

CODE OF VIRGINIA
Effective July 1, 2021
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Code of Virginia
Title 2.2. Administration of Government
Chapter 4.4. Office of the Children's Ombudsman

§ 2.2-438. Definitions.

As used in this chapter, unless context requires another meaning:

"Administrative act" includes an action, omission, decision, recommendation, practice, or other procedure of the Department, a local department, an adoption attorney, or a child-placing agency with respect to a particular child related to adoption, foster care, or protective services.

"Adoption attorney" means an attorney acting as counsel in an adoption proceeding or case.

"Central registry" means the system maintained at the Department of Social Services pursuant to § [63.2-1515](#).

"Child" means an individual under the age of 18.

"Child abuse" means harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, abandonment, or maltreatment by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy.

"Child-caring institution" means a child care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the child-caring institution for that purpose, and that operates throughout the year. An educational program may be provided, but the educational program shall not be the primary purpose of the facility. "Child-caring institution" includes a maternity home for the care of mothers who are minors, an inpatient substance use disorder treatment facility for minors, and an agency group home that is described as a small child-caring institution, owned, leased, or rented by a licensed agency providing care for more than four but less than 13 minor children. "Child-caring institution" also includes institutions for developmentally disabled or emotionally disturbed minor children. "Child-caring institution" does not include (i) 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; (ii) an establishment required to be licensed as a summer camp by § [35.1-18](#); or (iii) a licensed or accredited hospital legally maintained as such.

"Child neglect" means harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare that occurs through either of the following:

1. Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care, though financially able to do so, or the failure to seek financial or other reasonable means to provide adequate food, clothing, shelter, or medical care; or
2. Putting the child's health or welfare at unreasonable risk through failure of the parent, legal guardian, or other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of any such risk.

"Child-placing agency" means (i) any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § [63.2-1819](#); (ii) a local board that places children in foster homes or adoptive homes pursuant to §§ [63.2-900](#), [63.2-903](#), and [63.2-1221](#); or (iii) an entity that assists parents with the process of delegating parental and legal custodial

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powers of their children pursuant to Chapter 10 (§ [20-166](#) et seq.) of Title 20. "Child-placing agency" does not include the persons to whom such parental or legal custodial powers are delegated pursuant to Chapter 10 (§ [20-166](#) et seq.) of Title 20. Officers, employees, or agents of the Commonwealth or any locality thereof, 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.

"Children's Ombudsman" or "Ombudsman" means the individual appointed to head the Office of the Children's Ombudsman under § [2.2-439](#).

"Child-serving agency" means (i) a state agency that provides services to children, including the Department of Behavioral Health and Developmental Services, the Department of Education, the Department of Health, the Department of Juvenile Justice, the Department of Social Services, and the Office of Children's Services, and (ii) a local entity that provides services to children and that receives funding from a state agency under clause (i). "Child-serving agency" does not include any law-enforcement agency.

"Complainant" means an individual who makes a complaint pursuant to § [2.2-441](#).

"Department" means the Department of Social Services.

"Foster care" means care provided to a child by a child-caring institution or a foster parent, children's residential facility, or group home licensed or approved by the Department under Chapter 9 (§ [63.2-900](#)) of Title 63.2; care provided to a child in a relative's home under a court order; or any other care provided at the time the child's custody has been given to a government agency.

"Law-enforcement agency" means any crime victim and witness assistance program whose funding is provided in whole or in part by grants administered by the Department of Criminal Justice Services pursuant to § [9.1-104](#), any state or local police or sheriff's department, any office of an attorney for the Commonwealth, or the Office of the Attorney General.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Office" means the Office of the Children's Ombudsman established under § [2.2-439](#). 2020, c. [1090](#).

§ 2.2-439. Children's Ombudsman; establishment; appointment; removal.

A. There is hereby created the Office of the Children's Ombudsman as a means of effecting changes in policy, procedure, and legislation; educating the public; investigating and reviewing actions of the Department, local departments, child-placing agencies, or child-caring institutions; and monitoring and ensuring compliance with relevant statutes, rules, and policies pertaining to child protective services and the placement, supervision, and treatment of, and improvement of delivery of care to, children in foster care and adoptive homes.

B. The Office of the Children's Ombudsman shall be headed by the Children's Ombudsman, who shall be appointed by the Governor, subject to confirmation by the General Assembly. The individual shall be qualified by training and experience to perform the duties and exercise the powers of the Children's Ombudsman and the Office of the Children's Ombudsman as provided in this chapter.

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C. The appointment shall be for a term of four years. The Governor may remove the Ombudsman for cause in accordance with § 2.2-108. Vacancies shall be filled by appointment by the Governor for the unexpired term.

D. The operation and administration of the Office shall be funded by the Children's Advocacy Fund established pursuant to § 2.2-449.

§ 2.2-440. Procedures; training; complaint; investigation; notification of safety concerns.

A. The Ombudsman shall establish procedures for the Office for budget, expenditures, and employment. Subject to annual appropriations, the Ombudsman shall employ sufficient personnel to carry out the duties and powers prescribed by this chapter.

B. The Ombudsman shall establish procedures for receiving and processing complaints from complainants and individuals not meeting the definition of complainant, conducting investigations, holding informal hearings, and reporting findings and recommendations resulting from investigations.

C. Personnel employed by the Office shall receive mandatory training in domestic violence and in handling complaints of child abuse or child neglect that include a history of domestic violence.

D. Any individual may submit a complaint to the Ombudsman. The Ombudsman has the sole discretion and authority to determine if a complaint falls within the Ombudsman's duties and powers to investigate and if a complaint involves an administrative act. The Ombudsman may initiate an investigation without receiving a complaint. The Ombudsman may initiate an investigation upon receipt of a complaint from an individual not meeting the definition of complainant. An individual not meeting the definition of complainant is not entitled to receive information under this chapter as if such individual is a complainant. The individual is entitled to receive the recommendations of the Ombudsman and the Department or local department's response to the recommendations of the Ombudsman in accordance with state and federal law. During the course of an investigation, the Ombudsman may refer a case to a child-serving agency if the Ombudsman determines that such agency received a complaint on the case but did not conduct an investigation. If the Ombudsman refers a case to a child-serving agency, such agency shall conduct an investigation of the case or provide notice to the Ombudsman explaining why an investigation was not conducted or what alternative steps may have been taken to address the situation. If an investigation has been conducted, the child-serving agency shall report the results to the Ombudsman.

E. The Ombudsman shall notify a child-serving agency of any immediate safety concerns regarding a child or children who are part of an active or open child protective services or foster care case. This notification shall occur as soon as possible, but not later than one business day after the Ombudsman becomes aware of the concerns.

§ 2.2-441. Individuals making complaint to Children's Ombudsman.

Any of the following individuals may make a complaint to the Ombudsman with respect to a particular child, alleging that an administrative act is contrary to law, rule, or policy; imposed

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without an adequate statement of reason; or based on irrelevant, immaterial, or erroneous grounds:

1. The child, if the child is able to articulate a complaint;
2. A biological parent of the child;
3. A foster parent of the child;
4. An adoptive parent or a prospective adoptive parent of the child;
5. A legally appointed guardian of the child;
6. A guardian ad litem of the child;
7. A relative of the child or any person with a legitimate interest as defined in § 20-124.1;
8. A Virginia legislator;
9. An individual required to report child abuse or child neglect under § 63.2-1509; and
10. An attorney for any individual described in subdivisions 1 through 7. 2020.

§ 2.2-442. Children's Ombudsman; powers.

The Children's Ombudsman has the authority to do all of the following with regard to children receiving child-protective services, in foster care, or placed for adoption:

1. Pursue all necessary action, including legal action, to protect the rights and welfare of such children;
2. Pursue legislative advocacy in the best interest of such children;
3. Review policies and procedures relating to any child-serving agency's involvement with such children and make recommendations for improvement; and
4. Subject to an appropriation of funds, commence and conduct investigations into alleged violations of the rights of a foster parent.

§ 2.2-443. Victim of child abuse or child neglect; powers of Children's Ombudsman; child fatality cases; investigation.

A. The Ombudsman may do all of the following in relation to a child who may be a victim of child abuse or child neglect, including a child who may have died as a result of suspected child abuse or child neglect:

1. Upon the Ombudsman's own initiative or upon receipt of a complaint, investigate an administrative act that is alleged to be contrary to law or rule; contrary to any policy of the Department, a local department, or a child-placing agency; imposed without an adequate statement of reason; or based on irrelevant, immaterial, or erroneous grounds. The Ombudsman has sole discretion to determine if a complaint involves an administrative act.

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2. Decide, in the Ombudsman's discretion, whether to investigate an administrative act.
 3. Upon the Ombudsman's own initiative or upon receipt of a complaint and subject to an appropriation of funds, investigate an alleged violation of the rights of a foster parent.
 4. Except as otherwise provided in this subdivision, access records and reports necessary to carry out the Ombudsman's powers and duties under this chapter to the same extent and in the same manner as provided to the Department. The Ombudsman shall be provided access to medical and mental health disorder records in the same manner as access is provided to the Department. The Ombudsman may request substance use disorder records if the Ombudsman obtains a valid consent or a court order under 42 C.F.R. Part 2. In the course of a child fatality investigation, the Ombudsman may access records from the court of jurisdiction, Attorney General, prosecuting attorney, or any attorney retained by the Department or local department and reports from a county child fatality review team to the same extent and in the same manner as provided to the Department or local department under state law.
 5. Request a subpoena from a court requiring the production of a record or report necessary to carry out the Ombudsman's duties and powers, including a child fatality investigation. If the person to whom a subpoena is issued fails or refuses to produce the record or report, the Ombudsman may petition the court for enforcement of the subpoena.
 6. Hold informal hearings and request that individuals appear before the Ombudsman and give testimony or produce documentary or other evidence that the Ombudsman considers relevant to a matter under investigation.
 7. Make recommendations to the Governor and the General Assembly concerning the need for child protective services, adoption, or foster care legislation, policy, or practice without prior review by other offices, departments, or agencies in the executive branch in order to facilitate rapid implementation of recommendations or for suggested improvements to the recommendations. No other office, department, or agency shall prohibit the release of an Ombudsman's recommendation to the Governor or the General Assembly.
- B. The Ombudsman may investigate all child fatality cases that occurred or are alleged to have occurred due to child abuse or child neglect in the following situations:
1. A child died during an active child protective services investigation or open services case, or there was a valid or invalid child protective services complaint within 12 months immediately preceding the child's death.
 2. A child died while in foster care, unless the death is determined to have resulted from natural causes and there were no prior child protective services or licensing complaints concerning the foster home.
 3. A child was returned home from foster care and there is an active foster care case.
 4. A foster care case involving the deceased child or sibling was closed within 24 months immediately preceding the child's death.
- C. Subject to state appropriations, an investigation under subsection B shall be completed

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within 12 months after the Ombudsman opens a child fatality case for investigation.

D. The Ombudsman is subject to the same standards for safeguarding the confidentiality of information under this section and the same sanctions for unauthorized release of information as the Department.

§ 2.2-444. Decision to investigate; notice; pursuing administrative remedies or channels of complaint; further investigation; violation of state or federal criminal law; complaint against child-placing agency; petition requesting court jurisdiction or termination of parental rights.

A. Upon deciding to investigate a complaint from a complainant or an individual not meeting the definition of complainant, the Ombudsman shall notify the complainant or the individual not meeting the definition of complainant of the decision to investigate and shall notify the Department or local department, adoption attorney, or child-placing agency of the intention to investigate. If the Ombudsman declines to investigate a complaint or continue an investigation, the Ombudsman shall notify the complainant or the individual not meeting the definition of complainant and the Department or local department or child-placing agency of the decision and of the reasons for the Ombudsman's action.

B. The Ombudsman shall advise a complainant of administrative remedies and may advise the individual to pursue all administrative remedies or channels of complaint open to the complainant before pursuing a complaint with the Ombudsman. Subsequent to the administrative processing of a complaint, the Ombudsman may conduct further investigations of a complaint upon the request of the complainant or upon the Ombudsman's own initiative.

C. If the Ombudsman finds in the course of an investigation that an individual's action is in violation of state or federal criminal law, the Ombudsman shall immediately report that fact to the local attorney for the Commonwealth or the Attorney General. If the complaint is against a child-placing agency, the Ombudsman shall refer the matter to the Department or local department for further action with respect to licensing or approval.

§ 2.2-445. Department and child-placing agency; duties; information to be provided to biological parent, adoptive parent, or foster parent; access to departmental computer networks.

A. The Department or local department and a child-placing agency shall do all of the following:

1. Upon the Ombudsman's request, grant the Ombudsman or the Ombudsman's designee access to all information, records, and documents in the possession of the Department or local department or child-placing agency that the Ombudsman considers relevant and necessary in an investigation.

2. Assist the Ombudsman to obtain the necessary releases of those documents that are specifically restricted.

3. Upon the Ombudsman's request, provide the Ombudsman with progress reports concerning the administrative processing of a complaint.

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4. Upon the Ombudsman's request, provide the Ombudsman the information requested under subdivision 1 or notification within 10 business days after the request that the Department or local department has determined that release of the information would violate federal or state law.

B. The Department or local department, an attorney involved with an adoption, and a child-placing agency shall provide information to a biological parent, prospective adoptive parent, or foster parent regarding the provisions of this chapter.

C. The Ombudsman shall have access, in the Ombudsman's own office, to departmental computer networks pertaining to protective services, foster care, adoption, juvenile delinquency, and the central registry, unless otherwise prohibited by state or federal law or if the release of the information to the Ombudsman would jeopardize federal funding. The cost of implementing this subsection shall be negotiated among the Office and the custodians of such networks.

§ 2.2-446. Confidentiality of record of Children's Ombudsman; disclosure; limitations; release of certain information.

A. Subject to subsections B through F, a record of the Office is confidential, shall only be used for purposes set forth in this chapter, is not subject to court subpoena, and is not discoverable in a legal proceeding. If the Ombudsman identifies action or inaction by the state through its agencies or services that failed to protect children, the Ombudsman shall provide any findings and recommendations to the agency affected by those findings, and make those findings and recommendations available to the complainant and the General Assembly upon request, to the extent consistent with state or federal law. The Ombudsman shall not disclose any information that impairs the rights of the child or the child's parents or guardians.

B. Unless otherwise part of the public record, the Office shall not release any of the following confidential information to the general public:

1. Records relating to a mental health evaluation or treatment of a parent or child;
2. Records relating to the evaluation or treatment of a substance abuse-related disorder of a parent or child;
3. Records relating to a medical diagnosis or treatment of a parent or child;
4. Records relating to domestic violence-related services and sexual assault services provided to a parent or child; or
5. Records relating to educational services provided to a parent or child.

C. Notwithstanding subsection B, if the Ombudsman determines that disclosure of confidential information is necessary to identify, prevent, or respond to the abuse or neglect of a child, the Ombudsman may disclose such information to the Department or local department, a court, a law-enforcement agency, or a prosecuting attorney investigating a report of known or suspected child abuse or child neglect. The Ombudsman shall not release the address, telephone number, or other information regarding the whereabouts of a victim or suspected victim of domestic violence unless

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ordered to by a court.

D. Except as provided in subsection C, the Ombudsman shall not disclose information relating to an ongoing law-enforcement investigation or an ongoing child protective services investigation. The Ombudsman may release the results of its investigation to a complainant, or an individual not meeting the definition of complainant, if the Ombudsman receives notification that releasing the results of its investigation is not related to and will not interfere with an ongoing law- enforcement investigation or ongoing child protective services investigation.

E. The Ombudsman shall not disclose the identity of an individual making a child abuse or child neglect complaint unless that individual's written permission is obtained first or a court has ordered the Ombudsman to release such information.

F. The Ombudsman may release an individual's identity who makes an intentionally false report of child abuse or child neglect, subject to other laws relating to such disclosure.

§ 2.2-447. Report of findings; recommendations; consultation with individual, Department, local department, or child-placing agency; publication of adverse opinion; notice of actions; information provided to complainant; child fatality investigation; report.

A. The Ombudsman shall prepare a report of the factual findings of an investigation and make recommendations to the Department, local department, or child-placing agency if the Ombudsman finds any of the following:

1. A matter should be further considered by the Department, local department, or child-placing agency.
2. An administrative act or omission should be modified, canceled, or corrected.
3. Reasons should be given for an administrative act or omission.
4. Other action should be taken by the Department, local department, or child-placing agency.

