shall contain the following warning:

DANGER: ULTRAVIOLET RADIATION

Repeated exposure to ultraviolet radiation may cause chronic sun damage to the skin characterized by wrinkling, dryness, fragility, and bruising of the skin, and skin cancer.

Failure to use protective eyewear may result in severe burns or

permanent injury to the eyes. Medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician or nurse practitioner before using a sunlamp if you are using medications, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant **women** or **women** taking oral contraceptives who use this product may develop discolored skin.

IF YOU DO NOT TAN IN THE SUN, YOU WILL NOT TAN FROM USE OF AN ULTRAVIOLET SUNLAMP.

B. A tanning facility shall post a warning sign, one sign for each tanning device, in a conspicuous location that is readily readable to a person about to use the device. The sign shall contain the following:

DANGER: ULTRAVIOLET RADIATION

1. Follow the manufacturer's instructions for use of this device.

2. Avoid too frequent or lengthy exposure. As with natural sunlight, exposure can cause serious eye and skin injuries and allergic reactions. Repeated exposure may cause skin cancer.

3. Wear protective eyewear. Failure to use protective eyewear may result in severe burns or permanent damage to the eyes.

4. Do not sunbathe before or after exposure to ultraviolet radiation from sunlamps.

5. Medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician or nurse practitioner before using a sunlamp if you are using medication, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant **women** or **women** using oral contraceptives who use this product may develop discolored skin.

IF YOU DO NOT TAN IN THE SUN, YOU WILL NOT TAN FROM USE OF THIS DEVICE.

Drafting note: No change recommended.

§ 63.2-100. Definitions.

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

"Abused or neglected child" means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child, who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision shall be construed to limit the provisions of § 16.1-278.4;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law;

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis;

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902; or

7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the Trafficking Victims Protection Act of 2000, 22 U.S.C § 7102 et seq., and in the Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

If a civil proceeding under this title is based solely on the parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency medical services agency that employs emergency medical services providers, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult as defined in § 63.2-1603.

"Adult day care center" means any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more aged, infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii) the

home or residence of an individual who cares for only persons related to him by blood or marriage. Included in this definition are any two or more places, establishments or institutions owned, operated or controlled by a single entity and providing such supplementary care and protection to a combined total of four or more aged, infirm or disabled adults.

"Adult exploitation" means the illegal, unauthorized, improper, or fraudulent use of an adult as defined in § 63.2-1603 or his funds, property, benefits, resources, or other assets for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Adult exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services or perform services against his will for another's profit, benefit, or advantage if the adult did not agree, or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or to perform such services.

"Adult foster care" means room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three adults.

"Adult neglect" means that an adult as defined in § 63.2-1603 is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult.

"Adult protective services" means services provided by the local department that are necessary to protect an adult as defined in § 63.2-1603 from abuse, neglect or exploitation.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least a moderate level of assistance with activities of daily living.

"Assisted living facility" means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

"Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive these benefits except for excess income.

"Birth family" or "birth sibling" means the child's biological family or biological sibling.

"Birth parent" means the child's biological parent and, for purposes of adoptive placement, means parent(s) by previous adoption.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age.

"Child day center" means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Child-placing agency" means any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.2-1819 or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child-protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child support services" means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents; establish **paternity**; and establish, modify, enforce, or collect child support, or child and spousal support.

"Child-welfare agency" means a child day center, child-placing agency, children's residential facility, family day home, family day system, or independent foster home.

"Children's residential facility" means any facility, child-caring institution, or group home that is maintained for the purpose of receiving children separated from their parents or guardians for full-time care, maintenance, protection and guidance, or for the purpose of providing independent living services to persons between 18 and 21 years of age who are in the process of transitioning out of foster care. Children's residential facility shall not include:

1. A licensed or accredited educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;

2. An establishment required to be licensed as a summer camp by § 35.1-18; and

3. A licensed or accredited hospital legally maintained as such.

"Commissioner" means the Commissioner of the Department, his designee or authorized representative.

"Department" means the State Department of Social Services.

"Department of Health and Human Services" means the Department of Health and Human Services of the United States government or any department or agency thereof that may hereafter be designated as the agency to administer the Social Security Act, as amended.

"Disposable income" means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

"Energy assistance" means benefits to assist low-income households with their home heating and cooling needs, including, but not limited to, purchase of materials or substances used for home heating, repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving five through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered.

However, a family day home where the children in care are all related to the provider by blood or marriage shall not be required to be licensed.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"General relief" means money payments and other forms of relief made to those persons mentioned in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with § 63.2-401.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8.

"Independent living" means a planned program of services designed to assist a child age 16 and over and persons who are former foster care children between the ages of 18 and 21 in transitioning to self-sufficiency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or

licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years or (ii) is at least 18 years of age but who has not yet reached 21 years of age and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local board of social services. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Kinship care" means the full-time care, nurturing, and protection of children by relatives.

"Local board" means the local board of social services representing one or more counties or cities.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Local director" means the director or his designated representative of the local department of the city or county.

"Merit system plan" means those regulations adopted by the Board in the development and operation of a system of personnel administration meeting requirements of the federal Office of Personnel Management.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child care; and general relief.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for a home and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument for residents of assisted living facilities, or any hospital that has contracted with the Department of Medical Assistance Services to perform nursing facility pre-admission screenings.

"Registered family day home" means any family day home that has met the standards for voluntary registration for such homes pursuant to regulations adopted by the Board and that has obtained a certificate of registration from the Commissioner.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. The definition of "residential living care" includes the services provided by independent living facilities that voluntarily become licensed.

"Sibling" means each of two or more children having one or more parents in common.

"Social services" means foster care, adoption, adoption assistance, child-protective services, domestic violence services, or any other services program implemented in accordance with regulations adopted by the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et

seq.) of Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter 14 of Title 51.5 provided by local departments of social services in accordance with regulations and under the supervision of the Commissioner for Aging and Rehabilitative Services.

"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001.

"Temporary Assistance for Needy Families" or "TANF" means the program administered by the Department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the Temporary Assistance for Needy Families program for families in which both natural or adoptive parents of a child reside in the home and neither parent is exempt from the Virginia Initiative for Employment Not Welfare (VIEW) participation under § 63.2-609.

"Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social Security Act, as amended, and administered by the Department through which foster care is provided on behalf of qualifying children.