B. Before announcing a conclusion or recommendation that expressly or by implication criticizes an individual, the Department, the local department, or a child-placing agency, the Ombudsman shall consult with that individual, the Department, the local department, or the child-placing agency. When publishing an opinion adverse to the Department, local department, or child- placing agency, the Ombudsman shall include in the publication any statement of reasonable length made to the Ombudsman by the Department, local department, or child-placing agency in defense or mitigation of the action. The Ombudsman may request to be notified by the Department, local department, or child-placing agency, within a specified time, of any action taken on any recommendation presented.

C. The Ombudsman shall notify the complainant of the actions taken by the Ombudsman and by the Department, local department, or child-placing agency.

D. The Ombudsman may provide to the complainant the following information:

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1. A copy of the Ombudsman's report regarding the investigation's findings, recommendations to the Department or local department made according to the investigation, the Department or local department's response to the Ombudsman's findings and recommendations, and any epilogue to the Ombudsman's report and the Department or local department's response; or

2. Information that has otherwise been made public.

E. The Ombudsman shall not release information to the individual making the complaint if doing so could endanger the health or welfare of a child or another individual.

F. With respect to a child fatality case investigated under subsection B of § 2.2-443 and upon review of records or other information received under subdivision A 3 or 4 of § 2.2-443 in the course of a child fatality investigation, if there is no ongoing child protection proceeding involving a sibling of the child who died, the Ombudsman shall provide any necessary recommendations for improving systemic issues that are discovered during the investigation of the child fatality. The recommendations may be provided to the court of jurisdiction, the state court administrative office, the county child fatality review team, medical professionals, or attorneys or other legal professionals involved with the particular child who died. The recommendations shall also be summarized and included in the annual report referenced in subsection G.

G. The Ombudsman shall submit to the Governor, the director of the Department, and the General Assembly an annual report on the Ombudsman's activities, including any recommendations regarding the need for legislation or for a change in rules or policies.

§ 2.2-448. Penalty for filing complaint or cooperating in investigation prohibited.

A. An official, the Department, a local department, a child-serving agency, or a child-placing agency shall not penalize any person for filing a complaint or cooperating with the Ombudsman in investigating a complaint.

B. An individual, the Department, a local department, an adoption attorney, a child-serving agency, or a child-placing agency shall not hinder the lawful actions of the Ombudsman or employees of the Ombudsman.

C. A report by the Ombudsman is not subject to prior approval by a person outside of the Office.

§ 2.2-449. Children's Advocacy Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Children's Advocacy Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All funds appropriated for such purpose, and any gifts, donations, grants, bequests, and other funds received on its behalf 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.

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Moneys in the Fund shall be used solely for the purposes of supporting the Office of the Children's Ombudsman pursuant to § 2.2-439 and for carrying out the purposes of this chapter.

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 Children's Ombudsman.

Code of Virginia
Title 19.2. Criminal Procedure
Chapter 23. Central Criminal Records Exchange

§ 19.2-392.02. National criminal background checks by businesses and organizations regarding employees or volunteers providing care to children or the elderly or disabled.

A. For purposes of this section:

"Barrier crime" means (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any violation of subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1, 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1; any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86, 18.2-87, 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, or 18.2-314; any felony violation of § 18.2-346.01, 18.2-348, or 18.2-349; any violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation of § 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, or 18.2-386.2; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; or any substantially similar offense under the laws of another jurisdiction; (ii) any violation of § 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or any substantially similar offense under the laws of another jurisdiction; (iii) any felony violation of § 4.1-1101, 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, or 18.2-258.2 or any substantially similar offense under the laws of another jurisdiction; (iv) any felony violation of § 18.2-250 or any substantially similar offense under the laws of another jurisdiction; (v) any offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, including any finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901; any substantially similar offense under the laws of another jurisdiction; or any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted; or (vi) any other felony not included in clause (i), (ii), (iii), (iv), or (v) unless five years have elapsed from the date of the conviction.

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"Barrier crime information" means the following facts concerning a person who has been arrested for, or has been convicted of, a barrier crime, regardless of whether the person was a juvenile or adult at the time of the arrest or conviction: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the barrier crime or offenses for which the person has been arrested or has been convicted, the disposition of the charge, and any other information that may be useful in identifying persons arrested for or convicted of a barrier crime.

"Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children or the elderly or disabled.

"Department" means the Department of State Police.

"Employed by" means any person who is employed by, volunteers for, seeks to be employed by, or seeks to volunteer for a qualified entity.

"Identification document" means a document made or issued by or under the authority of the United States government, a state, a political subdivision of a state, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization that, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

"Provider" means a person who (i) is employed by a qualified entity and has, seeks to have, or may have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity provides care; (ii) is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised access to a child to whom the qualified entity provides care; or (iii) owns, operates, or seeks to own or operate a qualified entity.

"Qualified entity" means a business or organization that provides care to children or the elderly or disabled, whether governmental, private, for profit, nonprofit, or voluntary, except organizations exempt pursuant to subdivision A 7 of § [22.1-289.030](#).

B. A qualified entity may request the Department of State Police to conduct a national criminal background check on any provider who is employed by such entity. No qualified entity may request a national criminal background check on a provider until such provider has:

1. Been fingerprinted; and

2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address, and date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the provider has ever been convicted of or is the subject of pending charges for a criminal offense within or outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime and the particulars of the conviction; (iii) a notice to the provider that the entity may request a background check; (iv) a notice to the provider that he is entitled to obtain a copy of any background check report, to challenge the accuracy and completeness of any information contained in any such report, and to obtain a prompt determination as to the validity of such challenge before a final determination is made by the Department; and (v) a notice to the provider that prior to the completion of the background check the qualified entity may choose to deny the provider unsupervised access to children or the elderly or disabled for whom the qualified entity provides care.

C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in subsection B, the Department shall make a determination whether the provider has been convicted of or is the subject of charges of a barrier crime. To conduct its determination regarding

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the provider's barrier crime information, the Department shall access the national criminal history background check system, which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other methods of identification, and shall access the Central Criminal Records Exchange maintained by the Department. If the Department receives a background report lacking disposition data, the Department shall conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry within 15 business days.

D. Any background check conducted pursuant to this section for a provider employed by a private entity shall be screened by the Department of State Police. If the provider has been convicted of or is under indictment for a barrier crime, the qualified entity shall be notified that the provider is not qualified to work or volunteer in a position that involves unsupervised access to children or the elderly or disabled.

E. Any background check conducted pursuant to this section for a provider employed by a governmental entity shall be provided to that entity.

F. In the case of a provider who desires to volunteer at a qualified entity and who is subject to a national criminal background check, the Department and the Federal Bureau of Investigation may each charge the provider the lesser of \$18 or the actual cost to the entity of the background check conducted with the fingerprints.

G. The failure to request a criminal background check pursuant to subsection B shall not be considered negligence per se in any civil action.

Code of Virginia

Title 20. Domestic Relations

Chapter 6.1. Custody and Visitation Arrangements for Minor Children

§ 20-124.6. Access to minor's records

A. Notwithstanding any other provision of law, neither parent, regardless of whether such parent has custody, shall be denied access to the academic or health records or records of a child day center or family day home of that parent's minor child unless otherwise ordered by the court for good cause shown or pursuant to subsection B.

B. In the case of health records, access may also be denied if the minor's treating physician, clinical psychologist, or clinical social worker has made a part of the minor's record a written statement that, in the exercise of his professional judgment, the furnishing to or review by the requesting parent of such health records would be reasonably likely to cause substantial harm to the minor or another person. If a health care entity denies a parental request for access to, or copies of, a minor's health record, the health care entity denying the request shall comply with the provisions of subsection F of § 32.1-127.1:03. The minor or his parent, either or both, shall have the right to have the denial reviewed as specified in subsection F of § 32.1-127.1:03 to determine whether to make the minor's health record available to the requesting parent.

C. For the purposes of this section, the terms "health record" or the plural thereof and "health care entity" mean the same as those terms are defined in subsection B of § 32.1-127.1:03. The terms "child day center" and "family day home" mean the same as those terms are defined in § 63.2-

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Code of Virginia

Title 54.1. Professions and Occupations

Chapter 34. Drug Control Act Article 1. General Provisions

§ 54.1-3408. Professional use by practitioners.

A. A practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine, a licensed nurse practitioner pursuant to § [54.1-2957.01](#), a licensed certified midwife pursuant to § [54.1-2907.04](#), a licensed physician assistant pursuant to § [54.1-2952.1](#), or a TPA-certified optometrist pursuant to Article 5 (§ [54.1-3222](#) et seq.) of Chapter 32 shall only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes within the course of his professional practice.

B. The prescribing practitioner's order may be on a written prescription or pursuant to an oral prescription as authorized by this chapter. The prescriber may administer drugs and devices, or he may cause drugs or devices to be administered by:

1. A nurse, physician assistant, or intern under his direction and supervision;
2. Persons trained to administer drugs and devices to patients in state-owned or state-operated hospitals or facilities licensed as hospitals by the Board of Health or psychiatric hospitals licensed by the Department of Behavioral Health and Developmental Services who administer drugs under the control and supervision of the prescriber or a pharmacist;
3. Emergency medical services personnel certified and authorized to administer drugs and devices pursuant to regulations of the Board of Health who act within the scope of such certification and pursuant to an oral or written order or standing protocol; or
4. A licensed respiratory therapist as defined in § [54.1-2954](#) who administers by inhalation controlled substances used in inhalation or respiratory therapy.

C. Pursuant to an oral or written order or standing protocol, the prescriber, who is authorized by state or federal law to possess and administer radiopharmaceuticals in the scope of his practice, may authorize a nuclear medicine technologist to administer, under his supervision, radiopharmaceuticals used in the diagnosis or treatment of disease.

D. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize registered nurses and licensed practical nurses to possess (i) epinephrine and oxygen for administration in treatment of emergency medical conditions and (ii) heparin and sterile normal saline to use for the maintenance of intravenous access lines.

Pursuant to the regulations of the Board of Health, certain emergency medical services technicians may possess and administer epinephrine in emergency cases of anaphylactic shock.

Pursuant to an order or standing protocol issued by the prescriber within the course of his professional practice, any school nurse, school board employee, employee of a local governing body, or employee of a local health department who is authorized by a prescriber and trained in the administration of epinephrine may possess and administer epinephrine.

Pursuant to an order or standing protocol that shall be issued by the local health director within the course of his professional practice, any school nurse, school board employee, employee of a local governing body, or employee of a local health department who is authorized by the local

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health director and trained in the administration of albuterol inhalers and valved holding chambers or nebulized albuterol may possess or administer an albuterol inhaler and a valved holding chamber or nebulized albuterol to a student diagnosed with a condition requiring an albuterol inhaler or nebulized albuterol when the student is believed to be experiencing or about to experience an asthmatic crisis.

Pursuant to an order or a standing protocol issued by the prescriber within the course of his professional practice, any employee of a school for students with disabilities, as defined in § [22.1-319](#) and licensed by the Board of Education, or any 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 (a) epinephrine may possess and administer epinephrine and (b) albuterol inhalers or nebulized albuterol may possess or administer an albuterol inhaler or nebulized albuterol to a student diagnosed with a condition requiring an albuterol inhaler or nebulized albuterol when the student is believed to be experiencing or about to experience an asthmatic crisis.

Pursuant to an order or a standing protocol issued by the prescriber within the course of his professional practice, any 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 may possess and administer epinephrine.

Pursuant to an order or a standing protocol issued by the prescriber within the course of his professional practice, any employee of an organization providing outdoor educational experiences or programs for youth who is authorized by a prescriber and trained in the administration of epinephrine may possess and administer epinephrine.

Pursuant to an order or a standing protocol issued by the prescriber within the course of his professional practice, and in accordance with policies and guidelines established by the Department of Health, such prescriber may authorize any employee of a restaurant licensed pursuant to Chapter 3 (§ [35.1-18](#) et seq.) of Title 35.1 to possess and administer epinephrine on the premises of the restaurant at which the employee is employed, provided that such person is trained in the administration of epinephrine.

Pursuant to an order issued by the prescriber within the course of his professional practice, an employee of a provider licensed by the Department of Behavioral Health and Developmental Services or a person providing services pursuant to a contract with a provider licensed by the Department of Behavioral Health and Developmental Services may possess and administer epinephrine, provided such person is authorized and trained in the administration of epinephrine.

Pursuant to an order or standing protocol issued by the prescriber within the course of his professional practice, any employee of a public place, as defined in § [15.2-2820](#), who is authorized by a prescriber and trained in the administration of epinephrine may possess and administer epinephrine.

Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize pharmacists to possess epinephrine and oxygen for administration in treatment of emergency medical conditions.

E. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize licensed physical therapists to possess and administer topical corticosteroids, topical lidocaine, and any other Schedule VI topical drug.

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F. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize licensed athletic trainers to possess and administer topical corticosteroids, topical lidocaine, or other Schedule VI topical drugs; oxygen for use in emergency situations; epinephrine for use in emergency cases of anaphylactic shock; and naloxone or other opioid antagonist for overdose reversal.

G. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, and in accordance with policies and guidelines established by the Department of Health pursuant to § [32.1-50.2](#), such prescriber may authorize registered nurses or licensed practical nurses under the supervision of a registered nurse to possess and administer tuberculin purified protein derivative (PPD) in the absence of a prescriber. The Department of Health's policies and guidelines shall be consistent with applicable guidelines developed by the Centers for Disease Control and Prevention for preventing transmission of mycobacterium tuberculosis and shall be updated to incorporate any subsequently implemented standards of the Occupational Safety and Health Administration and the Department of Labor and Industry to the extent that they are inconsistent with the Department of Health's policies and guidelines. Such standing protocols shall explicitly describe the categories of persons to whom the tuberculin test is to be administered and shall provide for appropriate medical evaluation of those in whom the test is positive. The prescriber shall ensure that the nurse implementing such standing protocols has received adequate training in the practice and principles underlying tuberculin screening.

The Health Commissioner or his designee may authorize registered nurses, acting as agents of the Department of Health, to possess and administer, at the nurse's discretion, tuberculin purified protein derivative (PPD) to those persons in whom tuberculin skin testing is indicated based on protocols and policies established by the Department of Health.

H. Pursuant to a written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize, with the consent of the parents as defined in § [22.1-1](#), 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 who is trained in the administration of insulin and glucagon to assist with the administration of insulin or administer glucagon to a student diagnosed as having diabetes and who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia. Such authorization shall only be effective when a licensed nurse, nurse practitioner, physician, or physician assistant is not present to perform the administration of the medication.

Pursuant to a written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize an employee of a public institution of higher education or a private institution of higher education who is trained in the administration of insulin and glucagon to assist with the administration of insulin or administration of glucagon to a student diagnosed as having diabetes and who requires insulin injections or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia. Such authorization shall only be effective when a licensed nurse, nurse practitioner, physician, or physician assistant is not present to perform the administration of the medication.

Pursuant to a written order issued by the prescriber within the course of his professional practice, such prescriber may authorize an employee of a provider licensed by the Department of Behavioral Health and Developmental Services or a person providing services pursuant to a contract with a provider licensed by the Department of Behavioral Health and Developmental Services to assist with the administration of insulin or to administer glucagon to a person

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diagnosed as having diabetes and who requires insulin injections or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia, provided such employee or person providing services has been trained in the administration of insulin and glucagon.

I. A prescriber may authorize, pursuant to a protocol approved by the Board of Nursing, the administration of vaccines to adults for immunization, when a practitioner with prescriptive authority is not physically present, by (i) licensed pharmacists, (ii) registered nurses, or (iii) licensed practical nurses under the supervision of a registered nurse. A prescriber acting on behalf of and in accordance with established protocols of the Department of Health may authorize the administration of vaccines to any person by a pharmacist, nurse, or designated emergency medical services provider who holds an advanced life support certificate issued by the Commissioner of Health under the direction of an operational medical director when the prescriber is not physically present. The emergency medical services provider shall provide documentation of the vaccines to be recorded in the Virginia Immunization Information System.

J. A dentist may cause Schedule VI topical drugs to be administered under his direction and supervision by either a dental hygienist or by an authorized agent of the dentist.

Further, pursuant to a written order and in accordance with a standing protocol issued by the dentist in the course of his professional practice, a dentist may authorize a dental hygienist under his general supervision, as defined in § [54.1-2722](#), or his remote supervision, as defined in subsection E or F of § [54.1-2722](#), to possess and administer topical oral fluorides, topical oral anesthetics, topical and directly applied antimicrobial agents for treatment of periodontal pocket lesions, and any other Schedule VI topical drug approved by the Board of Dentistry. In addition, a dentist may 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.

K. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize registered professional nurses certified as sexual assault nurse examiners-A (SANE-A) under his supervision and when he is not physically present to possess and administer preventive medications for victims of sexual assault as recommended by the Centers for Disease Control and Prevention.