Drafting note: No change recommended.

§ 63.2-332. Powers and duties of local directors.

The local director shall be the administrator of the local department and shall serve as secretary to the local board. Under the supervision of the local board, unless otherwise specifically stated, and in cooperation with other public and private agencies, the local director, in addition to the functions, powers and duties conferred and imposed by other provisions of law, shall have the powers and perform the duties contained in this title.

The local director shall designate nonattorney employees who are authorized to (i) initiate a case on behalf of the local department by appearing before an intake officer or (ii) complete, sign, and file with the clerk of the juvenile and domestic relations district court, on forms approved by the Supreme Court of Virginia, petitions for foster care review, petitions for permanency planning hearings, petitions to establish

paternity, motions to establish or modify support, motions to amend or review an order, or motions for a rule to show cause.

Drafting note: No change recommended.

§ 63.2-604. Eligibility for TANF; children born to TANF recipients.

Notwithstanding the provisions of § 63.2-602 and the TANF program regulations, the Board shall revise the schedule of TANF financial assistance to be paid to a family by eliminating the increment in TANF benefits to which a family would otherwise be eligible as a result of the birth of a child during the period of TANF eligibility or during the period in which the family or adult recipient is ineligible for TANF benefits pursuant to a penalty imposed by the Commissioner for failure to comply with benefit eligibility or child support requirements, subsequent to which the family or adult recipient is again eligible for benefits. The Board shall provide that a recipient family in which the **mother** gives birth to an additional child during the period of the **mother's** eligibility for TANF financial assistance, or during a temporary penalty period of ineligibility for financial assistance, may receive additional financial assistance only in the case of a general increase in the amount of TANF financial assistance that is provided to all TANF recipients. Applicants shall receive notice of the provisions of this section at the time of application for TANF. This section shall not apply to legal guardians, grandparents, or other persons in loco parentis who are not the biological or adoptive parents of the child.

There shall be no elimination of the increment in benefits for children born within ten months after the **mother** begins to receive TANF.

A single custodial parent who does not receive additional TANF financial assistance for the birth of a child pursuant to this section shall receive the total value of all child support payments due and collected for such child, and the value of such payments shall not be counted as income for the purposes of TANF eligibility and grant determination.

Drafting note: No change recommended.

§ 63.2-900. Accepting children for placement in homes, facilities, etc., by local boards.

A. Pursuant to § 63.2-319, a local board shall have the right to accept for placement in suitable family homes, children's residential facilities or independent living arrangements, subject to the

supervision of the Commissioner and in accordance with regulations adopted by the Board, such persons under 18 years of age as may be entrusted to it by the parent, parents or guardian, committed by any court of competent jurisdiction, or placed through an agreement between it and the parent, parents or guardians where legal custody remains with the parent, parents, or guardians.

The Board shall adopt regulations for the provision of foster care services by local boards, which shall be directed toward the prevention of unnecessary foster care placements and towards the immediate care of and permanent planning for children in the custody of or placed by local boards and that shall achieve, as quickly as practicable, permanent placements for such children. The local board shall first seek out kinship care options to keep children out of foster care and as a placement option for those children in foster care, if it is in the child's best interests, pursuant to § 63.2-900.1. In cases in which a child cannot be returned to his prior family or placed for adoption and kinship care is not currently in the best interests of the child, the local board shall consider the placement and services that afford the best alternative for protecting the child's welfare. Placements may include but are not limited to family foster care, treatment foster care and residential care. Services may include but are not limited to assessment and stabilization, diligent family search, intensive in-home, intensive wraparound, respite, mentoring, family mentoring, adoption support, supported adoption, crisis stabilization or other community-based services. The Board shall also approve in foster care policy the language of the agreement required in § 63.2-902. The agreement shall include at a minimum a Code of Ethics and mutual responsibilities for all parties to the agreement.

Within 30 days of accepting for foster care placement a person under 18 years of age whose **father** is unknown, the local board shall request a search of the Virginia Birth Father **Registry** established pursuant to Article 7 (§ 63.2-1249 et seq.) of Chapter 12 to determine whether any man has registered as the putative **father** of the child. If the search results indicate that a man has registered as the putative **father** of the child, the local board shall contact the man to begin the process to determine **paternity**.

The local board shall, in accordance with the regulations adopted by the Board and in accordance with the entrustment agreement or other order by which such person is entrusted or committed to its care,

have custody and control of the person so entrusted or committed to it until he is lawfully discharged, has been adopted or has attained his majority.

Whenever a local board places a child where legal custody remains with the parent, parents or guardians, the board shall enter into an agreement with the parent, parents or guardians. The agreement shall specify the responsibilities of each for the care and control of the child.

The local board shall have authority to place for adoption, and to consent to the adoption of, any child properly committed or entrusted to its care when the order of commitment or entrustment agreement between the parent or parents and the agency provides for the termination of all parental rights and responsibilities with respect to the child for the purpose of placing and consenting to the adoption of the child.

The local board shall also have the right to accept temporary custody of any person under 18 years of age taken into custody pursuant to subdivision B of § 16.1-246 or § 63.2-1517. The placement of a child in a foster home, whether within or without the Commonwealth, shall not be for the purpose of adoption unless the placement agreement between the foster parents and the local board specifically so stipulates.

B. Prior to the approval of any family for placement of a child, a home study shall be completed and the prospective foster or adoptive parents shall be informed that information about shaken baby syndrome, its effects, and resources for help and support for caretakers is available on a website maintained by the Department as prescribed in regulations adopted by the Board. Home studies by local boards shall be conducted in accordance with the Mutual Family Assessment home study template and any addenda thereto developed by the Department.

C. Prior to placing any such child in any foster home or children's residential facility, the local board shall enter into a written agreement with the foster parents, pursuant to § 63.2-902, or other appropriate custodian setting forth therein the conditions under which the child is so placed pursuant to § 63.2-902. However, if a child is placed in a children's residential facility licensed as a temporary emergency shelter, and a verbal agreement for placement is secured within eight hours of the child's arrival at the facility, the written agreement does not need to be entered into prior to placement, but shall be

completed and signed by the local board and the facility representative within 24 hours of the child's arrival or by the end of the next business day after the child's arrival.