L. This section shall not prevent the administration of drugs by a person who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and who administers such drugs in accordance with a prescriber's instructions pertaining to dosage, frequency, and manner of administration, and in accordance with regulations promulgated by the Board of Pharmacy relating to security and record keeping, when the drugs administered would be normally self-administered by (i) an individual receiving services in a program licensed by the Department of Behavioral Health and Developmental Services; (ii) a resident of the Virginia Rehabilitation Center for the Blind and Vision Impaired; (iii) a resident of a facility approved by the Board or Department of Juvenile Justice for the placement of children in need of services or delinquent or alleged delinquent youth; (iv) a program participant of an adult day-care center licensed by the Department of Social Services; (v) a resident of any facility authorized or operated by a state or local government whose primary purpose is not to provide health care services; (vi) a resident of a private children's residential facility, as defined in § [63.2-100](#) and licensed by the Department of Social Services, Department of Education, or Department of Behavioral Health and Developmental Services; or (vii) a student in a school for students with disabilities, as defined in § [22.1-319](#) and licensed by the Board of Education.

In addition, this section shall not prevent a person who has successfully completed a training program for the administration of drugs via percutaneous gastrostomy tube approved by the Board of Nursing and been evaluated by a registered nurse as having demonstrated competency in administration of drugs via percutaneous gastrostomy tube from administering drugs to a

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person receiving services from a program licensed by the Department of Behavioral Health and Developmental Services to such person via percutaneous gastrostomy tube. The continued competency of a person to administer drugs via percutaneous gastrostomy tube shall be evaluated semiannually by a registered nurse.

M. Medication aides registered by the Board of Nursing pursuant to Article 7 (§ [54.1-3041](#) et seq.) of Chapter 30 may administer drugs that would otherwise be self-administered to residents of any assisted living facility licensed by the Department of Social Services. A registered medication aide shall administer drugs pursuant to this section in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration; in accordance with regulations promulgated by the Board of Pharmacy relating to security and recordkeeping; in accordance with the assisted living facility's Medication Management Plan; and in accordance with such other regulations governing their practice promulgated by the Board of Nursing.

N. In addition, this section shall not prevent the administration of drugs by a person who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration and with written authorization of a parent, and in accordance with school board regulations relating to training, security and record keeping, when the drugs administered would be normally self-administered by a student of a Virginia public school. Training for such persons shall be accomplished through a program approved by the local school boards, in consultation with the local departments of health.

O. In addition, this section shall not prevent the administration of drugs by a person to (i) a child in a child day program as defined in § [22.1-289.02](#) and regulated by the Board of Education or a local government pursuant to § [15.2-914](#), or (ii) a student of a private school that is accredited pursuant to § [22.1-19](#) as administered by the Virginia Council for Private Education, provided such person (a) has satisfactorily completed a training program for this purpose approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist; (b) has obtained written authorization from a parent or guardian; (c) administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration; and (d) administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container that would normally be self-administered by the child or student, or administered by a parent or guardian to the child or student.

P. In addition, this section shall not prevent the administration or dispensing of drugs and devices by persons if they are authorized by the State Health Commissioner in accordance with protocols established by the State Health Commissioner pursuant to § [32.1-42.1](#) when (i) the Governor has declared a disaster or a state of emergency or the United States Secretary of Health and Human Services has issued a declaration of an actual or potential bioterrorism incident or other actual or potential public health emergency; (ii) it is necessary to permit the provision of needed drugs or devices; and (iii) such persons have received the training necessary to safely administer or dispense the needed drugs or devices. Such persons shall administer or dispense all drugs or devices under the direction, control, and supervision of the State Health Commissioner.

Q. Nothing in this title shall prohibit the administration of normally self-administered drugs by unlicensed individuals to a person in his private residence.

R. This section shall not interfere with any prescriber issuing prescriptions in compliance with his authority and scope of practice and the provisions of this section to a Board agent for use pursuant to subsection G of § [18.2-258.1](#). Such prescriptions issued by such prescriber shall be deemed to be valid prescriptions.

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S. Nothing in this title shall prevent or interfere with dialysis care technicians or dialysis patient care technicians who are certified by an organization approved by the Board of Health Professions or persons authorized for provisional practice pursuant to Chapter 27.01 (§ [54.1-2729.1](#) et seq.), in the ordinary course of their duties in a Medicare-certified renal dialysis facility, from administering heparin, topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers, for the purpose of facilitating renal dialysis treatment, when such administration of medications occurs under the orders of a licensed physician, nurse practitioner, or physician assistant and under the immediate and direct supervision of a licensed registered nurse. Nothing in this chapter shall be construed to prohibit a patient care dialysis technician trainee from performing dialysis care as part of and within the scope of the clinical skills instruction segment of a supervised dialysis technician training program, provided such trainee is identified as a "trainee" while working in a renal dialysis facility.

The dialysis care technician or dialysis patient care technician administering the medications shall have demonstrated competency as evidenced by holding current valid certification from an organization approved by the Board of Health Professions pursuant to Chapter 27.01 (§ [54.1-2729.1](#) et seq.).

T. Persons who are otherwise authorized to administer controlled substances in hospitals shall be authorized to administer influenza or pneumococcal vaccines pursuant to § [32.1-126.4](#).

U. Pursuant to a specific order for a patient and under his direct and immediate supervision, a prescriber may authorize the administration of controlled substances by personnel who have been properly trained to assist a doctor of medicine or osteopathic medicine, provided the method does not include intravenous, intrathecal, or epidural administration and the prescriber remains responsible for such administration.

V. A physician assistant, nurse, dental hygienist, or authorized agent of a doctor of medicine, osteopathic medicine, or dentistry may possess and administer topical fluoride varnish pursuant to an oral or written order or a standing protocol issued by a doctor of medicine, osteopathic medicine, or dentistry.

W. A prescriber, acting in accordance with guidelines developed pursuant to § [32.1-46.02](#), may authorize the administration of influenza vaccine to minors by a licensed pharmacist, registered nurse, licensed practical nurse under the direction and immediate supervision of a registered nurse, or emergency medical services provider who holds an advanced life support certificate issued by the Commissioner of Health when the prescriber is not physically present.

X. Notwithstanding the provisions of § [54.1-3303](#), pursuant to an oral, written, or standing order issued by a prescriber or a standing order issued by the Commissioner of Health or his designee authorizing the dispensing of naloxone or other opioid antagonist used for overdose reversal in the absence of an oral or written order for a specific patient issued by a prescriber, and in accordance with protocols developed by the Board of Pharmacy in consultation with the Board of Medicine and the Department of Health, a pharmacist, a health care provider providing services in a hospital emergency department, and emergency medical services personnel, as that term is defined in § [32.1-111.1](#), may dispense naloxone or other opioid antagonist used for overdose reversal and a person to whom naloxone or other opioid antagonist has been dispensed pursuant to this subsection may possess and administer naloxone or other opioid antagonist used for overdose reversal to a person who is believed to be experiencing or about to experience a life-threatening opioid overdose. Law-enforcement officers as defined in § [9.1-101](#), employees of the Department of Forensic Science, employees of the Office of the Chief Medical Examiner, employees of the Department of General Services Division of Consolidated Laboratory Services, employees of the Department of Corrections designated as probation and parole officers or as correctional officers as defined in § [53.1-1](#), employees of the Department of Juvenile Justice designated as probation and parole officers or as juvenile correctional officers, employees of regional jails, school nurses, local health department employees that are assigned to a public

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school pursuant to an agreement between the local health department and the school board, other school board employees or individuals contracted by a school board to provide school health services, and firefighters who have completed a training program may also possess and administer naloxone or other opioid antagonist used for overdose reversal and may dispense naloxone or other opioid antagonist used for overdose reversal pursuant to an oral, written, or standing order issued by a prescriber or a standing order issued by the Commissioner of Health or his designee in accordance with protocols developed by the Board of Pharmacy in consultation with the Board of Medicine and the Department of Health.

Notwithstanding the provisions of § [54.1-3303](#), pursuant to an oral, written, or standing order issued by a prescriber or a standing order issued by the Commissioner of Health or his designee authorizing the dispensing of naloxone or other opioid antagonist used for overdose reversal in the absence of an oral or written order for a specific patient issued by a prescriber, and in accordance with protocols developed by the Board of Pharmacy in consultation with the Board of Medicine and the Department of Health, an employee or other person acting on behalf of a public place who has completed a training program may also possess and administer naloxone or other opioid antagonist used for overdose reversal other than naloxone in an injectable formulation with a hypodermic needle or syringe in accordance with protocols developed by the Board of Pharmacy in consultation with the Board of Medicine and the Department of Health.

Notwithstanding any other law or regulation to the contrary, an employee or other person acting on behalf of a public place may possess and administer naloxone or other opioid antagonist, other than naloxone in an injectable formulation with a hypodermic needle or syringe, to a person who is believed to be experiencing or about to experience a life-threatening opioid overdose if he has completed a training program on the administration of such naloxone and administers naloxone in accordance with protocols developed by the Board of Pharmacy in consultation with the Board of Medicine and the Department of Health.

For the purposes of this subsection, "public place" means any enclosed area that is used or held out for use by the public, whether owned or operated by a public or private interest.

Y. Notwithstanding any other law or regulation to the contrary, a person who is acting on behalf of an organization that provides services to individuals at risk of experiencing an opioid overdose or training in the administration of naloxone for overdose reversal may dispense naloxone to a person who has received instruction on the administration of naloxone for opioid overdose reversal, provided that such dispensing is (i) pursuant to a standing order issued by a prescriber and (ii) in accordance with protocols developed by the Board of Pharmacy in consultation with the Board of Medicine and the Department of Health. If the person acting on behalf of an organization dispenses naloxone in an injectable formulation with a hypodermic needle or syringe, he shall first obtain authorization from the Department of Behavioral Health and Developmental Services to train individuals on the proper administration of naloxone by and proper disposal of a hypodermic needle or syringe, and he shall obtain a controlled substance registration from the Board of Pharmacy. The Board of Pharmacy shall not charge a fee for the issuance of such controlled substance registration. The dispensing may occur at a site other than that of the controlled substance registration provided the entity possessing the controlled substances registration maintains records in accordance with regulations of the Board of Pharmacy. No person who dispenses naloxone on behalf of an organization pursuant to this subsection shall charge a fee for the dispensing of naloxone that is greater than the cost to the organization of obtaining the naloxone dispensed. A person to whom naloxone has been dispensed pursuant to this subsection may possess naloxone and may administer naloxone to a person who is believed to be experiencing or about to experience a life-threatening opioid overdose.

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Z. A person who is not otherwise authorized to administer naloxone or other opioid antagonist used for overdose reversal may administer naloxone or other opioid antagonist used for overdose reversal to a person who is believed to be experiencing or about to experience a life-threatening opioid overdose.

AA. Pursuant to a written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize, with the consent of the parents as defined in § [22.1-1](#), 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 who is trained in the administration of injected medications for the treatment of adrenal crisis resulting from a condition causing adrenal insufficiency to administer such medication 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. Such authorization shall be effective only when a licensed nurse, nurse practitioner, physician, or physician assistant is not present to perform the administration of the medication.

Code of Virginia
Title 63.2. Welfare (Social Services)
Chapter 1. General Provisions

§ 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;

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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 § [55.1-2000](#), 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 Tier III 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

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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 foster care" does not include services or support provided to individuals through the Fostering Futures program set forth in Article 2 (§ [63.2-917](#) et seq.) of Chapter 9.

"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.

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"Child" means any natural person who is (i) under 18 years of age or (ii) for purposes of the Fostering Futures program set forth in Article 2 (§ [63.2-917](#) et seq.) of Chapter 9, under 21 years of age and meets the eligibility criteria set forth in § [63.2-919](#).

"Child-placing agency" means (i) any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § [63.2-1819](#), (ii) a local board that places children in foster homes or adoptive homes pursuant to §§ [63.2-900](#), [63.2-903](#), and [63.2-1221](#), or (iii) an entity that assists parents with the process of delegating parental and legal custodial powers of their children pursuant to Chapter 10 (§ [20-166](#) et seq.) of Title 20. "Child-placing agency" does not include the persons to whom such parental or legal custodial powers are delegated pursuant to Chapter 10 (§ [20-166](#) et seq.) of Title 20. 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-placing agency, children's residential facility, 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

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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 and permanency team" means the group of individuals assembled by the local department to assist with determining planning and placement options for a child, which shall include, as appropriate, all biological relatives and fictive kin of the child, as well as any professionals who have served as a resource to the child or his family, such as teachers, medical or mental health providers, and clergy members. In the case of a child who is 14 years of age or older, the family and permanency team shall also include any members of the child's case planning team that were selected by the child in accordance with subsection A of § [16.1-281](#).

"Federal-Funded Kinship Guardianship Assistance program" means a program consistent with 42 U.S.C. § 673 that provides, subject to a kinship guardianship assistance agreement developed in accordance with § [63.2-1305](#), payments to eligible individuals who have received custody of a child of whom they had been the foster parents.

"Fictive kin" means persons who are not related to a child by blood or adoption but have an established relationship with the child or his family.

"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 care placement" does not include placement of a child in accordance with a power of attorney pursuant to Chapter 10 (§ [20-166](#) et seq.) of Title 20.

"Foster home" means a residence approved by a child-placing agency or local board in which any child, other than a child by birth or adoption of such person or a child who is the subject of a power of attorney to delegate parental or legal custodial powers by his parents or legal custodian to the natural person who has been designated the child's legal guardian pursuant to Chapter 10 (§ [20-166](#) et seq.) of Title 20 and who exercises legal authority over the child on a continuous basis for at least 24 hours without compensation, 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; (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](#); and (iii) a home in which are received only children who are the subject of a properly executed power of attorney pursuant to Chapter 10 (§ [20-166](#) et seq.) of Title 20.

"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 or were formerly committed to the Department of Juvenile Justice and are between the ages of 18 and 21 in transitioning to self-sufficiency.

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"Independent living arrangement" means placement of (i) a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency by the local board or licensed child-placing agency or (ii) a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement by the Department of Juvenile Justice, in a living arrangement in which such child or person 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; (ii) is between the ages of 18 and 21 and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local board of social services; or (iii) is a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement in an independent living arrangement. 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.

"Kinship guardian" means the adult relative of a child in a kinship guardianship established in accordance with § [63.2-1305](#) or [63.2-1306](#) who has been awarded custody of the child by the court after acting as the child's foster parent.

"Kinship guardianship" means a relationship established in accordance with § [63.2-1305](#) or [63.2-1306](#) between a child and an adult relative of the child who has formerly acted as the child's foster parent that is intended to be permanent and self-sustaining as evidenced by the transfer by the court to the adult relative of the child of the authority necessary to ensure the protection, education, care and control, and custody of the child and the authority for decision making for the child.

"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.

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"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.

"Qualified individual" means a trained professional or licensed clinician who is not an employee of the local board of social services or licensed child-placing agency that placed the child in a qualified residential treatment program and is not affiliated with any placement setting in which children are placed by such local board of social services or licensed child-placing agency.

"Qualified residential treatment program" means a program that (i) provides 24-hour residential placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that meets the clinical and other needs of children with serious emotional or behavioral disorders, including any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts outreach with the child's family members, including efforts to maintain connections between the child and his siblings and other family; documents and maintains records of such outreach efforts; and maintains contact information for any known biological family and fictive kin of the child; (v) whenever appropriate and in the best interest of the child, facilitates participation by family members in the child's treatment program before and after discharge and documents the manner in which such participation is facilitated; (vi) provides discharge planning and family-based aftercare support for at least six months after discharge; (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an organization approved by the federal Secretary of Health and Human Services; and (viii) requires that any child placed in the program receive an assessment within 30 days of such placement by a qualified individual that (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, and functional assessment tool approved by the Commissioner of Social Services; (b) identifies whether the needs of the child can be met through placement with a family member or in a foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a qualified residential treatment program, that would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals established for the child in his foster care or permanency plan; (c) establishes a list of short-term and long-term mental and behavioral health goals for the child; and (d) is documented in a written report to be filed with the court prior to any hearing on the child's placement pursuant to § [16.1-281](#), [16.1-282](#), [16.1-282.1](#), or [16.1-282.2](#).

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"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](#).

"State-Funded Kinship Guardianship Assistance program" means a program that provides payments to eligible individuals who have received custody of a relative child subject to a kinship guardianship assistance agreement developed in accordance with § [63.2-1306](#).

"Supervised independent living setting" means the residence of a person 18 years of age or older who is participating in the Fostering Futures program set forth in Article 2 (§ [63.2-917](#) et seq.) of Chapter 9 where supervision includes a monthly visit with a service worker or, when appropriate, contracted supervision. "Supervised independent living setting" does not include residential facilities or group homes.

"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 Virginia Initiative for Education and Work (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.

Code of Virginia
Title 63.2. Welfare (Social Services)
Chapter 2. State Social Services

§ 63.2-217.1. Board to amend regulations governing emergency response plans of assisted living facilities.

A. The Board shall amend its regulations governing emergency preparedness and response plans and temporary emergency electrical power sources of assisted living facilities to

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require the following:

1. Any assisted living facility that is equipped with an on-site emergency generator shall (i) include in its emergency preparedness and response plan a description of the emergency generator's capacity to provide sufficient power for the operation of lighting, ventilation, temperature control, supplied oxygen, and refrigeration and (ii) test such emergency generator monthly and maintain records of such tests; and

2. Any assisted living facility that is not equipped with an on-site emergency generator shall (i) enter into an agreement with a vendor capable of providing the assisted living facility with an emergency generator for the provision of electricity during an interruption of the normal electric power supply; (ii) enter into at least one agreement with a separate vendor capable of providing an emergency generator in the event that the primary vendor is unable to comply with its agreement with the assisted living facility during an emergency; and (iii) have its temporary emergency electrical power source connection tested at the time of installation and every two years thereafter by a contracted vendor and maintain records of such tests.

B. The Department shall provide notice to all licensed assisted living facilities regarding the date by which such assisted living facilities must comply with the regulations promulgated pursuant to this section.

Code of Virginia
Title 63.2. Welfare (Social Services)
Chapter 17. Licensure and Registration Procedures

Article 1. General Provisions

§ 63.2-1700. Application fees; regulations and schedules; use of fees; certain facilities, centers and agencies exempt.

The Board is authorized to adopt regulations and schedules for fees to be charged for processing applications for licenses to operate assisted living facilities, adult day care centers, and child welfare agencies. Such schedules shall specify minimum and maximum fees and, where appropriate, gradations based on the capacity of such facilities, centers, and agencies. Fees shall be used for the development and delivery of training for operators and staff of facilities, centers, and agencies. Fees shall be expended for this purpose within two fiscal years following the fiscal year in which they are collected. These fees shall not be applicable to facilities, centers, or agencies operated by federal entities.

§ 63.2-1701. Licenses required; issuance, expiration, and renewal; maximum number of residents, participants or children; posting of licenses.

A. As used in this section, "person" means any individual; corporation; partnership; association; limited liability company; local government; state agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity that operates or maintains a child welfare agency, adult day care center, or assisted living facility.

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B. Every person who constitutes, or who operates or maintains, an assisted living facility, adult day care center, or child welfare agency shall obtain the appropriate license from the Commissioner, which may be renewed. However, no license shall be required for an adult day care center that provides services only to individuals enrolled in a Programs of All-Inclusive Care for the Elderly program operated in accordance with an agreement between the provider, the Department of Medical Assistance Services and the Centers for Medicare and Medicaid Services. The Commissioner, upon request, shall consult with, advise, and assist any person interested in securing and maintaining any such license. Each application for a license shall be made to the Commissioner, in such form as he may prescribe. It shall contain the name and address of the applicant and, if the applicant is an association, partnership, limited liability company, or corporation, the names and addresses of its officers and agents. The application shall also contain a description of the activities proposed to be engaged in and the facilities and services to be employed, together with other pertinent information as the Commissioner may require. In the case of an application for licensure as a children's residential facility, the application shall also contain information regarding any complaints, enforcement actions, or sanctions against a license to operate a children's residential facility held by the applicant in another state.

C. The licenses shall be issued on forms prescribed by the Commissioner. Any two or more licenses may be issued for concurrent operation of more than one assisted living facility, adult day care center, or child welfare agency, but each license shall be issued upon a separate form. Each license and renewals thereof for an assisted living facility, adult day care center, or child welfare agency may be issued for periods of up to three successive years, unless sooner revoked or surrendered.

D. The length of each license or renewal thereof for an assisted living facility shall be based on the judgment of the Commissioner regarding the compliance history of the facility and the extent to which it meets or exceeds state licensing standards. On the basis of this judgment, the Commissioner may issue licenses or renewals thereof for periods of six months, one year, two years, or three years.

E. The Commissioner may extend or shorten the duration of licensure periods for a child welfare agency whenever, in his sole discretion, it is administratively necessary to redistribute the workload for greater efficiency in staff utilization.

F. Each license shall indicate the maximum number of persons who may be cared for in the assisted living facility, adult day care center, or child welfare agency for which it is issued.

G. The license and any other documents required by the Commissioner shall be posted in a conspicuous place on the licensed premises.

H. Every person issued a license that has not been suspended or revoked shall renew such license prior to its expiration.

I. Officers, employees, or agents of the Commonwealth, or of any county, city, or town 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.

§ 63.2-1702. Investigation on receipt of application.

Upon receipt of the application, the Commissioner shall cause an investigation to be made of the activities, services, and facilities of the applicant and of his character and reputation or, if the applicant is an association, partnership, limited liability company, or corporation, the character and reputation of its officers and agents, and upon receipt of the initial application, an

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investigation of the applicant's financial responsibility. The financial records of an applicant shall not be subject to inspection if the applicant submits an operating budget and at least one credit reference. In the case of child welfare agencies and assisted living facilities, the character and reputation investigation upon application shall include background checks pursuant to § [63.2-1721](#); however, a children's residential facility shall comply with the background check requirements contained in § [63.2-1726](#). In the case of a children's residential facility, the character and reputation investigation shall also include consideration of any complaints, enforcement actions, or sanctions against a license to operate a children's residential facility held by the applicant in another state. Records that contain confidential proprietary information furnished to the Department pursuant to this section shall be exempt from disclosure pursuant to subdivision 4 of § [2.2-3705.5](#).

§ 63.2-1703. Variances.

The Commissioner may grant a variance to a regulation when the Commissioner determines that (i) a licensee or applicant for licensure as an assisted living facility, adult day center or child welfare agency has demonstrated that the implementation of a regulation would impose a substantial financial or programmatic hardship and (ii) the variance would not adversely affect the safety and well-being of residents, participants or children in care. The Commissioner shall review each allowable variance at least annually. At a minimum, this review shall address the impact of the allowable variance on persons in care, adherence by the licensee to any conditions attached, and the continuing need for the allowable variance.

§ 63.2-1705. Compliance with Uniform Statewide Building Code.

A. Buildings licensed as assisted living facilities, adult day care centers and child welfare agencies shall be classified by and meet the specifications for the proper Use Group as required by the Virginia Uniform Statewide Building Code.

B. Buildings used for assisted living facilities or adult day care centers shall be licensed for ambulatory or nonambulatory residents or participants. Ambulatory means the condition of a resident or participant who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by the Uniform Statewide Building Code without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident or participant may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate. Nonambulatory means the condition of a resident or participant who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

§ 63.2-1706. Inspections and interviews.

A. Applicants for licensure and licensees shall at all times afford the Commissioner reasonable opportunity to inspect all of their facilities, books and records, and to interview their agents and employees and any person living or participating in such facilities, or under their custody, control, direction or supervision. Interviews conducted pursuant to this section with persons living or participating in a facility operated by or under the custody, control, direction, or supervision of an applicant for licensure or a licensee shall be (i) authorized by the person to be interviewed or his legally authorized representative and (ii) limited to discussion of issues related to the applicant's or licensee's compliance with applicable laws and regulations,

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including ascertaining if assessments and reassessments of residents' cognitive and physical needs are performed as required under regulations of the Board.

B. For any adult day care center issued a license or renewal thereof for a period of six months, the Commissioner shall make at least two inspections during the six-month period, one of which shall be unannounced. For any adult day care center issued a license or renewal thereof for a period of one year, the Commissioner shall make at least three inspections each year, at least two of which shall be unannounced. For any adult day care center issued a license or a renewal thereof for a period of two years, the Commissioner shall make at least two inspections each year, at least one of which shall be unannounced. For any adult day care center issued a three- year license, the Commissioner shall make at least one inspection each year, which shall be unannounced.

For any assisted living facility issued a license or renewal thereof for a period of six months, the Commissioner shall make at least two inspections during the six-month period, one of which shall be unannounced. For any assisted living facility issued a license or renewal thereof for a period of one, two, or three years, the Commissioner shall make at least one inspection each year, which shall be unannounced, and as needed based on compliance with applicable laws and regulations.

C. All licensed child welfare agencies shall be inspected not less than twice annually, and one of those inspections shall be unannounced.

D. The activities, services and facilities of each applicant for renewal of his license as an assisted living facility, adult day care center or child welfare agency shall be subject to an inspection or examination by the Commissioner to determine if he is in compliance with current regulations of the Board.

E. For any licensed assisted living facility, adult day care center or child welfare agency, the Commissioner may authorize such other announced or unannounced inspections as the Commissioner considers appropriate.

§ 63.2-1706.1. Inspections of child welfare agencies; prioritization.

The Commissioner shall prioritize inspections of child welfare agencies in the following order: (i) inspections conducted in response to a complaint involving a child welfare agency and (ii) inspections of child welfare agencies that are not conducted in response to a complaint.

§ 63.2-1707. Issuance or refusal of license; notification; provisional and conditional licenses.

Upon completion of his investigation, the Commissioner shall issue an appropriate license to the applicant if (i) the applicant has made adequate provision for such activities, services, and facilities as are reasonably conducive to the welfare of the residents, participants, or children over whom he may have custody or control; (ii) at the time of initial application, the applicant has submitted an operating budget and at least one credit reference; (iii) he is, or the officers and agents of the applicant if it is an association, partnership, limited liability company, or corporation are, of good character and reputation; and (iv) the applicant and agents comply with

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the provisions of this subtitle. Otherwise, the license shall be denied. Immediately upon taking final action, the Commissioner shall notify the applicant of such action.

Upon completion of the investigation for the renewal of a license, the Commissioner may issue a provisional license to any applicant if the applicant is temporarily unable to comply with all of the licensure requirements. The provisional license may be renewed, but the issuance of a provisional license and any renewals thereof shall be for no longer a period than six successive months. A copy of the provisional license shall be prominently displayed by the provider at each public entrance of the subject facility and shall be printed in a clear and legible size and style. In addition, the facility shall be required to prominently display next to the posted provisional license a notice that a description of specific violations of licensing standards to be corrected and the deadline for completion of such corrections is available for inspection at the facility and on the facility's website, if applicable.

At the discretion of the Commissioner, a conditional license may be issued to an applicant to operate a new facility in order to permit the applicant to demonstrate compliance with licensure requirements. Such conditional license may be renewed, but the issuance of a conditional license and any renewals thereof shall be for no longer a period than six successive months.

§ 63.2-1708. Records and reports.

Every licensed assisted living facility, licensed adult day care center, or licensed child welfare agency shall keep such records and make such reports to the Commissioner as he may require. The forms to be used in the making of such reports shall be prescribed and furnished by the Commissioner.

§ 63.2-1709. Enforcement and sanctions; assisted living facilities and adult day care centers; interim administration; receivership, revocation, denial, summary suspension.

A. Upon receipt and verification by the Commissioner of information from any source indicating an imminent and substantial risk of harm to residents, the Commissioner may require an assisted living facility to contract with an individual licensed by the Board of Long-Term Care Administrators, to be either selected from a list created and maintained by the Department of Medical Assistance Services or selected from a pool of appropriately licensed administrators recommended by the owner of the assisted living facility, to administer, manage, or operate the assisted living facility on an interim basis, and to attempt to bring the facility into compliance with all relevant requirements of law, regulation, or any plan of correction approved by the Commissioner. Such contract shall require the interim administrator to comply with any and all requirements established by the Department to ensure the health, safety, and welfare of the residents. Prior to or upon conclusion of the period of interim administration, management, or operation, an inspection shall be conducted to determine whether operation of the assisted living facility shall be permitted to continue or should cease. Such interim administration, management, or operation shall not be permitted when defects in the conditions of the premises of the assisted living facility (i) present immediate and substantial risks to the health, safety, and welfare of residents, and (ii) may not be corrected within a reasonable period of time. Any decision by the Commissioner to require the employment of a person to administer, manage, or operate an assisted living facility shall be subject to the rights of judicial review and appeal as provided in the Administrative Process Act (§ 2.2-4000 et seq.). Actual and reasonable costs of

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such interim administration shall be the responsibility of and shall be borne by the owner of the assisted living facility.

B. The Board shall adopt regulations for the Commissioner to use in determining when the imposition of administrative sanctions or initiation of court proceedings, severally or jointly, is appropriate in order to ensure prompt correction of violations in assisted living facilities and adult day care centers involving noncompliance with state law or regulation as discovered through any inspection or investigation conducted by the Departments of Social Services, Health, or Behavioral Health and Developmental Services. The Commissioner may impose such sanctions or take such actions as are appropriate for violation of any of the provisions of this subtitle or any regulation adopted under any provision of this subtitle that adversely affects the health, safety or welfare of an assisted living facility resident or an adult day care participant. Such sanctions or actions may include (i) petitioning the court to appoint a receiver for any assisted living facility or adult day care center and (ii) revoking or denying renewal of the license for the assisted living facility or adult day care center for violation of any of the provisions of this subtitle, § 54.1-3408 or any regulation adopted under this subtitle that violation adversely affects, or is an immediate and substantial threat to, the health, safety or welfare of the person cared for therein, or for permitting, aiding or abetting the commission of any illegal act in an assisted living facility or adult day care center.

C. The Commissioner may issue a notice of summary suspension of the license to operate the assisted living facility pursuant to (i) for assisted living facilities operated by agencies of the Commonwealth, the procedures set forth in § 63.2-1710.1 or (ii) for all other assisted living facilities, the procedures hereinafter set forth in conjunction with any proceeding for revocation, denial, or other action when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the residents. The notice of summary suspension shall set forth (a) the summary suspension procedures, (b) hearing and appeal rights as provided under this subsection, (c) facts and evidence that formed the basis for which the summary suspension is sought, and (d) the time, date, and location of the hearing to determine whether the suspension is appropriate. Such notice shall be served on the assisted living facility or its designee as soon as practicable thereafter by personal service or certified mail, return receipt requested, to the address of record of the assisted living facility.

The summary suspension hearing shall be presided over by a hearing officer selected by the Commissioner from a list prepared by the Executive Secretary of the Supreme Court of Virginia and shall be held as soon as practicable, but in no event later than 15 business days following service of the notice of hearing; however, the hearing officer may grant a written request for a continuance, not to exceed an additional 10 business days, for good cause shown. Within 10 business days after such hearing, the hearing officer shall provide to the Commissioner written findings and conclusions, together with a recommendation as to whether the license should be summarily suspended.

Within 10 business days of the receipt of the hearing officer's findings, conclusions, and recommendation, the Commissioner may issue a final order of summary suspension or an order that such summary suspension is not warranted by the facts and circumstances presented. The Commissioner shall adopt the hearing officer's recommended decision unless to do so would be an error of law or Department policy. In the event that the Commissioner rejects a hearing

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officer's findings, conclusions, or recommended decision, the Commissioner shall state with particularity the basis for rejection. In issuing a final order of summary suspension, the Commissioner may suspend the license of the assisted living facility or suspend only certain authority of the assisted living facility to provide certain services or perform certain functions that the Commissioner determines should be restricted or modified in order to protect the health, safety, and welfare of the residents receiving care. A final order of summary suspension shall include notice that the assisted living facility may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following service of the order. A copy of any final order of summary suspension shall be prominently displayed by the provider at each public entrance of the facility, or in lieu thereof, the provider may display a written statement summarizing the terms of the order in a prominent location, printed in a clear and legible size and typeface, and identifying the location within the facility where the final order of summary suspension may be reviewed.

Upon appeal, the sole issue before the court shall be whether the Department had reasonable grounds to require the assisted living facility to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. Any concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension. The willful and material failure to comply with the final order of summary suspension shall constitute an offense under subdivision 3 of § 63.2-1712. At the request of the Commissioner, all agencies and subdivisions of the Commonwealth shall cooperate with the Commissioner in the relocation of residents of an assisted living facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to residents.