D. Within 72 hours of placing a child of school age in a foster care placement, as defined in § 63.2-100, the local social services agency making such placement shall, in writing, (i) notify the principal of the school in which the student is to be enrolled and the superintendent of the relevant school division or his designee of such placement, and (ii) inform the principal of the status of the parental rights.

If the documents required for enrollment of the foster child pursuant to § 22.1-3.1, 22.1-270 or 22.1-271.2, are not immediately available upon taking the child into custody, the placing social services agency shall obtain and produce or otherwise ensure compliance with such requirements for the foster child within 30 days after the child's enrollment.

Drafting note: No change recommended.

§ 63.2-903. Entrustment agreements; adoption.

A. Whenever a local board accepts custody of a child pursuant to an entrustment agreement entered into under the authority of § 63.2-900, or a licensed child-placing agency accepts custody of a child pursuant to an entrustment agreement entered into under the authority of § 63.2-1817, in the city or county juvenile and domestic relations district court a petition for approval of the entrustment agreement (i) shall be filed within a reasonable period of time, not to exceed 89 days after the execution of an entrustment agreement for less than 90 days, if the child is not returned to his home within that period; (ii) shall be filed within a reasonable period of time, not to exceed 30 days after the execution of an entrustment agreement for 90 days or longer or for an unspecified period of time, if such entrustment agreement does not provide for the termination of all parental rights and responsibilities with respect to the child; and (iii) may be filed in the case of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child.

B. For purposes of §§ 63.2-900, 63.2-1817 and this section, a parent who is less than 18 years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement that provides for the termination of all parental rights and responsibilities, and shall be as fully bound thereby as if such parent had attained the age of 18 years. An

entrustment agreement for the termination of all parental rights and responsibilities shall be executed in writing and notarized. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the father of a child born out of wedlock if the identity of the **father** is not reasonably ascertainable, or if such **father** is given notice of the entrustment by registered or certified mail to his last known address and fails to object to the entrustment within 15 days of mailing of such notice. An affidavit of the mother that the identity of the **father** is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the **father** is reasonably ascertainable. For purposes of determining whether the identity of the **father** is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the **mother** and the **father**.

C. An entrustment agreement for the termination of parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth **father** of a child when such **father** has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.

D. A child may be placed for adoption by a licensed child-placing agency or a local board, in accordance with the provisions of § 63.2-1221.

Drafting note: No change recommended.

§ 63.2-1203. When consent is withheld or unobtainable.

A. If, after consideration of the evidence, the circuit court finds that the valid consent of any person or agency whose consent is required is withheld contrary to the best interests of the child as set forth in § 63.2-1205, or is unobtainable, the circuit court may grant the petition without such consent:

1. Fifteen days after personal service of notice of petition on the party or parties whose consent is required by this section;

2. If personal service is unobtainable, 10 days after the completion of the execution of an order of publication against the party or parties whose consent is required by this section concerning the petition;

3. If a birth parent is deceased, upon the filing of a death certificate for a deceased birth parent with the court; or

4. If the judge certifies on the record that the identity of any person whose consent is hereinabove required is not reasonably ascertainable.

An affidavit of the birth **mother** that the identity of the birth **father** is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the circuit court that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the birth **father** is reasonably ascertainable. For purposes of determining whether the identity of the birth **father** is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the birth **mother** and the birth **father**.

B. If the child is not in the custody of a child-placing agency and both parents are deceased, the circuit court, after hearing evidence to that effect, may grant the petition without the filing of any consent.

C. In an adoption proceeding where the consent of a birth parent is required, but the petition for adoption alleges that the birth parent is withholding consent to the adoption, the court shall provide written notice to the birth parent of his right to be represented by counsel prior to any hearing or decision on the petition. Upon request, the court shall appoint counsel for any such birth parent if such parent has been determined to be indigent by the court pursuant to § 19.2-159.

Drafting note: No change recommended.

§ 63.2-1249. Establishment of Registry.

A. A Virginia Birth **Father** Registry is hereby established in the Department of Social Services.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Birth **Father** Registry Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected under § 63.2-1201 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year

shall not revert to the general fund by shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of administration of the Virginia Birth **Father** Registry. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner or his designee.

Drafting note: No change recommended.

§ 63.2-1251. Furnishing information; confidentiality; penalty.

A. The Department is not required to locate the **mother** of a child who is the subject of a registration, but the Department shall send a copy of the notice of registration to the **mother** if an address is provided.

B. Information contained in the registry is confidential and may only be released on request to:

1. A court or a person designated by the court;

2. The **mother** of the child who is the subject of the registration;

3. An agency authorized by law to receive such information;

4. A licensed child-placing agency;

5. A support enforcement agency;

6. The child's guardian ad litem;

7. A party or the party's attorney of record in an adoption proceeding, custody proceeding, **paternity** proceeding, or in a proceeding of termination of parental rights, regarding a child who is the subject of the registration;

8. A putative **father** registry in another state; and

9. A local department of social services for the purpose of establishing **paternity** of a child accepted for placement by a local board pursuant to § 63.2-900.

C. Information contained in the registry shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

D. An individual who intentionally releases information from the registry to an individual or agency not authorized to receive the information in this section is guilty of a Class 4 misdemeanor.

Drafting note: No change recommended.

§ 63.2-1252. Search of registry.

A. If no **father-child** relationship has been established pursuant to § 20-49.1, a petitioner for adoption shall obtain from the Department a certificate that a search of the Virginia Birth **Father** Registry was performed. If the conception or birth of the child occurred in another state, a petitioner for adoption shall obtain a certificate from that state indicating that a search of the putative **father** registry was performed, if that state has a putative **father** registry.

B. The Department shall furnish to the requester a certificate of search of the registry upon the request of an individual, court, or agency listed in § 63.2-1251. Any such certificate shall be signed on behalf of the Department and state that a search has been made of the registry and a registration containing the information required to identify the registrant has been found and is attached to the certificate of search or has not been found. Within four business days from the receipt of the request, the Department shall mail the certificate to the requestor by United States mail. Upon request of the requestor and payment of any additional costs, the Department shall have the certificate delivered to the requestor by overnight mail, in person, by messenger, by facsimile or other electronic communication. The Department's certificate or an appropriate certificate from another state shall be sufficient proof the registry was searched.

C. A petitioner shall file the certificate of search with the court before a proceeding for adoption of, or termination of parental rights regarding, a child may be concluded.