D. Notice of the Commissioner's intent to revoke or deny renewal of the license for an assisted living facility or to summarily suspend the license of an assisted living facility shall be provided by the Department and a copy of such notice shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations. In determining whether to deny, revoke, or summarily suspend a license, the Commissioner may choose to deny, revoke, or summarily suspend only certain authority of the assisted living facility to operate and may restrict or modify the assisted living facility's authority to provide certain services or perform certain functions that the Commissioner determines should be restricted or modified in order to protect the health, safety, or welfare of the residents. Such proposed denial, revocation, or summary suspension of certain services or functions may be appealed (i) if the assisted living facility is operated by an agency of the Commonwealth in accordance with the provisions of § 63.2-1710.2 and (ii) for all other assisted living facilities as otherwise provided in this subtitle for any denial, revocation, or summary suspension.

§ 63.2-1709.1. Enforcement and sanctions; child welfare agencies; revocation, denial, and summary suspension.

A. The Commissioner may revoke or deny the renewal of the license of any child welfare agency that violates any provision of this subtitle or fails to comply with the limitations and standards set forth in its license.

B. Pursuant to the procedures set forth in subsection C and in addition to the authority for

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other disciplinary actions provided in this title, the Commissioner may issue a notice of summary suspension of the license of any child welfare agency, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the child welfare agency that pose an immediate and substantial threat to the health, safety, and welfare of the children receiving care and the Commissioner believes the operation of the child welfare agency should be suspended during the pendency of such proceeding.

C. A notice of summary suspension issued by the Commissioner to a child welfare agency shall set forth (i) the summary suspension procedures; (ii) hearing and appeal rights as provided in this subsection; (iii) facts and evidence that formed the basis for the summary suspension; and (iv) the time, date, and location of a hearing to determine whether the summary suspension is appropriate. Such notice shall be served on the child welfare agency or its designee as soon as practicable thereafter by personal service or certified mail, return receipt requested, to the address of record of the child welfare agency.

The summary suspension hearing shall be presided over by a hearing officer selected by the Commissioner from a list prepared by the Executive Secretary of the Supreme Court of Virginia and shall be held as soon as practicable, but in no event later than 15 business days following service of the notice of summary suspension; however, the hearing officer may grant a written request for a continuance, not to exceed an additional 10 business days, for good cause shown. Within 10 business days after such hearing, the hearing officer shall provide to the Commissioner written findings and conclusions, together with a recommendation as to whether the license should be summarily suspended.

Within 10 business days of the receipt of the hearing officer's findings, conclusions, and recommendation, the Commissioner may issue a final order of summary suspension or an order that such summary suspension is not warranted by the facts and circumstances presented. The Commissioner shall adopt the hearing officer's recommended decision unless to do so would be an error of law or Department policy. In the event that the Commissioner rejects the hearing officer's findings, conclusions, or recommendation, the Commissioner shall state with particularity the basis for rejection. In issuing a final order of summary suspension, the Commissioner may choose to suspend the license of the child welfare agency or to suspend only certain authority of the child welfare agency to operate, including the authority to provide certain services or perform certain functions that the Commissioner determines should be restricted or modified in order to protect the health, safety, or welfare of the children receiving care. A final order of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following service of the order. The sole issue before the court shall be whether the Commissioner had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

A copy of any final order of summary suspension shall be prominently displayed by the child welfare agency at each public entrance of the facility, or in lieu thereof, the child welfare agency may display a written statement summarizing the terms of the order in a prominent location, printed in a clear and legible size and typeface, and identifying the location within the facility

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where the final order of summary suspension may be reviewed.

The willful and material failure to comply with the final order of summary suspension constitutes a violation of subdivision 3 of § 63.2-1712. In the case of a children's residential facility, the Commissioner may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who are residents of a children's residential facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to such residents.

The provisions of this subsection shall not apply to any child welfare agency operated by an agency of the Commonwealth, which shall instead be governed by the provisions of § 63.2-1710.1

§ 63.2-1709.2. Enforcement and sanctions; special orders; civil penalties.

A. Notwithstanding any other provision of law, following a proceeding as provided in § 2.2-4019, the Commissioner may issue a special order (i) for violation of any of the provisions of this subtitle, § 54.1-3408, or any regulation adopted under any provision of this subtitle which violation adversely affects, or is an imminent and substantial threat to, the health, safety, or welfare of the person cared for therein, or (ii) for permitting, aiding, or abetting the commission of any illegal act in an assisted living facility, adult day care center, or child welfare agency. Notice of the Commissioner's intent to take any of the actions enumerated in subdivisions B 1 through B 7 shall be provided by the Department and a copy of such notice shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. Actions set forth in subsection B may be appealed by (a) an assisted living facility, adult day care center, or child welfare agency operated by an agency of the Commonwealth in accordance with § 63.2-1710.2 or (b) any other assisted living facility, adult day care center, or child welfare agency in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The Commissioner shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders.

B. The Commissioner may take the following actions regarding assisted living facilities, adult day care centers, and child welfare agencies through the issuance of a special order and may require a copy of the special order provided by the Department to be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations:

1. Place a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of its license and that the health and safety of residents, participants, or children are at risk;
2. Reduce licensed capacity or prohibit new admissions when the Commissioner concludes that the licensee cannot make necessary corrections to achieve compliance with regulations except by a temporary restriction of its scope of service;
3. Mandate training for the licensee or licensee's employees, with any costs to be borne by the licensee, when the Commissioner concludes that the lack of such training has led directly to

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violations of regulations;

4. Assess civil penalties for each day the assisted living facility is or was out of compliance with the terms of its license and the health, safety, and welfare of residents are at risk, which shall be paid into the state treasury and credited to the Assisted Living Facility Education, Training, and Technical Assistance Fund created pursuant to § 63.2-1803.1; however, no civil penalty shall be imposed pursuant to this subdivision on any assisted living facility operated by an agency of the Commonwealth. The aggregate amount of such civil penalties shall not exceed \$10,000 for assisted living facilities in any 12-month period. Criteria for imposition of civil penalties and amounts, expressed in ranges, shall be developed by the Board, and shall be based upon the severity, pervasiveness, duration, and degree of risk to the health, safety, or welfare of residents. Such civil penalties shall be applied by the Commissioner in a consistent manner. Such criteria shall also provide that (i) the Commissioner may accept a plan of correction, including a schedule of compliance, from an assisted living facility prior to setting a civil penalty, and (ii) the Commissioner may reduce or abate the penalty amount if the facility complies with the plan of correction within its terms.

A single act, omission, or incident shall not give rise to imposition of multiple civil penalties even though such act, omission, or incident may violate more than one statute or regulation. A civil penalty that is not appealed becomes due on the first day after the appeal period expires. The license of an assisted living facility that has failed to pay a civil penalty due under this section shall not be renewed until the civil penalty has been paid in full, with interest, provided that the Commissioner may renew a license when an unpaid civil penalty is the subject of a pending appeal;

5. Assess civil penalties of not more than \$500 per inspection upon finding that the adult day care center or child welfare agency is substantially out of compliance with the terms of its license and the health and safety of residents, participants, or children are at risk; however, no civil penalty shall be imposed pursuant to this subdivision on any adult day care center or child welfare agency operated by an agency of the Commonwealth;

6. Require licensees to contact parents, guardians, or other responsible persons in writing regarding health and safety violations; and

7. Prevent licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.

C. The Board shall adopt regulations to implement the provisions of this section.

§ 63.2-1709.3. Child-placing agencies; conscience clause.

A. To the extent allowed by federal law, no private child-placing agency shall be required to perform, assist, counsel, recommend, consent to, refer, or participate in any placement of a child for foster care or adoption when the proposed placement would violate the agency's written religious or moral convictions or policies.

B. The Commissioner shall not deny an application for an initial license or renewal of a license or revoke the license of a private child-placing agency because of the agency's objection

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to performing, assisting, counseling, recommending, consenting to, referring, or participating in a placement that violates the agency's written religious or moral convictions or policies.

C. A state or local government entity may not deny a private child-placing agency any grant, contract, or participation in a government program because of the agency's objection to performing, assisting, counseling, recommending, consenting to, referring, or participating in a placement that violates the agency's written religious or moral convictions or policies.

D. Refusal of a private child-placing agency to perform, assist, counsel, recommend, consent to, refer, or participate in a placement that violates the agency's written religious or moral convictions or policies shall not form the basis of any claim for damages.

§ 63.2-1710. Appeal from refusal, denial of renewal, or revocation of license.

A. Whenever the Commissioner refuses to issue a license or to renew a license or revokes a license for an assisted living facility, adult day care center, or child welfare agency operated by an agency of the Commonwealth, the provisions of § [63.2-1710.2](#) shall apply. Whenever the Commissioner refuses to issue a license or to renew a license or revokes a license for an assisted living facility, adult day care center, or child welfare agency other than an assisted living facility, adult day care center, or child welfare agency operated by an agency of the Commonwealth, the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.) shall apply, except that all appeals from notice of the Commissioner's intent to refuse to issue or renew, or revoke a license shall be received in writing from the assisted living facility, adult day care center or child welfare agency operator within 15 days of the date of receipt of the notice. Judicial review of a final review agency decision shall be in accordance with the provisions of the Administrative Process Act. No stay may be granted upon appeal to the Court of Appeals.

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

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

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

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

§ 63.2-1710.1. Summary order of suspension; assisted living facilities and child welfare agencies operated by an agency of the Commonwealth.

Whenever the Commissioner issues a summary order of suspension of the license to operate an assisted living facility, group home, or child welfare agency operated by an agency of the Commonwealth:

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1. Before such summary order of suspension shall take effect, the Commissioner shall issue to the assisted living facility, group home, or child welfare agency a notice of summary order of suspension setting forth (i) the procedures for a hearing and right of review as provided in this section and (ii) facts and evidence that formed the basis on which the summary order of suspension is sought. Such notice shall be served on the licensee or its designee as soon as practicable thereafter by personal service or certified mail, return receipt requested, to the address of record of the licensee. The notice shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the notice of the summary order of suspension and shall be convened by the Commissioner or his designee. After such hearing, the Commissioner may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented.

2. A final order of summary suspension shall include notice that the licensee may request, in writing and within three business days after receiving the Commissioner's decision, that the Commissioner refer the matter to the Secretary of Health and Human Resources for resolution within three business days of the referral. Any determination by the Secretary shall be final and not subject to judicial review. If the final order of summary suspension is upheld, it shall take effect immediately, and a copy of the final order of summary suspension shall be prominently displayed by the licensee at each public entrance of the facility. Any concurrent revocation, denial, or other proceedings shall not be affected by the outcome of any determination by the Secretary.

§ 63.2-1710.2. Right to appeal notice of intent; assisted living facilities, adult day care centers, and child welfare agencies operated by agencies of the Commonwealth.

An assisted living facility, adult day care center, or child welfare agency operated by an agency of the Commonwealth shall have the right to appeal any notice of intent as follows:

1. Within 30 days after receiving a notice of intent to impose a sanction, the licensee shall request in writing that the Commissioner review the intended agency action and may submit, together with such request, relevant information, documentation, or other pertinent data supporting its appeal. The Commissioner shall issue a decision within 60 days after receiving the request and shall have the authority to uphold the sanction or take whatever action he deems appropriate to resolve the controversy.

2. If the assisted living facility, adult day care center, or child welfare agency disputes the Commissioner's decision, the licensee shall request, within 30 days of receiving the Commissioner's decision, that the Commissioner refer the matter to the Secretary of Health and Human Resources. The Secretary shall issue a decision within 60 days of receiving the request for review. The Secretary's decision shall be final and shall not be subject to review.

§ 63.2-1711. Injunction against operation without license.

Any circuit court having jurisdiction in the county or city where the principal office of any assisted living facility, adult day care center or child welfare agency is located shall, at the suit of the Commissioner, have jurisdiction to enjoin its operation without a license required by this subtitle.

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§ 63.2-1712. Offenses; penalty.

Any person, and each officer and each member of the governing board of any association or corporation that operates an assisted living facility, adult day care center or child welfare agency, is guilty of a Class 1 misdemeanor if he:

1. Interferes with any representative of the Commissioner in the discharge of his duties under this subtitle;
2. Makes to the Commissioner or any representative of the Commissioner any report or statement, with respect to the operation of any assisted living facility, adult day care center or child welfare agency, that is known by such person to be false or untrue;
3. Operates or engages in the conduct of an assisted living facility, adult day care center or child welfare agency without first obtaining a license as required by this subtitle or after such license has been revoked or suspended or has expired and not been renewed. No violation shall occur if the facility, center, or agency has applied to the Department for renewal prior to the expiration date of the license. Every day's violation of this subdivision shall constitute a separate offense; or
4. Operates or engages in the conduct of an assisted living facility, adult day care center, or child welfare agency serving more persons than the maximum stipulated in the license.

§ 63.2-1713. Misleading advertising prohibited.

No assisted living facility, adult day care center or child welfare agency shall make, publish, disseminate, circulate, or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public in this Commonwealth, in a newspaper or other publication; in the form of a book, notice, handbill, poster, blueprint, map, bill, tag, label, circular, pamphlet, or letter; or via electronic mail, website, automatic mailing list services (listservs), newsgroups, facsimile, chat rooms; or in any other way an advertisement of any sort regarding services or anything so offered to the public, which advertisement contains any promise, assertion, representation or statement of fact that is untrue, deceptive or misleading.

§ 63.2-1714. Duty of attorneys for the Commonwealth.

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

Article 2. Unlicensed Programs

§ 63.2-1715. Exemptions from licensure.

- A. No person to whom parental and legal custodial powers have been delegated pursuant to Chapter 10 (§ [20-166](#) et seq.) of Title 20 shall be required to obtain a license to operate an independent foster home or approval as a foster parent from the Commissioner.
- B. Officers, employees, or agents of the Commonwealth, or of any county, city, or town acting within the scope of their authority as such, who serve as or maintain a child-placing agency shall

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not be required to be licensed.

§ 63.2-1718. Inspection of unlicensed child or adult care operations; inspection warrant.

In order to perform his duties under this subtitle, the Commissioner may enter and inspect any unlicensed child or adult care operation with the consent of the owner or person in charge, or pursuant to a warrant. Administrative search warrants for inspections of child or adult care operations, based upon a petition demonstrating probable cause and supported by an affidavit, may be issued ex parte by any judge having authority to issue criminal warrants whose territorial jurisdiction includes the child or adult care operation to be inspected, if he is satisfied from the petition and affidavit that there is reasonable and probable cause for the inspection. The affidavit shall contain either a statement that consent to inspect has been sought and refused, or that facts and circumstances exist reasonably justifying the failure to seek such consent. Such facts may include, without limitation, past refusals to permit inspection or facts establishing reason to believe that seeking consent would provide an opportunity to conceal violations of statutes or regulations. Probable cause may be demonstrated by an affidavit showing probable cause to believe that the child or adult care operation is in violation of any provision of this subtitle or any regulation adopted pursuant to this subtitle, or upon a showing that the inspection is to be made pursuant to a reasonable administrative plan for the administration of this subtitle. The inspection of a child or adult care operation that has been the subject of a complaint pursuant to § 63.2-1728 shall have preeminent priority over any other inspections of child or adult care operations to be made by the Commissioner unless the complaint on its face or in the context of information known to the Commissioner discloses that the complaint has been brought to harass, to retaliate, or otherwise to achieve an improper purpose, and that the improper purpose casts serious doubt on the veracity of the complaint. After issuing a warrant under this section, the judge shall file the affidavit in the manner prescribed by § 19.2-54. Such warrant shall be executed and returned to the clerk of the circuit court of the city or county wherein the inspection was made.

Article 3. Background Checks

§ 63.2-1719. Barrier crime; construction.

For purposes of this chapter, in the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, convictions for any barrier crime as defined in § 19.2-392.02 shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

§ 63.2-1720. Assisted living facilities and adult day care centers.

A. No assisted living facility or adult day care center shall hire for compensated employment or continue to employ persons who have been convicted of any offense set forth in clause (i) of the definition of barrier crime in § [19.2-392.02](#). A child-placing agency or independent foster home licensed in accordance with the provisions of this chapter shall not hire for compensated employment or continue to employ persons who (i) have been convicted of any barrier crime as defined in § [19.2-392.02](#) or (ii) are the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. All applicants for employment shall undergo background

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checks pursuant to subsection C.

B. A licensed assisted living facility or adult day care center may hire an applicant or continue to employ a person convicted of one misdemeanor barrier crime not involving abuse or neglect, or any substantially similar offense under the laws of another jurisdiction, if five years have elapsed following the conviction.

C. Background checks pursuant to subsection A require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and, in the case of licensed child-placing agencies or independent foster homes, whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. A criminal history records check through the Central Criminal Records Exchange pursuant to § [19.2-389](#); and

3. In the case of licensed child-placing agencies or independent foster homes, a search of the central registry maintained pursuant to § [63.2-1515](#) for any founded complaint of child abuse and neglect.

D. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision C 1 is guilty of a Class 1 misdemeanor.

E. A licensed assisted living facility, licensed adult day care center, licensed child-placing agency, or licensed independent foster home shall obtain for any compensated employees within 30 days of employment (i) an original criminal record clearance with respect to convictions for any offense set forth in clause (i) of the definition of barrier crime in § [19.2-392.02](#) or an original criminal history record from the Central Criminal Records Exchange and (ii) in the case of licensed child-placing agencies or independent foster homes, (a) an original criminal record clearance with respect to any barrier crime as defined in § [19.2-392.02](#) or an original criminal history record from the Central Criminal Records Exchange and (b) a copy of the information from the central registry for any compensated employee within 30 days of employment. However, no employee shall be permitted to work in a position that involves direct contact with a person or child receiving services until an original criminal record clearance or original criminal history record has been received, unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with the requirements of this section. If an applicant is denied employment because of information from the central registry or convictions appearing on his criminal history record, the licensed assisted living facility, adult day care center, child-placing agency, or independent foster home shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

F. No volunteer who (i) has been convicted of any barrier crime as defined in § [19.2-392.02](#) or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth shall be permitted to serve in a licensed child-placing agency or independent foster home. Any person desiring to volunteer at a licensed child-placing agency or independent foster home shall provide the agency, system, or home with a sworn statement or affirmation

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pursuant to subdivision C 1. Such licensed child-placing agency or independent foster home shall obtain for any volunteers, within 30 days of commencement of volunteer service, a copy of (a) the information from the central registry and (b) an original criminal record clearance with respect to any barrier crime as defined in § [19.2-392.02](#) or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision C 1 is guilty of a Class 1 misdemeanor. If a volunteer is denied service because of information from the central registry or convictions appearing on his criminal history record, such licensed child-placing agency or independent foster home shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the volunteer. The provisions of this subsection shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending a licensed child-placing agency or independent foster home, whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children that includes the parent-volunteer's own child in a program that operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

G. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult day care center without the permission or under the supervision of a person who has received a clearance pursuant to this section.

H. Further dissemination of the background check information is prohibited other than to the Commissioner's 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.

I. Notwithstanding any other provision of law, a licensed adult day care center that provides services to individuals receiving services under the state plan for medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history background check has been completed for an employee in accordance with this section and (ii) whether such employee is eligible for employment.

J. A licensed assisted living facility shall notify and provide all students a copy of the provisions of this article prior to or upon enrollment in a certified nurse aide program operated by such assisted living facility.

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

§ 63.2-1721. Background check upon application for licensure as a child-placing agency, etc.; penalty.

A. Upon application for licensure as a child-placing agency or independent foster home, (i) all applicants and (ii) agents at the time of application who are or will be involved in the day-to-day operations of the child-placing agency or independent foster home or who are or will be alone with, in control of, or supervising one or more of the children shall undergo a background check pursuant to subsection B. Upon application for licensure as an assisted

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living facility, all applicants shall undergo a background check pursuant to subsection B. In addition, foster or adoptive parents requesting approval by child-placing agencies shall undergo background checks pursuant to subsection B prior to their approval.

B. Background checks pursuant to subsection A require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;
2. A criminal history records check through the Central Criminal Records Exchange pursuant to § [19.2-389](#); and
3. In the case of child-placing agencies, independent foster homes, or adoptive or foster parents, a search of the central registry maintained pursuant to § [63.2-1515](#) for any founded complaint of child abuse and neglect.

C. The person required to have a background check pursuant to subsection A shall submit the background check information required in subsection B to the Commissioner's representative prior to issuance of a license, registration or approval. The applicant, other than an applicant for licensure as an assisted living facility, shall provide an original criminal record clearance with respect to any barrier crime as defined in § [19.2-392.02](#) or an original criminal history record from the Central Criminal Records Exchange. An applicant for licensure as an assisted living facility shall provide an original criminal record clearance with respect to any offense set forth in clause (i) of the definition of barrier crime in § [19.2-392.02](#) or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor. If any person specified in subsection A, other than an applicant for licensure as an assisted living facility, required to have a background check (i) has been convicted of any barrier crime as defined in § [19.2-392.02](#) or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such person has not been granted a waiver by the Commissioner pursuant to § [63.2-1723](#) or is not subject to an exception in subsection E, F, G, or H, (a) the Commissioner shall not issue a license to a child-placing agency or independent foster home or (b) a child-placing agency shall not approve an adoptive or foster home. If any applicant for licensure as an assisted living facility required to have a background check has been convicted of any offense set forth in clause (i) of the definition of barrier crime in § [19.2-392.02](#), the Commissioner shall not issue a license to an assisted living facility.

D. No person specified in subsection A shall be involved in the day-to-day operations of a licensed child-placing agency or independent foster home; be alone with, in control of, or supervising one or more children receiving services from a licensed child-placing agency or independent foster home; or be permitted to work in a position that involves direct contact with a person receiving services without first having completed background checks pursuant to subsection B unless such person is directly supervised by another person for whom a

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background check has been completed in accordance with the requirements of this section.

E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant who has been convicted of not more than one misdemeanor offense as set out in § [18.2-57](#), or any substantially similar offense under the laws of another jurisdiction, not involving abuse, neglect, moral turpitude, or a minor, provided that 10 years have elapsed following the conviction.

F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as a foster parent an applicant who has been convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny, or any substantially similar offense under the laws of another jurisdiction, who has had his civil rights restored by the Governor or other appropriate authority, provided that 25 years have elapsed following the conviction.

G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause (iv) of the definition of barrier crime in § [19.2-392.02](#) who has had his civil rights restored by the Governor or other appropriate authority, provided that 10 years have elapsed following the conviction, or eight years have elapsed following the conviction and the applicant (i) has complied with all obligations imposed by the criminal court; (ii) has completed a substance abuse treatment program; (iii) has completed a drug test administered by a laboratory or medical professional within 90 days prior to being approved, and such test returned with a negative result; and (iv) complies with any other obligations as determined by the Department.

H. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause (iii) of the definition of barrier crime in § [19.2-392.02](#) who has had his civil rights restored by the Governor or other appropriate authority, provided that 20 years have elapsed following the conviction.

I. If an applicant is denied licensure, registration or approval because of information from the central registry or convictions appearing on his criminal history record, the Commissioner shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

J. Further dissemination of the background check information is prohibited other than to the Commissioner's 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.

§ 63.2-1722. Revocation or denial of renewal based on background checks; failure to obtain background check.

A. The Commissioner may revoke or deny renewal of a license of a child welfare agency, assisted living facility, or adult day care center and a child-placing agency may revoke the approval of a foster home if the assisted living facility, adult day care center, child welfare agency, or foster home has knowledge that a person specified in § [63.2-1720](#) or [63.2-](#)

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[1721](#) required to have a background check (i) has been convicted of any barrier crime as defined in § [19.2-392.02](#) or (ii) in the case of a child welfare agency or foster home, is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such person has not been granted a waiver by the Commissioner pursuant to § [63.2-1723](#) or is not subject to the exceptions in subsection B of § [63.2-1720](#) or subsection E, F, G, or H of § [63.2-1721](#), and the facility, center, or agency refuses to separate such person from employment or service or allows the household member to continue to reside in the home.

B. Failure to obtain background checks pursuant to §§ [63.2-1720](#) and [63.2-1721](#) shall be grounds for denial, revocation, or termination of a license, registration, or approval or any contract with the Department or a local department to provide child care services to clients of the Department or local department. No violation shall occur if the assisted living facility, adult day care center, child-placing agency, or independent foster home has applied for the background check timely and it has not been obtained due to administrative delay. The provisions of this section shall be enforced by the Department.

§ 63.2-1723. Child welfare agencies; criminal conviction and waiver.

A. Any person who seeks to operate or volunteer or work at a child welfare agency and who is disqualified because of a criminal conviction pursuant to §§ [63.2-1720](#) and [63.2-1721](#), may apply in writing for a waiver from the Commissioner. The Commissioner may grant a waiver if the Commissioner determines that (i) the person is of good moral character and reputation and (ii) the waiver would not adversely affect the safety and well-being of children in the person's care. The Commissioner shall not grant a waiver to any person who has been convicted of any barrier crime as defined in § [19.2-392.02](#). The child welfare agency shall notify in writing every parent and guardian of the children in its care of any waiver granted for its operators, employees or volunteers.

B. The Board shall adopt regulations to implement the provisions of this section.

§ 63.2-1726. Background check required; children's residential facilities.

A. As a condition of employment, volunteering, or providing services on a regular basis, every children's residential facility that is regulated or operated by the Departments of Social Services, Education, Military Affairs, or Behavioral Health and Developmental Services shall require any individual who (i) accepts a position of employment at such a facility, (ii) is employed by such a facility, (iii) volunteers for such a facility, or (iv) provides contractual services directly to a juvenile for such a facility to submit to fingerprinting and to provide personal descriptive information, to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. The children's residential facility shall inform the applicant that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of the applicant's eligibility to have responsibility for the safety and well-being of children. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth. The results of the criminal history background check must be received prior to permitting an applicant to work in the children's residential facility.

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The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the state agency which operates or regulates the children's residential facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's record lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the children's facility whether the applicant is eligible to have responsibility for the safety and well-being of children. Except as otherwise provided in subsection B, no children's residential facility regulated or operated by the Departments of Education, Behavioral Health and Developmental Services, Military Affairs, or Social Services shall hire for compensated employment or allow to volunteer or provide contractual services persons who have been convicted of or are the subject of pending charges for (a) any offense set forth in clause (i), (ii), (iii), or (v) of the definition of barrier crime in § [19.2-392.02](#) or (b) any offense set forth in clause (iv) of the definition of barrier crime in § [19.2-392.02](#) (1) in the five years prior to the application date for employment, to be a volunteer, or to provide contractual services or (2) such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § [19.2-392.02](#). The provisions of this section also shall apply to residential programs established pursuant to § [16.1-309.3](#) for juvenile offenders cited in a complaint for intake or in a petition before the court that alleges the juvenile is delinquent or in need of services or supervision and to local secure detention facilities, provided, however, that the provisions of this section related to local secure detention facilities shall only apply to an individual who, on or after July 1, 2013, accepts a position of employment at such local secure detention facility, volunteers at such local secure detention facility on a regular basis and will be alone with a juvenile in the performance of his duties, or provides contractual services directly to a juvenile at a local secure detention facility on a regular basis and will be alone with a juvenile in the performance of his duties. The Central Criminal Records Exchange and the state or local agency that regulates or operates the local secure detention facility shall process the criminal history record information regarding such applicant in accordance with this subsection and subsection B.

B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for compensated employment or for volunteer or contractual service purposes persons who have been convicted of not more than one misdemeanor offense under § [18.2-57](#) or [18.2-57.2](#), or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his employment, volunteer, or contractual services.

If the applicant is denied employment or the opportunity to volunteer or provide services at a children's residential facility because of information appearing on his criminal history record, and the applicant disputes the information upon which the denial was based, upon written request of the applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history record from the Federal Bureau of Investigation. The information provided to the children's residential facility shall not be disseminated except as provided in this section.

C. Those individuals listed in clauses (i) through (iv) of subsection A also shall authorize the children's residential facility to obtain a copy of information from the central registry maintained pursuant to § [63.2-1515](#) on any investigation of child abuse or neglect undertaken on him. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The children's residential facility shall receive the results of the central registry search prior to permitting an applicant to work. Children's residential facilities regulated or operated by the Departments of Education; Behavioral Health and Developmental Services; Military Affairs; and Social Services shall not hire for compensated employment or allow to volunteer or provide contractual services, persons who have a founded case of child

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abuse or neglect. Every residential facility for juveniles which is regulated or operated by the Department of Juvenile Justice shall be authorized to obtain a copy of the information from the central registry.

D. The Boards of Social Services; Education; Juvenile Justice; and Behavioral Health and Developmental Services, and the Department of Military Affairs, may adopt regulations to comply with the provisions of this section. Copies of any information received by a children's residential facility pursuant to this section shall be available to the agency that regulates or operates such facility but shall not be disseminated further. The cost of obtaining the criminal history record and the central registry information shall be borne by the employee or volunteer unless the children's residential facility, at its option, decides to pay the cost.

Article 4. Complaints Received from Consumers and the Public

§ 63.2-1728. Establishment of toll-free telephone line for complaints; investigation on receipt of complaints.

With such funds as are appropriated for this purpose, the Commissioner shall establish a toll-free telephone line to respond to complaints regarding operations of assisted living facilities, adult day care centers and child welfare agencies. Upon receipt of a complaint concerning the operation of an assisted living facility, adult day care center or child welfare agency, regardless of whether the program is subject to licensure, the Commissioner shall, for good cause shown, cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services, records and facilities. The assisted living facility, adult day care center or child welfare agency shall afford the Commissioner reasonable opportunity to inspect all of the operator's activities, services, records and facilities and to interview its agents and employees and any child or other person within its custody or control. Whenever an assisted living facility, adult day care center or child welfare agency subject to inspection under this section is determined by the Commissioner to be in noncompliance with the provisions of this subtitle or with regulations adopted pursuant to this subtitle, the Commissioner shall give reasonable notice to the assisted living facility, adult day care center or child welfare agency of the nature of its noncompliance and may thereafter take appropriate action as provided by law, including a suit to enjoin the operation of the assisted living facility, adult day care center or child welfare agency.

An incident report filed by an assisted living facility, pursuant to regulations adopted by the Board, for any major incident that negatively affects or threatens the life, health, safety, or welfare of any resident of the facility shall not be considered a complaint for purposes of this section and shall not be posted by the Department on a website maintained by the Department. However, upon receipt of an incident report for any major incident that negatively affects or threatens the life, health, safety, or welfare of any resident of an assisted living facility, the Commissioner may initiate an investigation including an on-site visit to the facility if the Commissioner finds, for good cause shown based upon the seriousness of the incident and the nature of any response to the incident, including any implementation of a plan of correction to address the situation giving rise to the incident, that an investigation is required to protect the life, health, safety, or welfare of a resident of the assisted living facility.

§ 63.2-1729. Confidentiality of complainant's identity.

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Whenever the Department conducts inspections and investigations in response to complaints received from the public, the identity of the complainant and the identity of any resident, participant or child who is the subject of the complaint, or identified therein, shall be confidential and shall not be open to inspection by members of the public. Identities of the complainant and resident, participant or child who is the subject of the complaint shall be revealed only if a court order so requires. Nothing contained herein shall prevent the Department, in its discretion, from disclosing to the assisted living facility, adult day care center or child welfare agency the nature of the complaint or the identity of the resident, participant or child who is the subject of the complaint. Nothing contained herein shall prevent the Department or its employees from making reports under Chapter 15 (§ 63.2-1500 et seq.) of this title or Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of this title. If the Department intends to rely, in whole or in part, on any statements made by the complainant, at any administrative hearing brought against the assisted living facility, adult day care center or child welfare agency, the Department shall disclose the identity of the complainant to the assisted living facility, adult day care center or child welfare agency a reasonable time in advance of such hearing.

§ 63.2-1730. Retaliation or discrimination against complainants.

No assisted living facility, adult day care center or child welfare agency may retaliate or discriminate in any manner against any person who (i) in good faith complains or provides information to, or otherwise cooperates with, the Department or any other agency of government or any person or entity operating under contract with an agency of government, having responsibility for protecting the rights of residents of assisted living facilities, participants in adult day care centers or children in child welfare agencies, (ii) attempts to assert any right protected by state or federal law, or (iii) assists any person in asserting such right.

§ 63.2-1731. Retaliation against reports of child or adult abuse or neglect.

No assisted living facility, adult day care center or child welfare agency may retaliate in any manner against any person who in good faith reports adult or child abuse or neglect pursuant to Chapter 15 (§ 63.2-1500 et seq.) of this title or Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of this title.

Article 5. Regulations and Interdepartmental Cooperation

§ 63.2-1732. Regulations for assisted living facilities.

A. The Board shall have the authority to adopt and enforce regulations to carry out the provisions of this subtitle and to protect the health, safety, welfare, and individual rights of residents of assisted living facilities and to promote their highest level of functioning. Such regulations shall take into consideration cost constraints of smaller operations in complying with such regulations and shall provide a procedure whereby a licensee or applicant may request, and the Commissioner may grant, an allowable variance to a regulation pursuant to § [63.2-1703](#).