D. A certificate of search of the Virginia Birth **Father** Registry is admissible in a proceeding for adoption of, or termination of parental rights regarding, a child and, if relevant, in other legal proceedings.

Drafting note: No change recommended.

§ 63.2-1253. Duty to publicize registry.

A. The Department shall produce and distribute a pamphlet or other publication informing the public about the Virginia Birth **Father** Registry including (i) the procedures for voluntary acknowledgement of **paternity**, (ii) the consequences of acknowledgement and failure to acknowledge **paternity** pursuant to § 20-49.1, (iii) a description of the Virginia Birth **Father** Registry including to whom and under what circumstances it applies, (iv) the time limits and responsibilities for filing, (v) **paternal** rights and associated responsibilities, and (vi) other appropriate provisions of this article.

B. Such pamphlet or publication shall include a detachable form that meets the requirements of subsection H of § 63.2-1250, is suitable for United States mail, and is addressed to the Virginia Birth **Father** Registry. Such pamphlet or publication shall be made available for distribution at all offices of the Department of Health and all local departments of social services. The Department shall also provide such pamphlets or publications to hospitals, libraries, medical clinics, schools, baccalaureate institutions of higher education, and other providers of child-related services upon request.

C. The Department shall provide information to the public at large by way of general public service announcements, or other ways to deliver information to the public about the Virginia Birth **Father** Registry and its services.

Drafting note: No change recommended.

§ 63.2-1506. Family assessments by local departments.

A. A family assessment requires the collection of information necessary to determine:

1. The immediate safety needs of the child;

2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;

3. Risk of future harm to the child;

4. Whether the **mother** of a child who was exposed in utero to a controlled substance sought substance abuse counseling or treatment prior to the child's birth; and

5. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services.

B. When a local department has been designated as a child-protective services differential response system participant by the Department pursuant to § 63.2-1504 and responds to the report or complaint by conducting a family assessment, the local department shall:

1. Conduct an immediate family assessment and, if the report or complaint was based upon one of the factors specified in subsection B of § 63.2-1509, the local department may file a petition pursuant to § 16.1-241.3;

2. Immediately contact the subject of the report and the family of the child alleged to have been abused or neglected and give each a written and an oral explanation of the family assessment procedure. The family assessment shall be in writing and shall be completed in accordance with Board regulation;

3. Complete the family assessment within 45 days and transmit a report to such effect to the Department and to the person who is the subject of the family assessment. However, upon written justification by the local department, the family assessment may be extended, not to exceed a total of 60 days;

4. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and his family. Families have the option of declining the services offered as a result of the family assessment. If the family declines the services, the case shall be closed unless the local department determines that sufficient cause exists to redetermine the case as one that needs to be investigated. In no instance shall a case be redetermined as an investigation solely because the family declines services;

5. Petition the court for services deemed necessary;

6. Make no disposition of founded or unfounded for reports in which a family assessment is completed. Reports in which a family assessment is completed shall not be entered into the central registry contained in § 63.2-1515; and

7. Commence an immediate investigation, if at any time during the completion of the family assessment, the local department determines that an investigation is required.

C. When a local department has been designated as a child-protective services differential response agency by the Department, the local department may investigate any report of child abuse or neglect, but the following valid reports of child abuse or neglect shall be investigated: (i) sexual abuse, (ii) child fatality, (iii) abuse or neglect resulting in serious injury as defined in § 18.2-371.1, (iv) child has been taken into the custody of the local department, or (v) cases involving a caretaker at a state-licensed child day center, religiously exempt child day center, licensed, registered or approved family day home, private or public school, hospital or any institution. If a report or complaint is based upon one of the factors specified in subsection B of § 63.2-1509, the local department shall (a) conduct a family assessment,

unless an investigation is required pursuant to this subsection or other provision of law or is necessary to protect the safety of the child, and (b) develop a plan of safe care in accordance with federal law, regardless of whether the local department makes a finding of abuse or neglect.

Drafting note: No change recommended.

§ 63.2-1902. Central unit for information and administration; request and receipt of information from other entities and agencies; disclosure of such information.

The Department is authorized and directed to establish a central unit within the Department to administer the Title IV D State Plan according to 45 C.F.R. 302.12. The central unit shall have the statewide jurisdiction and authority to:

1. Establish a registry for the receipt of information;

2. Answer interstate inquiries concerning noncustodial parents;

3. Coordinate and supervise departmental activities in relation to noncustodial parents to ensure effective cooperation with law-enforcement agencies; and

4. Contract and enter into cooperative agreements with individuals and agencies including law-enforcement agencies, in order that they may assist the Department in its responsibilities.

The central unit within the Department shall supervise offices whose primary functions are:

a. Location of absent noncustodial parents;

b. Assessment of the ability of parents to pay child or child and spousal support and to obtain health care coverage or cash medical support, or both, for dependent children;

c. Establishment, modification and enforcement of support obligations including health care coverage for dependent children, through administrative action;

d. Preparation of individual cases for court action existing under all laws of the Commonwealth;

e. Ensuring on a consistent basis that support continues in all cases in which support is assessed administratively or ordered by the court; and

f. Provision of its services in establishing **paternity** and establishing and enforcing support obligations equally to public-assisted and nonpublic-assisted families.

To effectuate the purposes of this section, the Commissioner may request and shall receive from the records of state, county and local agencies within and without the Commonwealth, including but not limited to such agencies and entities responsible for vital records; tax and revenue; real and titled personal property; authorizations to engage in a business, trade, profession or occupation; employment security; motor vehicle licensing and registration; public assistance programs and corrections, all information and assistance as authorized by this chapter. The Commissioner may request from state and local criminal justice agencies within the Commonwealth assistance in locating and serving individuals who owe child support and have an outstanding civil show cause summons or capias pursuant to § 16.1-278.16. Solely for the purposes of obtaining motor vehicle licensing and registration information from entities within and without the Commonwealth, the Division of Child Support Enforcement shall be deemed to be a criminal justice agency.

With respect to individuals who owe child support or are alleged in a pending **paternity** proceeding to be a putative **father**, the Commissioner may request and shall receive the names and addresses of such individuals and the names and addresses of such individuals' employers as appearing in the customer records of public service corporations and companies as defined in § 56-1, cable television companies and financial institutions. All state, county and city departments, boards, bureaus or other entities or agencies, officers and employees shall cooperate in the location of noncustodial parents who have abandoned or deserted, or are failing to support, children and their custodial parents and shall on request supply the Department with all information on hand relative to the location, income, benefits and property of such noncustodial parents, notwithstanding any provision of law making such information confidential. These entities are authorized to provide such information as is necessary for this purpose. Only information directly bearing on the identity and whereabouts of a person owing or asserted to be owing an obligation of support shall be requested and used or transmitted by the Commissioner. The Commissioner may make such information available only to public officials, agencies and political subdivisions of this Commonwealth, and other states seeking to locate parents who have deserted their children and other persons liable for support of dependents for the purpose of enforcing their liability for

support. A civil penalty not to exceed $1,000 may be assessed by the Commissioner for a failure to respond to a request for information made in accordance with this section.

Any public or private person, partnership, firm, corporation or association, any financial institution and any political subdivision, department or other entity of the Commonwealth who in good faith and in the absence of gross negligence, willful misconduct or breach of an ethical duty, provide information requested pursuant to this section shall be immune from liability, civil or criminal, that might otherwise result from the release of such information to the Department.

Drafting note: No change recommended.

§ 63.2-1904. Administrative support remedies available for individuals not receiving public assistance; fees.

The Department shall make available to those individuals not receiving public assistance, upon receipt of an authorization to seek or enforce a support obligation the same support services provided to recipients of public assistance. These services may include, but are not limited to:

1. Locating noncustodial parents to obtain child support;

2. Establishing **paternity**;

3. Establishing or modifying child support obligations, that shall include a provision for health care coverage for dependent children of the parents; and

4. Enforcing and collecting child support obligations; however, the only support in arrears that may be enforced by administrative action is (i) arrearages accrued or accruing under a court order or decree or (ii) arrearages on an administrative order accruing from the entry of such administrative order.

No individual shall be required to obtain support services from the Department prior to commencing a judicial proceeding to establish, modify, enforce or collect a child support obligation.

The Board shall charge the following fees:

a. One dollar, upon application for services pursuant to this section. At the option of the Department, the fee may be paid by the Department on behalf of the applicants;

b. Twenty-five dollars, for the cost of reopening a case within six months of requesting case closure; and

c. Twenty-five dollars per federal fiscal year in each case of an obligee who has never received assistance pursuant to the Temporary Assistance for Needy Families Program and for whom the Department has collected at least $500 of child support annually.

The Department is further designated as the public entity responsible for implementing immediate income withholding pursuant to § 466 of the Social Security Act, as amended.

Drafting note: No change recommended.

§ 63.2-1905. Establishment of State Case Registry.

The Department shall keep and maintain a State Case Registry (Registry) that contains case records of services provided by the Division of Child Support Enforcement, as well as each support order established or modified in the Commonwealth. Records contained in this Registry shall be promptly updated, maintained, and regularly monitored, and shall include (i) information on administrative actions and administrative and judicial proceedings and orders relating to **paternity** establishment and support; (ii) information obtained from comparison with federal, state or local sources of information; (iii) information on support collections and distributions; and (iv) any other relevant information. The Supreme Court of Virginia shall report information concerning judicial proceedings and orders relating to **paternity** and support to the Department. The Department shall be permitted to disseminate Registry information for information comparisons with other state and federal agencies, and as may be required pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) and any regulations adopted thereto. Such information comparison activities shall include the following: (a) Federal Case Registry of Child Support Orders, (b) Federal Parent Locator Service, (c) Temporary Assistance for Needy Families and Medicaid, and (d) intrastate and interstate information comparisons.

Drafting note: No change recommended.

§ 63.2-1913. Administrative establishment of *paternity*.

The Department may establish the parent and child relationship between a child and a man upon request, verified by oath or affirmation, filed by a child, a parent, a person claiming parentage, a person standing in loco parentis to the child or having legal custody of the child, or a representative of the

Department or the Department of Juvenile Justice. The request may be filed at any time before the child attains the age of eighteen years.

Pursuant to subsection F of § 63.2-1903, the Department may summons a parent or putative parent to appear in the office of the Division of Child Support Enforcement to provide such information as may be necessary to the proceeding.

Paternity may be established by a written statement of the **father and mother** made under oath acknowledging **paternity** or scientifically reliable genetic tests, including blood tests, which affirm at least a ninety-eight percent probability of **paternity**. The Department may order genetic testing and shall pay the costs of such tests, subject to recoupment from the **father**, if **paternity** is established. Where an original test is contested and additional testing is requested, the Department may require advance payment by the contestant.

Before a voluntary acknowledgment of **paternity** is accepted by the Department as the basis for establishing **paternity**, the Department shall provide to both the **mother** and the putative **father** a written and oral description of the rights and responsibilities of acknowledging **paternity** and the consequences that arise from a signed acknowledgment, including the right to rescind the acknowledgment within the earlier of (i) sixty days from the date of signing or (ii) the date of entry of an order in an administrative or judicial proceeding relating to the child in which the signatory is a party.

A genetic test result affirming at least a ninety-eight percent probability of **paternity** shall have the same legal effect as a judgment entered pursuant to § 20-49.8. When sixty days have elapsed from its signing, a voluntary statement acknowledging **paternity** shall have the same legal effect as a judgment entered pursuant to § 20-49.8 and shall be binding and conclusive unless, in a subsequent judicial proceeding, the person challenging the statement establishes that the statement resulted from fraud, duress or a material mistake of fact. In any subsequent proceeding in which a statement acknowledging **paternity** is subject to challenge, the legal responsibilities of any person signing it shall not be suspended during the pendency of the proceeding, except for good cause shown.

The order of the Department in proceedings pursuant to this section shall be served upon the putative **father** in accordance with the provisions of Chapter 8 (§ 8.01-285 et seq.) or Chapter 9 (§ 8.01-

328 et seq.) of Title 8.01. The Department shall file a copy of its order determining **paternity**, including the information required by subsection C of § 20-49.8, with the State Registrar of Vital Records within thirty days after the acknowledgment becomes binding and conclusive or the order otherwise becomes final. No judicial or administrative proceeding shall be required to ratify an unchallenged acknowledgment of **paternity** nor shall the Department or the courts have any jurisdiction over proceedings to ratify an unchallenged acknowledgment.

Drafting note: No change recommended.