B. Regulations shall include standards for staff qualifications and training; facility design, functional design, and equipment; services to be provided to residents; administration of medicine; allowable medical conditions for which care can be provided; and medical procedures to be followed by staff, including provisions for physicians' services, restorative care, and specialized rehabilitative services. The Board shall adopt regulations on qualifications and training for employees of an assisted living facility in a direct care position. "Direct care position" means supervisors, assistants, aides, or other employees of a facility who assist residents in their

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daily living activities.

C. Regulations for a Medication Management Plan in a licensed assisted living facility shall be developed by the Board, in consultation with the Board of Nursing and the Board of Pharmacy. Such regulations shall (i) establish the elements to be contained within a Medication Management Plan, including a demonstrated understanding of the responsibilities associated with medication management by the facility; standard operating and record-keeping procedures; staff qualifications, training and supervision; documentation of daily medication administration; and internal monitoring of plan conformance by the facility; (ii) include a requirement that each assisted living facility shall establish and maintain a written Medication Management Plan that has been approved by the Department; and (iii) provide that a facility's failure to conform to any approved Medication Management Plan shall be subject to the sanctions set forth in § [63.2-1709](#) or [63.2-1709.2](#).

D. The Board shall amend 22VAC40-73-450 governing assisted living facility individualized service plans to require (i) that individualized service plans be reviewed and updated (a) at least once every 12 months or (b) sooner if modifications to the plan are needed due to a significant change, as defined in 22VAC40-73-10, in the resident's condition and (ii) that any deviation from the individualized service plan (a) be documented in writing or electronically, (b) include a description of the circumstances warranting deviation and the date such deviation will occur, (c) certify that notice of such deviation was provided to the resident or his legal representative, (d) be included in the resident's file, and (e) in the case of deviations that are made due to a significant change in the resident's condition, be signed by an authorized representative of the assisted living facility and the resident or his legal representative.

E. Regulations shall require all licensed assisted living facilities with six or more residents to be able to connect by July 1, 2007, to a temporary emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply. The installation shall be in compliance with the Uniform Statewide Building Code.

F. Regulations for medical procedures in assisted living facilities shall be developed in consultation with the State Board of Health and adopted by the Board, and compliance with these regulations shall be determined by Department of Health or Department inspectors as provided by an interagency agreement between the Department and the Department of Health.

G. In developing regulations to determine the number of assisted living facilities for which an assisted living facility administrator may serve as administrator of record, the Board shall consider (i) the number of residents in each of the facilities, (ii) the travel time between each of the facilities, and (iii) the qualifications of the on-site manager under the supervision of the administrator of record.

H. Regulations shall require that each assisted living facility register with the Department of State Police to receive notice of the registration, reregistration, or verification of registration information of any person required to register with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ [9.1-900](#) et seq.) of Title 9.1 within the same or a contiguous zip code area in which the facility is located, pursuant to § [9.1-914](#).

I. Regulations shall require that each assisted living facility ascertain, prior to admission, whether a potential resident is required to register with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ [9.1-900](#) et seq.) of Title 9.1, if the facility anticipates the potential resident will have a length of stay greater than three days or in fact stays longer than three days.

J. During a declared public health emergency related to a communicable disease of public health

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threat, regulations shall require each assisted living facility to establish a protocol to allow residents to receive visits from a rabbi, priest, minister, or clergy of any religious denomination or sect consistent with guidance from the Centers for Disease Control and Prevention and the Centers for Medicare and Medicaid Services and subject to compliance with any executive order, order of public health, Department guidance, or any other applicable federal or state guidance having the effect of limiting visitation. Such protocol may restrict the frequency and duration of visits and may require visits to be conducted virtually using interactive audio or video technology. Any such protocol may require the person visiting a resident pursuant to this subsection to comply with all reasonable requirements of the assisted living facility adopted to protect the health and safety of the person, residents, and staff of the assisted living facility.

§ 63.2-1733. Regulations for adult day care centers.

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

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

§ 63.2-1734. Regulations for child welfare agencies.

The Board shall adopt regulations for the activities, services, and facilities to be employed by persons and agencies required to be licensed under this subtitle, which shall be designed to ensure that such activities, services, and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies.

Such regulations shall be developed in consultation with representatives of the affected entities and shall include, but need not be limited to, matters relating to the sex, age, and number of children and other persons to be maintained, cared for, or placed out, as the case may be, and to the buildings and premises to be used, and reasonable standards for the activities, services, and facilities to be employed. Such limitations and standards shall be specified in each license and renewal thereof. Such regulations shall not require the adoption of a specific teaching approach or doctrine or require the membership, affiliation, or accreditation services of any single private accreditation or certification agency.

§ 63.2-1736. Interagency agreements; cooperation of Department with other departments.

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

§ 63.2-1737. Licensure of group homes and residential facilities for children.

A. Notwithstanding any other provisions of this subtitle, the Department shall cooperate with other state departments in fulfilling their respective licensing and certification

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responsibilities of children's residential facilities. The Board shall adopt regulations establishing the Department as the single licensing agency for the regulation of children's residential facilities, including group homes, which provide social services programs, with the exception of educational programs licensed by the Department of Education and facilities regulated by the Department of Juvenile Justice. Notwithstanding any other provisions of this chapter, licenses issued to children's residential facilities may be issued for periods of up to 36 successive months.

B. The Board's regulations for the regulation of children's residential facilities shall address the services required to be provided in such facilities as it may deem appropriate to ensure the health and safety of the children. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications for the structure and accommodations of such facilities according to the needs of the children; (ii) rules concerning allowable activities, local government- and facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

C. Notwithstanding any other provisions of this chapter, any facility licensed by the Commissioner as a child-caring institution as of January 1, 1987, and that receives no public funds shall be licensed under minimum standards for licensed child-caring institutions as adopted by the Board and in effect on January 1, 1987. Effective January 1, 1987, all children's residential facilities shall be licensed under the regulations for children's residential facilities.

D. In addition to the requirements set forth in subsection B, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, community relations, and shaken baby syndrome and its effects; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.

E. In addition, the Department shall:

1. Notify relevant local governments and placing and funding agencies, including the Office of Children's Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead licensure agency when such violations result in the lowering of the licensure status of the facility to provisional;

2. Post on the Department's website information concerning the application for initial licensure of or renewal, denial, or provisional licensure of any residential facility for children located in the locality;

3. Require all licensees to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges

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that may have been made relating to the health and safety or human rights of residents;

4. Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan;
5. Disseminate to local governments, or post on the Department's website, an accurate (updated weekly or monthly as necessary) list of licensed and operating group homes and other residential facilities for children by locality with information on services and identification of the lead licensure agency; and
6. Modify the term of the license at any time during the term of the license based on a change in compliance.

Code of Virginia
Title 63.2. Welfare (Social Services)
Chapter 18. Facilities and Programs

Article 1. Assisted Living Facilities

§ 63.2-1800. Licensure requirements.

- A. Each license shall indicate whether the facility is licensed to provide residential living care or residential living and assisted living care.
- B. Any facility licensed exclusively as an assisted living facility shall not use in its title the words "convalescent," "health," "hospital," "nursing," "sanatorium," or "sanitarium," nor shall such words be used to describe the facility in brochures, advertising, or other marketing material. No facility shall advertise or market a level of care that it is not licensed to provide. Nothing in this subsection shall prohibit the facility from describing services available in the facility.
- C. Upon initial application for a license, any person applying to operate an assisted living facility who has not previously owned or managed or does not currently own or manage such a facility shall be required to undergo training by the Commissioner. The training programs shall focus on health and safety regulations and resident rights as they pertain to assisted living facilities and shall be completed by the owner or administrator prior to the granting of an initial license. Such training shall be required of those owners and currently employed administrators of an assisted living facility at the time of initial application for a license. The Commissioner may also approve training programs provided by other entities and allow owners or administrators to attend such approved training programs in lieu of training by the Commissioner. The Commissioner may also approve for licensure applicants who meet requisite experience criteria as established by the Board. The Commissioner may, at his discretion, issue a license conditioned upon the owner or administrator's completion of the required training.
- D. For the purpose of facilitating the prompt restoration of electrical service and prioritization of customers during widespread power outages, the Commissioner shall notify on a quarterly basis all electric utilities serving customers in Virginia as to the location of all assisted living facilities licensed in the Commonwealth. The requirements of this subsection shall be met

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if the Commissioner maintains such information on an electronic database accessible by electric utilities serving customers in Virginia.

§ 63.2-1801. Access to assisted living facilities by community services boards and behavioral health authorities.

All assisted living facilities shall provide reasonable access to staff or contractual agents of community services boards or behavioral health authorities as defined in § 37.2-100 for the purposes of (i) assessing or evaluating, (ii) providing case management or other services or assistance, or (iii) monitoring the care of individuals receiving services who are residing in the facility. Such staff or contractual agents also shall be given reasonable access to other facility residents who have previously requested their services.

§ 63.2-1802. Safe, secure environments for residents with serious cognitive impairments.

A. Assisted living facilities may provide safe, secure environments for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia if they comply with the Board's regulations governing such placement. The Board's regulations shall define (i) serious cognitive impairment, which shall include, but not be limited to, an assessment by a clinical psychologist licensed to practice in the Commonwealth or by a physician and (ii) safe, secure environment.

B. Prior to placing a resident with a serious cognitive impairment due to a primary psychiatric diagnosis of dementia in a safe, secure environment, an assisted living facility shall obtain the written approval of one of the following persons, in the specified order of priority: (i) the resident, if capable of making an informed decision; (ii) a guardian or legal representative for the resident; however, such an appointment shall not be required in order that written approval may be obtained; (iii) a relative authorized pursuant to the Board's regulations to act as the resident's representative; or (iv) an independent physician who is skilled and knowledgeable in the diagnosis and treatment of dementia, if a guardian, legal representative or relative is unavailable. Such written approval shall be retained in the resident's file.

C. The Board of Social Services shall amend 22VAC40-73-1130 governing staffing of units of assisted living facilities with residents who have serious cognitive impairment due to a primary psychiatric diagnosis of dementia and are unable to recognize danger or protect their own safety and welfare to require that the following number of direct care staff members be awake and on duty and responsible for the care and supervision of the residents at all times during night hours:

1. When 22 or fewer residents are present, at least two direct care staff members;
2. When 23 to 32 residents are present, at least three direct care staff members;
3. When 33 to 40 residents are present, at least four direct care staff members; and
4. When more than 40 residents are present, at least four direct care staff members plus at least one additional direct care staff member for every 10 residents or portion thereof in excess of 40 residents.

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Nothing in this subsection shall apply to the provisions of 22VAC40-73-280.

§ 63.2-1803. Staffing of assisted living facilities.

A. An administrator of an assisted living facility shall be licensed as an assisted living facility administrator by the Virginia Board of Long-Term Care Administrators pursuant to Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1. However, an administrator of an assisted living facility licensed for residential living care only shall not be required to be licensed. Any person meeting the qualifications for a licensed nursing home administrator under § 54.1-3103 shall be deemed qualified to (i) serve as an administrator of an assisted living facility or (ii) serve as the administrator of both an assisted living facility and a licensed nursing home, provided the assisted living facility and licensed nursing home are part of the same building.

B. If a licensed assisted living facility administrator dies, resigns, is discharged, or becomes unable to perform his duties, the assisted living facility shall immediately employ a licensed administrator or appoint an acting administrator who is qualified by education for an approved administrator-in-training program and has a minimum of one year of administrative or supervisory experience in a health care or long-term care facility, or has completed such a program and is awaiting licensure. The facility shall give immediate notice to the regional licensing office of the Department of Social Services and to the Board of Long-Term Care Administrators that the licensed administrator died, resigned, was discharged, or became unable to perform his duties and shall provide the last date of employment of the licensed administrator. When an acting administrator is named, he shall notify the Department of his employment and, if intending to assume the position permanently, submit a completed application for an approved administrator-in-training program to the Board of Long-Term Care Administrators within 10 days of employment. An assisted living facility may be operated by an acting administrator for no more than 150 days, or not more than 90 days if the acting administrator has not applied for licensure, from the last date of employment of the licensed administrator.

C. The Department may grant an extension of up to 30 days in addition to the 150 days from the last date of employment of a licensed administrator if the acting administrator has applied for licensure as a long-term care administrator pursuant to Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1, has completed the administrator-in-training program, and is awaiting the results of the national examination. If a 30-day extension is granted, the acting administrator shall immediately submit written notice to the Board of Long-Term Care Administrators. In no case shall an assisted living facility be operated with an acting administrator for more than 180 days, including the 30-day extension, from the last date of employment of a licensed administrator.

D. No assisted living facility shall operate under the supervision of an acting administrator pursuant to § 54.1-3103.1 and this section more than two times during any two-year period unless authorized to do so by the Department. Determinations regarding authorization to operate under the supervision of an acting administrator for more than two times in any two-year period shall be made by the Department on a case-by-case basis.

E. The assisted living facility shall have adequate, appropriate, and sufficient staff to

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provide services to attain and maintain (i) the physical, mental and psychosocial well-being of each resident as determined by resident assessments and individual plans of care and (ii) the physical safety of the residents on the premises. Upon admission and upon request, the assisted living facility shall provide in writing a description of the types of staff working in the facility and the services provided, including the hours such services are available.

§ 63.2-1803.01. Possession or administration of cannabis oil.

Assisted living facility staff members who are authorized to possess, distribute, or administer medications to residents in accordance with the facility's written plan for medication management shall be permitted to store, dispense, or administer cannabis oil to a resident who has been issued a valid written certification for the use of cannabis oil in accordance with subsection B of § [54.1-3408.3](#) and has registered with the Board of Pharmacy.

§ 63.2-1803.1. Assisted Living Facility Education, Training, and Technical Assistance Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Assisted Living Facility Education, Training, and Technical Assistance Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All penalties directed to this fund by subdivision B 4 of § 63.2-1709.2 and all other funds from any public or private source directed to the Fund 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 purpose of providing education and training for staff of and technical assistance to assisted living facilities to improve the quality of care in such facilities. 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.

§ 63.2-1804. Uniform assessment instrument.

A uniform assessment instrument setting forth a resident's care needs shall be completed for all residents upon admission and at subsequent intervals as determined by regulations promulgated by the Commissioner of the Department for Aging and Rehabilitative Services. No uniform assessment instrument shall be required to be completed upon admission if a uniform assessment instrument was completed by a case manager or other qualified assessor within ninety days prior to such admission to the assisted living facility unless there has been a change in the resident's condition within that time which would affect the admission. Uniform assessment instruments shall not be required to be completed more often than once every twelve months on individuals residing in assisted living facilities except that uniform assessment instruments shall be completed whenever there is a change in the resident's condition that appears to warrant a change in the resident's approved level of care. At the request of the assisted living facility, the resident's representative, the resident's physician, the Department or the local department, an independent assessment, using the uniform assessment instrument shall be completed to determine whether the resident's care needs are being met in the current placement. The resident's case manager or other qualified assessor shall complete the uniform assessment instrument for public pay residents or, upon request by the private pay resident, for

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private pay residents. Unless a private pay resident requests the uniform assessment instrument be completed by a case manager or other qualified assessor, qualified staff of the assisted living facility or an independent private physician may complete the uniform assessment instrument for private pay residents; however, for private pay residents, social and financial information which is not relevant because of the resident's payment status shall not be required. The cost of administering the uniform assessment instrument pursuant to this section shall be borne by the entity designated pursuant to regulations promulgated by the Commissioner of the Department for Aging and Rehabilitative Services. Upon receiving the uniform assessment instrument prior to admission of a resident, the assisted living facility administrator shall provide written assurance that the facility has the appropriate license to meet the care needs of the resident at the time of admission.

§ 63.2-1805. Admissions and discharge; mandatory minimum liability insurance.