§ 63.2-1914. Hospital *paternity* establishment programs.

Each public and private birthing hospital in the Commonwealth shall provide unwed parents the opportunity to legally establish the **paternity** of a child prior to the child's discharge from the hospital following birth, by means of a voluntary acknowledgment of **paternity** signed by the **mother** and the **father**, under oath.

Birthing hospitals are defined as hospitals with licensed obstetric-care units, hospitals licensed to provide obstetric services, or licensed birthing centers associated with a hospital. Birthing centers are facilities outside hospitals that provide maternity services.

Designated staff members of such hospitals shall provide to both the **mother** and the alleged **father**, if he is present at the hospital, (i) written materials regarding **paternity** establishment, (ii) the forms necessary to voluntarily acknowledge **paternity**, (iii) a written and oral description of the rights and responsibilities of acknowledging **paternity**, and (iv) the opportunity, prior to the child's discharge from the hospital, to speak with staff who are trained to provide information and answer questions about **paternity** establishment. The provision by designated hospital staff members of the information required by this section, consistent with federal regulations, shall not constitute the unauthorized practice of law pursuant to Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1.

Hospitals shall send the original acknowledgment of **paternity** containing the social security numbers, if available, of both parents, with the information required by Article 2 (§ 32.1-257 et seq.) of Chapter 7 of Title 32.1, to the State Registrar of Vital Records so that the birth certificate issued includes the name of the legal **father** of the child.

The Department shall (a) provide to birthing hospitals all necessary materials and forms, and a written description of the rights and responsibilities related to voluntary acknowledgment of **paternity**; (b) provide the necessary training, guidance and written instructions regarding voluntary acknowledgment of **paternity**; (c) annually assess each birthing hospital's **paternity** establishment program; (d) pay to each hospital an amount determined by regulation of the Board for each acknowledgment of **paternity** signed under oath by both parents; and (e) determine if a voluntary acknowledgment has been filed with the State Registrar of Vital Records in cases applying for **paternity** establishment services.

Drafting note: No change recommended.

§ 63.2-1916. Notice of administrative support order; contents; hearing; modification.

The Commissioner may proceed against a noncustodial parent whose support debt has accrued or is accruing based upon subrogation to, assignment of, or authorization to enforce a support obligation. Such obligation may be created by a court order for support of a child or child and spouse or decree of divorce ordering support of a child or child and spouse. In the absence of such a court order or decree of divorce, the Commissioner may, pursuant to this chapter, proceed against a person whose support debt has accrued or is accruing based upon payment of public assistance or who has a responsibility for the support of any dependent child or children and their custodial parent. The administrative support order shall also provide that support shall continue to be paid for any child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until such child reaches the age of 19 or graduates from high school, whichever comes first. The Commissioner shall initiate proceedings by issuing notice containing the administrative support order which shall become effective unless timely contested. The notice shall be served upon the debtor (a) in accordance with the provisions of § 8.01-296, 8.01-327 or 8.01-329 or (b) by certified mail, return receipt requested, or by electronic means, or the debtor may accept service by signing a formal waiver. A copy of the notice shall be provided to the obligee. The notice shall include the following:

1. A statement of the support debt or obligation accrued or accruing and the basis and authority under which the assessment of the debt or obligation was made. The initial administrative support order shall be effective on the date of service and the first monthly payment shall be due on the first of the month

following the date of service and the first of each month thereafter. A modified administrative support order shall be effective the date that notice of the review is served on the nonrequesting party, and the first monthly payment shall be due on the first day of the month following the date of such service and on the first day of each month thereafter. In addition, an amount shall be assessed for the partial month between the effective date of the order and the date that the first monthly payment is due. The assessment for the initial partial month shall be prorated from the effective date through the end of that month, based on the current monthly obligation. All payments are to be credited to current support obligations first, with any payment in excess of the current obligation applied to arrearages, if any;

2. A statement of the name, date of birth, and last four digits of the social security number of the child or children for whom support is being sought;

3. A statement that support shall continue to be paid for any child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the party seeking or receiving child support, until such child reaches the age of 19 or graduates from high school, whichever comes first;

4. A demand for immediate payment of the support debt or obligation or, in the alternative, a demand that the debtor file an answer with the Commissioner within 10 days of the date of service of the notice stating his defenses to liability;

5. If known, the full name, date of birth, and last four digits of the social security number of each parent of the child; however, when a protective order has been issued or the Department otherwise finds reason to believe that a party is at risk of physical or emotional harm from the other party, only the name of the party at risk shall be included in the order;

6. A statement that if no answer is made on or before 10 days from the date of service of the notice, the administrative support order shall be final and enforceable, and the support debt shall be assessed and determined subject to computation, and is subject to collection action;

7. A statement that the debtor may be subject to mandatory withholding of income, the interception of state or federal tax refunds, interception of payments due to the debtor from the Commonwealth, notification of arrearage information to consumer reporting agencies, passport denial or suspension, or

incarceration and that the debtor's property will be subject to lien and foreclosure, distraint, seizure and sale, an order to withhold and deliver, or withholding of income;

8. A statement that the parents shall keep the Department informed regarding access to health insurance coverage and health insurance policy information and a statement that health care coverage shall be required for the parents' dependent children if available at reasonable cost as defined in § 63.2-1900, or pursuant to subsection A of § 63.2-1903. If a child is enrolled in Department-sponsored health care coverage, the Department shall collect the cost of the coverage pursuant to subsection E of § 20-108.2;

9. A statement of each party's right to appeal and the procedures applicable to appeals from the decision of the Commissioner;

10. A statement that the obligor's income shall be immediately withheld to comply with this order unless the obligee, or the Department, if the obligee is receiving public assistance, and obligor agree to an alternative arrangement;

11. A statement that any determination of a support obligation under this section creates a judgment by operation of law and as such is entitled to full faith and credit in any other state or jurisdiction;

12. A statement that each party shall give the Department written notice of any change in his address, including email address, or phone number, including cell phone number, within 30 days;

13. A statement that each party shall keep the Department informed of the name, telephone number and address of his current employer;

14. A statement that if any arrearages for child support, including interest or fees, exist at the time the youngest child included in the order emancipates, payments shall continue in the total amount due (current support plus amount applied toward arrearages) at the time of emancipation until all arrearages are paid;

15. A statement that a petition may be filed for suspension of any license, certificate, registration, or other authorization to engage in a profession, trade, business, occupation, or recreational activity issued by the Commonwealth to a parent as provided in § 63.2-1937 upon a delinquency for a period of 90 days or more or in amount of $5,000 or more. The order shall indicate whether either or both parents currently hold such an authorization and, if so, the type of authorization held;

16. A statement that the Department of Motor Vehicles may suspend or refuse to renew the driver's license of any person upon receipt of notice from the Department of Social Services that the person (i) is delinquent in the payment of child support by 90 days or in an amount of $5,000 or more or (ii) has failed to comply with a subpoena, summons, or warrant relating to **paternity** or child support proceedings; and

17. A statement that on and after July 1, 1994, the Department of Social Services, as provided in § 63.2-1921 and in accordance with § 20-108.2, may initiate a review of the amount of support ordered by any court.

If no answer is received by the Commissioner within 10 days of the date of service or acceptance, the administrative support order shall be effective as provided in the notice. The Commissioner may initiate collection procedures pursuant to this chapter, Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 or Title 20. The debtor and the obligee have 10 days from the date of receipt of the notice to file an answer with the Commissioner to exercise the right to an administrative hearing.

Any changes in the amount of the administrative order must be made pursuant to this section. In no event shall an administrative hearing alter or amend the amount or terms of any court order for support or decree of divorce ordering support. No administrative support order may be retroactively modified, but may be modified from the date that notice of the review has been served on the nonrequesting party. Notice of each review shall be served on the nonrequesting party (1) in accordance with the provisions of § 8.01-296, 8.01-327, or 8.01-329, (2) by certified mail, return receipt requested, (3) by electronic means, or (4) by the nonrequesting party executing a waiver. The existence of an administrative order shall not preclude either an obligor or obligee from commencing appropriate proceedings in a juvenile and domestic relations district court or a circuit court.

Drafting note: No change recommended.

§ 63.2-1937. Applications for occupational or other license to include social security or control number; suspension upon delinquency; procedure.

Every initial application for or application for renewal of a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth pursuant to Titles 22.1, 38.2, 46.2 or 54.1 or any other provision of law shall require that the applicant

provide his social security number or a control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.

Upon 30 days' notice to an obligor who (i) has failed to comply with a subpoena, summons or warrant relating to **paternity** or child support proceedings or (ii) is alleged to be delinquent in the payment of child support by a period of 90 days or more or for $5,000 or more, an obligee or the Department on behalf of an obligee, may petition either the court that entered or the court that is enforcing the order for child support for an order suspending any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation, or recreational activity issued to the obligor by the Commonwealth pursuant to Titles 22.1, 29.1, 38.2, 46.2 or 54.1 or any other provision of law. The notice shall be sent in accordance with the provisions of § 8.01-296, 8.01-327, or 8.01-329, by certified mail, with proof of actual receipt, or by electronic means. The notice shall specify that (a) the obligor has 30 days from the date of receipt to comply with the subpoena, summons or warrant or pay the delinquency or to reach an agreement with the obligee or the Department to pay the delinquency and (b) if compliance is not forthcoming or payment is not made or an agreement cannot be reached within that time, a petition will be filed seeking suspension of any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation, or recreational license issued by the Commonwealth to the obligor.

The court shall not suspend a license, certificate, registration or authorization upon finding that an alternate remedy is available to the obligee or the Department that is likely to result in collection of the delinquency. Further, the court may refuse to order the suspension upon finding that (1) suspension would result in irreparable harm to the obligor or employees of the obligor or would not result in collection of the delinquency or (2) the obligor has made a demonstrated, good faith effort to reach an agreement with the obligee or the Department.

If the court finds that the obligor is delinquent in the payment of child support by 90 days or more or in an amount of $5,000 or more and holds a license, certificate, registration or other authority to engage in a business, trade, profession or occupation or recreational activity issued by the Commonwealth, it shall order suspension. The order shall require the obligor to surrender any license, certificate, registration or

other such authorization to the issuing entity within 90 days of the date on which the order is entered. If at any time after entry of the order the obligor (A) pays the delinquency or (B) reaches an agreement with the obligee or the Department to satisfy the delinquency within a period not to exceed 10 years and makes at least one payment, representing at least five percent of the total delinquency or $500, whichever is greater, pursuant to the agreement, or (C) complies with the subpoena, summons or warrant or reaches an agreement with the Department with respect to the subpoena, summons or warrant, upon proof of payment or certification of the compliance or agreement, the court shall order reinstatement. Payment shall be proved by certified copy of the payment record issued by the Department or notarized statement of payment signed by the obligee. No fee shall be charged to a person who obtains reinstatement of a license, certificate, registration or authorization pursuant to this section.

Drafting note: No change recommended.

§ 63.2-1946. Virginia New Hire Reporting Center; State Directory of New Hires; reporting by employers.

A. The Virginia New Hire Reporting Center shall be operated under the authority of the Division of Child Support Enforcement. The Center shall operate and maintain the Virginia State Directory of New Hires. The Center is authorized to share information with the Virginia Employment Commission.

B. Each employing unit shall submit information concerning each newly hired employee, as defined in subsection H, to the Center within 20 days of the employment, as defined in § 60.2-212, of the newly hired employee. The information shall include the items required by § 453A of the Social Security Act, 42 U.S.C. § 653a, as amended.

C. Employers who transmit such reports magnetically or electronically shall, if necessary, report by two monthly transmissions not less than 12 days nor more than 16 days apart. Employers that have employees who are employed in two or more states and that transmit reports magnetically or electronically may comply by designating one state in which such employer has employees to which the employer will transmit the report and transmitting such report to such state. Such employers shall notify the federal Secretary of Health and Human Services in writing as to which state is designated for the purpose of sending reports and shall provide a copy of that notification to the Virginia New Hire Reporting Center.

D. Employers shall not report an employee of a state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that such reporting could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

E. Information to be provided shall include only that information that is required by federal law. This information may be provided by mailing a copy of the employee's W-4 form, transmitting information magnetically or electronically in the prescribed format or by any other means determined by the Virginia New Hire Reporting Center to result in timely reporting. Within three business days after the date information regarding a newly hired employee is entered into the Virginia State Directory of New Hires, the Center shall furnish the information to the National Directory of New Hires established under § 453(i) of the Social Security Act, as amended.