- A. The Board shall adopt regulations:
1. Governing admissions to assisted living facilities;
 2. Requiring that each assisted living facility prepare and provide a statement, in a format prescribed by the Department, to any prospective resident and his legal representative, if any, prior to admission and upon request, that discloses information, fully and accurately in plain language, about the (i) services; (ii) fees, including clear information about what services are included in the base fee and any fees for additional services; (iii) admission, transfer, and discharge criteria, including criteria for transfer to another level of care within the same facility or complex; (iv) general number and qualifications of staff on each shift; (v) range, frequency, and number of activities provided for residents; and (vi) ownership structure of the facility;
 3. Establishing a process to ensure that each resident admitted or retained in an assisted living facility receives appropriate services and periodic independent reassessments and reassessments when there is a significant change in the resident's condition in order to determine whether a resident's needs can continue to be met by the facility and whether continued placement in the facility is in the best interests of the resident;
 4. Governing appropriate discharge planning for residents whose care needs can no longer be met by the facility;
 5. Addressing the involuntary discharge of residents;
 6. Requiring that residents are informed of their rights pursuant to § 63.2-1808 at the time of admission;
 7. Establishing a process to ensure that any resident temporarily detained in a facility pursuant to §§ 37.2-809 through 37.2-813 is accepted back in the assisted living facility if the resident is not involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819;
 8. Requiring that each assisted living facility train all employees who are mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting procedures and the consequences for failing to make a required report;

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9. Requiring that each assisted living facility prepare and provide a statement, in a format prescribed by the Board, to any resident or prospective resident and his legal representative, if any, and upon request, that discloses whether the assisted living facility maintains liability insurance in force to compensate residents or other individuals for injuries and losses from the negligent acts of the facility, provided that no facility shall state that liability insurance is in place unless such insurance provides a minimum amount of coverage as established by the Board;

10. Establishing the minimum amount of liability insurance coverage to be maintained by an assisted living facility for purposes of disclosure in accordance with subdivision 9; and

11. Requiring that all assisted living facilities disclose to each prospective resident, or his legal representative, in writing in a document provided to the prospective resident or his legal representative and as evidenced by the written acknowledgment of the resident or his legal representative on the same document, whether the facility has an on-site emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply and, if the assisted living facility does have an on-site emergency electrical power source,

(i) the items for which such on-site emergency electrical power source will supply power in the event of an interruption of the normal electric power supply and (ii) whether staff of the assisted living facility have been trained to maintain and operate such on-site emergency electrical power source to ensure the provision of electricity during an interruption of the normal electrical power supply. For the purposes of this subdivision, an on-site emergency electrical power supply shall include both permanent emergency electrical power supply sources and portable emergency electrical power sources, provided that such temporary electrical power supply source remains on the premises of the assisted living facility at all times. Written acknowledgement of the disclosure shall be represented by the signature or initials of the resident or his legal representative immediately following the on-site emergency electrical power source disclosure statement.

B. If there are observed behaviors or patterns of behavior indicative of mental illness, intellectual disability, substance abuse, or behavioral disorders, as documented in the uniform assessment instrument completed pursuant to § 63.2-1804, the facility administrator or designated staff member shall ensure that an evaluation of the individual is or has been conducted by a qualified professional as defined in regulations. If the evaluation indicates a need for mental health, developmental, substance abuse, or behavioral disorder services, the facility shall provide (i) a notification of the resident's need for such services to the authorized contact person of record when available and (ii) a notification of the resident's need for such services to the community services board or behavioral health authority established pursuant to Title 37.2 that serves the city or county in which the facility is located, or other appropriate licensed provider. The Department shall not take adverse action against a facility that has demonstrated and documented a continual good faith effort to meet the requirements of this subsection.

C. The Department shall not order the removal of a resident from an assisted living facility if (i) the resident, the resident's family, the resident's physician, and the facility consent to the resident's continued stay in the assisted living facility and (ii) the facility is capable of providing,

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obtaining, or arranging for the provision of necessary services for the resident, including, but not limited to, home health care or hospice care.

D. Notwithstanding the provisions of subsection C, assisted living facilities shall not admit or retain an individual with any of the following conditions or care needs:

1. Ventilator dependency.
2. Dermal ulcers III and IV, except those stage III ulcers that are determined by an independent physician to be healing.
3. Intravenous therapy or injections directly into the vein except for intermittent intravenous therapy managed by a health care professional licensed in Virginia or as permitted in subsection E.
4. Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold.
5. Psychotropic medications without appropriate diagnosis and treatment plans.
6. Nasogastric tubes.
7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection E.
8. An imminent physical threat or danger to self or others is presented by the individual.
9. Continuous licensed nursing care (seven-days-a-week, 24-hours-a-day) is required by the individual.
10. Placement is no longer appropriate as certified by the individual's physician.
11. Maximum physical assistance is required by the individual as documented by the uniform assessment instrument and the individual meets Medicaid nursing facility level-of-care criteria as defined in the State Plan for Medical Assistance, unless the individual's independent physician determines otherwise. Maximum physical assistance means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.
12. The assisted living facility determines that it cannot meet the individual's physical or mental health care needs.
13. Other medical and functional care needs that the Board determines cannot be met properly in an assisted living facility.

E. Except for auxiliary grant recipients, at the request of the resident in an assisted living facility and when his independent physician determines that it is appropriate, (i) care for the conditions or care needs defined in subdivisions D 3 and D 7 may be provided to the resident by

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a licensed physician, a licensed nurse or a nurse holding a multistate licensure privilege under a physician's treatment plan, or a home care organization licensed in Virginia or (ii) care for the conditions or care needs defined in subdivision D 7 may also be provided to the resident by facility staff if the care is delivered in accordance with the regulations of the Board of Nursing for delegation by a registered nurse Part VIII (18VAC90-20-420 et seq.) of 18VAC90-20.

The Board shall adopt regulations to implement the provisions of this subsection.

F. In adopting regulations pursuant to subsections A, B, C, D, and E the Board shall consult with the Departments of Health and Behavioral Health and Developmental Services.

§ 63.2-1806. Hospice care.

Notwithstanding § 63.2-1805, at the request of the resident, hospice care may be provided in an assisted living facility under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1, if the hospice program determines that such program is appropriate for the resident. However, to the extent allowed by federal law, no assisted living facility shall be required to provide or allow hospice care if such hospice care restrictions are included in a disclosure statement that is signed by the resident prior to admission.

§ 63.2-1807. Certification in cardiopulmonary resuscitation; do not resuscitate orders.

The owners or operators of any assisted living facility may provide that their employees who are certified in cardiopulmonary resuscitation (CPR) shall not be required to resuscitate any resident for whom a valid written order not to resuscitate in the event of cardiac or respiratory arrest has been issued by the attending physician and has been included in the resident's individualized service plan.

§ 63.2-1808. Rights and responsibilities of residents of assisted living facilities; certification of licensure.

A. Any resident of an assisted living facility has the rights and responsibilities enumerated in this section. The operator or administrator of an assisted living facility shall establish written policies and procedures to ensure that, at the minimum, each person who becomes a resident of the assisted living facility:

1. Is fully informed, prior to or at the time of admission and during the resident's stay, of his rights and of all rules and expectations governing the resident's conduct, responsibilities, and the terms of the admission agreement; evidence of this shall be the resident's written acknowledgment of having been so informed, which shall be filed in his record;
2. Is fully informed, prior to or at the time of admission and during the resident's stay, of services available in the facility and of any related charges; this shall be reflected by the resident's signature on a current resident's agreement retained in the resident's file;
3. Unless a committee or conservator has been appointed, is free to manage his personal finances and funds regardless of source; is entitled to access to personal account statements

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reflecting financial transactions made on his behalf by the facility; and is given at least a quarterly accounting of financial transactions made on his behalf when a written delegation of responsibility to manage his financial affairs is made to the facility for any period of time in conformance with state law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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- b. As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened resident;
- 16. Is free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician, physician assistant, or nurse practitioner;
- 17. Is accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:
 - a. In the care of his personal needs except as assistance may be needed;
 - b. In any medical examination or health-related consultations the resident may have at the facility;
 - c. In communications, in writing or by telephone;
 - d. During visitations with other persons;
 - e. In the resident's room or portion thereof; residents shall be permitted to have guests or other residents in their rooms unless to do so would infringe upon the rights of other residents; staff may not enter a resident's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in regulations of the Board;
 - f. In visits with his spouse; if both are residents of the facility they are permitted but not required to share a room unless otherwise provided in the residents' agreements;
- 18. Is permitted to meet with and participate in activities of social, religious, and community groups at his discretion unless medically contraindicated as documented by his physician, physician assistant, or nurse practitioner in his medical record;
- 19. Is fully informed, as evidenced by the written acknowledgment of the resident or his legal representative, prior to or at the time of admission and during his stay, that he should exercise whatever due diligence he deems necessary with respect to information on any sex offenders registered pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including how to obtain such information. Upon request, the assisted living facility shall assist the resident, prospective resident, or the legal representative of the resident or prospective resident in accessing this information and provide the resident, prospective resident, or the legal representative of the resident or prospective resident with printed copies of the requested information; and
- 20. Is informed, in writing and upon request, of whether the assisted living facility maintains the minimum liability coverage, as established by the Board pursuant to subdivision A 10 of § 63.2- 1805.
- B. If the resident is unable to fully understand and exercise the rights and responsibilities contained in this section, the facility shall require that a responsible individual, of the resident's choice when possible, designated in writing in the resident's record, be made aware of each item in this section and the decisions that affect the resident or relate to specific items in this section; a resident shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in

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the resident's record.

C. The rights and responsibilities of residents shall be printed in at least 12-point type and posted conspicuously in a public place in all assisted living facilities. The facility shall also post the name and telephone number of the regional licensing supervisor of the Department, the Adult Protective Services' toll-free telephone number, as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program, any sub-state ombudsman program serving the area, and the toll-free number of the Commonwealth's designated protection and advocacy system.

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

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

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

G. The Board shall adopt regulations as necessary to carry out the full intent of this section.

H. It shall be the responsibility of the Commissioner to ensure that the provisions of this section are observed and implemented by assisted living facilities as a condition to the issuance, renewal, or continuation of the license required by this article.

§ 63.2-1808.1. Life-sharing communities.

A. For the purposes of this section:

"Life-sharing community" means a residential setting, operated by a nonprofit organization, that (i) offers a safe environment in free standing, self-contained homes for residents that have been determined by a licensed health-care professional as having at least one developmental disability; (ii) is an environment located in a community setting where residents participate in therapeutic activities including artistic crafts, stewardship of the land, and agricultural activities; (iii) consists of the residents as well as staff and volunteers who live together in residential homes; (iv) operates at a ratio of at least one staff member, volunteer, or supervising personnel for every three residents in each self-contained home household; and (v) has at least one supervisory staff member on premises to be responsible for the care, safety, and supervision of the residents at all times.

"Resident" means an individual who has been determined by a physician or nurse practitioner to have at least one developmental disability and who resides at the life-sharing community on a full-time basis.

"Volunteer" means an individual who resides in the life-sharing community on a full-time basis and who assists residents with their daily activities and receives no wages. A volunteer may receive a small stipend for personal expenses.

B. Any facility seeking to operate as a life-sharing community shall file with the Commissioner: (i) a statement of intent to operate as a life-sharing community; (ii) a certification

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that at the time of admission, a contract and written notice was provided to each resident and his legally authorized representative that includes a statement of disclosure that the facility is exempt from licensure as an "assisted living facility," and (iii) documentary evidence that such life-sharing community is a private nonprofit organization in accordance with 501(c)(3) of the Internal Revenue Code of 1954, as amended.

C. Upon filing an initial statement of intent to operate as a life-sharing community, and every two years thereafter, the life-sharing community shall certify that the local health department, building inspector, fire marshal, or other local official designated by the locality to enforce the Statewide Fire Prevention Code, and any other local official required by law to inspect the premises, have inspected the physical facilities of the life-sharing community and have determined that the facility is in compliance with all applicable laws and regulations with regard to food service activities, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code and the Uniform Statewide Building Code.

D. Upon filing an initial statement of intent to operate as a life-sharing community, and every two years thereafter, the life-sharing community shall provide the Commissioner documentary evidence that:

1. Life-sharing community staff and volunteers have completed a training program that includes instruction in personal care of residents, house management, and therapeutic activities;
2. Volunteers and staff have completed first aid and Cardio-Pulmonary Resuscitation training;
3. Each resident's needs are evaluated using the Uniform Assessment Instrument, and Individual Service Plans are developed for each resident annually;
4. The residents of the life-sharing community are each 21 years of age or older;
5. A criminal background check through the Criminal Records Exchange has been completed for each (i) full-time salaried staff member and (ii) volunteer as defined in this section.

E. A residential facility operating as a life-sharing facility shall be exempt from the licensing requirements of Article 1 (§ 63.2-1800 et seq.) of Chapter 18 of Title 63.2 applicable to assisted living facilities.

F. The Commissioner may perform unannounced on-site inspections of a life-sharing community to determine compliance with the provisions of this section and to investigate any complaint that the life-sharing community is not in compliance with the provisions of this section, or to otherwise ensure the health, safety, and welfare of the life-sharing community residents. The Commissioner may revoke the exemption from licensure pursuant to this chapter for any life-sharing community for serious or repeated violation of the requirements of this section and order that the facility cease operations or comply with the licensure requirements of an assisted living facility. If a life-sharing community does not file the statement and documentary evidence required by this section, the Commissioner shall give reasonable notice to such life-sharing community of the nature of its noncompliance and may thereafter take

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action as he determines appropriate, including a suit to enjoin the operation of the life-sharing community.

G. All life-sharing communities shall provide access to their facilities and residents by staff of community services boards and behavioral health authorities as defined in § 37.2-100 for the purpose of (i) assessing or evaluating, (ii) providing case management or other services or assistance, or (iii) monitoring the care of individuals receiving services who are residing in the facility. Such staff or contractual agents also shall be given reasonable access to other facility residents who have previously requested their services.

H. Any residents of any life-sharing community shall be accorded the same rights and responsibilities as residents in assisted living facilities as provided in subsections A through F of § 63.2-1808.

I. A life-sharing community shall not admit or retain individuals with any of the conditions or care needs as provided in subsection C of § 63.2-1805.

J. Notwithstanding § 63.2-1805, at the request of the resident, hospice care may be provided in a life-sharing community under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1 if the hospice program determines that such a program is appropriate for the resident.

Article 2. Child Welfare Agencies

§ 63.2-1814. Public funds to be withheld for serious or persistent violations.

The Board and the State Board of Education may adopt policies, as permitted by state and federal law, to restrict the eligibility of a licensed child welfare agency to receive or continue to receive funds when such agency is found to be in serious or persistent violation of regulations.

§ 63.2-1816. Municipal and county appropriations; contracts.

The governing bodies of the several cities and counties of this Commonwealth may, in their discretion, appropriate to incorporated charitable organizations licensed by the Commissioner for the purpose of receiving and caring for children, or placing or boarding them in private homes, such sums as to them may seem proper, for the maintenance and care of such dependent children as the charitable organizations may receive from the respective cities and counties. The governing body of any county may make contracts with such organizations.

§ 63.2-1817. Acceptance and control over children by licensed child-placing agency, children's residential facility or independent foster home.

A licensed child-placing agency, children's residential facility or independent foster home shall have the right to accept, for any purpose not contrary to the limitations contained in its license, such children as may be entrusted or committed to it by the parents, guardians, relatives or other persons having legal custody thereof, or committed by any court of competent jurisdiction. The agency, facility or home shall, within the terms of its license and the agreement or order by which such child is entrusted or committed to its care, have custody and control of every child

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so entrusted or committed and accepted, until he is lawfully discharged, has been adopted, or has attained his majority. An entrustment agreement for the termination of parental rights and responsibilities with respect to such child shall be executed in writing and notarized.

An agency that is licensed as a child-placing agency by the Department and certified as a proprietary school for students with disabilities by the Department of Education shall not be required to take custody of any child placed in its special education program but shall enter into a placement agreement with the parents or guardian of the child concerning the respective responsibilities of the agency and the parents or guardian for the care and control of the child. Such an agency shall conform with all other legal requirements of licensed child-placing agencies including the provisions of §§ 16.1-281 and 16.1-282.

A licensed private child-placing agency may accept placement of a child through an agreement with a local department where the local department retains legal custody of the child or where the parents or legal guardian of the child retain legal custody but have entered into a placement agreement with the local department or the public agency designated by the community policy and management team.

Whenever a licensed child-placing agency accepts legal custody of a child, the agency shall comply with §§ 16.1-281 and 16.1-282.

A children's residential facility licensed as a temporary emergency shelter may accept a child for placement provided that verbal agreement for placement is obtained from the parents, guardians, relatives or other persons having legal custody thereof, within eight hours of the child's arrival at the facility and provided that a written placement agreement is completed and signed by the legal guardian 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.

§ 63.2-1818. Reports to Commissioner.

Upon the entry of a final order of adoption involving a child placed by a licensed child-placing agency, that agency shall transmit to the Commissioner all reports and collateral information in connection with the case which shall be preserved by the Commissioner in accordance with § 63.2-1246. Such agency may keep duplicate copies of such reports and collateral information or may obtain copies of such documents from the Commissioner at a reasonable fee as prescribed by the Board.

§ 63.2-1819. Where child-placing agencies may place children.

Any licensed child-placing agency may place or negotiate and arrange for the placement of children in any licensed children's residential facility, and, unless its license contains a limitation to the contrary, a licensed child-placing agency may also place or arrange for the placement of such persons in any suitable foster home or independent living arrangement.