F. The Division of Child Support Enforcement shall use information received pursuant to this section to locate individuals for purposes of establishing **paternity** and establishing, modifying, and enforcing child support obligations, and may disclose such information in accordance with existing law to carry out such purposes. The Division shall have access to information reported by employers pursuant to this section.

G. The Board shall have the authority to adopt regulations as necessary, consistent with the federal law and its implementing regulations, to administer this provision, including any exemptions and waivers which are needed to reduce unnecessary or burdensome reporting.

H. As used in this section, "newly hired employee" means an individual in employment, as defined in § 60.2-212, who (i) has not previously been in the employment of the employer or (ii) was previously in the employment of the employer but has been separated from such prior employment for at least 60 consecutive days.

Drafting note: No change recommended.

§ 63.2-1960. Recovery of certain fees and costs.

The Department shall have the authority to assess and recover from the noncustodial parent in proceedings to enforce child support obligations against the noncustodial parent, reasonable attorneys' fees. All such fees recovered in proceedings to collect child support arrearages shall be retained by the

Department in a special fund for the support of the Division of Support Enforcement. The Department shall also have the authority to assess and recover costs in such cases. However, the Department shall not be entitled to recover attorneys' fees or costs in any case in which the noncustodial parent prevails.

The Department shall have the authority to assess and recover the actual costs of genetic testing against the noncustodial parent if **paternity** is established. Where an original test is contested and additional testing is requested, the Department may require advance payment by the contestant. The genetic testing costs shall be set at the rate charged the Department by the provider of genetic testing services.

The Department shall have the authority to assess and recover the actual costs of intercept programs from the noncustodial parent. The intercept programs' costs shall be set at the rate actually charged the Department.

The Department shall have the authority to assess and recover the actual costs of fees for service of process, and seizure and sale pursuant to a levy on a judgment in enforcement actions from the noncustodial parent.

The fees and costs that may be recovered pursuant to this section may be collected using any mechanism provided by this chapter.

Drafting note: No change recommended.

§ 64.2-101. Construction of generic terms.

In the interpretation of wills and trusts, adopted persons and persons born out of wedlock are included in class gift terminology or terms of relationship in accordance with rules for determining relationships for purposes of intestate succession unless a contrary intent appears on the face of the will or trust. In determining the intent of a testator or settlor, adopted persons are presumptively included in such terms as "children," "issue," "kindred," "heirs," "relatives," "descendents" or similar words of classification and are presumptively excluded by such terms as "natural children," "issue of the body," "blood kindred," "heirs of the body," "blood relatives," "descendents of the body" or similar words of classification. In the event that a fiduciary makes payment to members of a class to the exclusion of persons born out of wedlock of whose claim of **paternity or maternity** the fiduciary has no knowledge,

the fiduciary shall not be held liable to such persons for payments made prior to knowledge of such claim. This section shall apply to all inter vivos trusts executed after July 1, 1978, and to all wills of decedents dying after July 1, 1978, regardless of when executed.

Drafting note: No change recommended.

§ 64.2-102. Meaning of child and related terms.

If, for purposes of this title or for determining rights in and to property pursuant to any deed, will, trust or other instrument, a relationship of parent and child must be established to determine succession or a taking by, through, or from a person:

1. An adopted person is the child of an adopting parent and not of the biological parents, except that adoption of a child by the spouse of a biological parent has no effect on the relationship between the child and either biological parent.

2. The parentage of a child resulting from assisted conception is determined as provided in Chapter 9 (§ 20-156 et seq.) of Title 20.

3. Except as otherwise provided by subdivision 1 or 2, a person born out of wedlock is a child of the **mother**. That person is also a child of the **father**, if:

a. The biological parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage was prohibited by law, deemed null or void, or dissolved by a court; or

b. **Paternity** is established by clear and convincing evidence, including scientifically reliable genetic testing, as set forth in § 64.2-103; however, **paternity** established pursuant to this subdivision is ineffective to qualify the **father** or his kindred to inherit from or through the child unless the **father** has openly treated the child as his and has not refused to support the child.

4. No claim of succession based upon the relationship between a child born out of wedlock and a deceased parent of such child shall be recognized unless, within one year of the date of the death of such parent (i) an affidavit by such child or by someone acting for such child alleging such parenthood has been filed in the clerk's office of the circuit court of the jurisdiction wherein the property affected by such claim is located and (ii) an action seeking adjudication of parenthood is filed in an appropriate circuit court. The

one-year limitation period runs notwithstanding the minority of such child; however, it does not apply in those cases where the relationship between the child born out of wedlock and the parent in question is established by (a) a birth record prepared upon information given by or at the request of such parent; (b) admission by such parent of parenthood before any court or in writing under oath; or (c) a previously entered judgment establishing such parent's **paternity** by a court having jurisdiction to determine his **paternity**.

5. Unless otherwise specifically provided therein, an order terminating residual parental rights under § 16.1-283 terminates the rights of the parent to take from or through the child in question but the order does not otherwise affect the rights of the child, the child's kindred, or the parent's kindred to take from or through the parent or the rights of the parent's kindred to take from or through the child.

Drafting note: No change recommended.

§ 64.2-103. Evidence of *paternity*.

A. For the purposes of this title, **paternity** of a child born out of wedlock shall be established by clear and convincing evidence, and such evidence may include the following:

1. That he cohabited openly with the **mother** during all of the 10 months immediately prior to the time the child was born;

2. That he gave consent to a physician or other person, not including the **mother**, charged with the responsibility of securing information for the preparation of a birth record that his name be used as the **father** of the child upon the birth record of the child;

3. That he allowed by a general course of conduct the common use of his surname by the child;

4. That he claimed the child as his child on any statement, tax return, or other document filed and signed by him with any local, state, or federal government or any agency thereof;

5. That he admitted before any court having jurisdiction to determine his **paternity** that he is the **father** of the child;

6. That he voluntarily admitted **paternity** in writing under oath;

7. The results of scientifically reliable genetic tests, including DNA tests, weighted with all the evidence; or

8. Other medical, scientific, or anthropological evidence relating to the alleged parentage of the child based on tests performed by experts.

B. A judgment establishing a father's paternity made by a court having jurisdiction to determine his paternity is sufficient evidence of paternity for the purposes of this section.

Drafting note: No change recommended.

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