

# VIRGINIA ACTS OF ASSEMBLY -- 2012 RECONVENED SESSION

## CHAPTER 847

*An Act to amend and reenact §§ 2.2-510, 37.2-304, 37.2-709, and 51.5-40 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 8.1 of Title 51.5 a section numbered 51.5-39.13; and to repeal §§ 51.5-39.1 through 51.5-39.12 of the Code of Virginia, relating to privatization of the Virginia Office for Protection and Advocacy.*

[H 1230]

Approved May 18, 2012

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

**1. That §§ 2.2-510, 37.2-304, 37.2-709, and 51.5-40 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 8.1 of Title 51.5 a section numbered 51.5-39.13 as follows:**

§ 2.2-510. Employment of special counsel generally.

No special counsel shall be employed for or by the Governor or any state department, institution, division, commission, board, bureau, agency, entity, official, justice of the Supreme Court, or judge of any circuit court or district court except in the following cases:

1. When the Governor determines that, because of the nature of the legal service to be performed, the Attorney General's office is unable to render such service, then the Governor shall issue an exemption order stating with particularity the facts and reasons leading to the conclusion that the Attorney General's office is unable to render such service. The Governor may then employ special counsel to render such service as he may deem necessary and proper. The compensation for such special counsel shall be paid out of the funds appropriated for the administration of the board, commission, division, or department to be represented or whose members, officers, inspectors, investigators, or other employees are to be represented pursuant to this section.

2. In cases of legal services in civil matters to be performed for the Commonwealth, where it is impracticable or uneconomical for the Attorney General to render such service, he may employ special counsel whose compensation shall be paid out of the appropriation for the Attorney General's office.

3. In cases of legal services in civil matters to be performed for any state department, institution, division, commission, board, bureau, agency, entity, official, justice of the Supreme Court, or judge of any circuit court or district court where it is impracticable or uneconomical for the Attorney General's office to render such service, special counsel may be employed but only as set forth in subsection C of § 2.2-507, upon the written recommendation of the Attorney General, who shall approve all requisitions drawn upon the Comptroller for warrants as compensation for such special counsel before the Comptroller shall have authority to issue such warrants.

4. In cases where the Attorney General certifies to the Governor that it would be improper for the Attorney General's office to render legal services due to a conflict of interests, or that he is unable to render certain legal services, the Governor may employ special counsel or other assistance to render such services as may be necessary.

~~5. In cases of legal services in civil matters to be performed by the Virginia Office for Protection and Advocacy pursuant to Chapter 8.1 (§ 51.5-39.1 et seq.) of Title 51.5.~~

§ 37.2-304. Duties of Commissioner.

The Commissioner shall be the chief executive officer of the Department and shall have the following duties and powers:

1. To supervise and manage the Department and its state facilities.

2. To employ the personnel required to carry out the purposes of this title.

3. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, including contracts with the United States, other states, and agencies and governmental subdivisions of the Commonwealth, consistent with policies and regulations of the Board and applicable federal and state statutes and regulations.

4. To accept, hold, and enjoy gifts, donations, and bequests on behalf of the Department from the United States government, agencies and instrumentalities thereof, and any other source, subject to the approval of the Governor. To these ends, the Commissioner shall have the power to comply with conditions and execute agreements that may be necessary, convenient, or desirable, consistent with policies and regulations of the Board.

5. To accept, execute, and administer any trust in which the Department may have an interest, under the terms of the instruments creating the trust, subject to the approval of the Governor.

6. To transfer between state hospitals and training centers school-age consumers who have been identified as appropriate to be placed in public school programs and to negotiate with other school

divisions for placements in order to ameliorate the impact on those school divisions located in a jurisdiction in which a state hospital or training center is located.

7. To provide to the Director of the Virginia Office for Protection and Advocacy, *established* pursuant to § ~~51.5-39.12~~ 51.5-39.13, a written report setting forth the known facts of critical incidents or deaths of consumers in facilities within 15 working days of the critical incident or death.

8. To work with the appropriate state and federal entities to ensure that any person who has been a consumer in a state facility for more than one year has possession of or receives prior to discharge any of the following documents, when they are needed to obtain the services contained in his discharge plan: a Department of Motor Vehicles approved identification card that will expire 90 days from issuance, a copy of his birth certificate if the consumer was born in the Commonwealth, or a social security card from the Social Security Administration. State facility directors, as part of their responsibilities pursuant to § 37.2-837, shall implement this provision when discharging consumers.

9. To work with the Department of Veterans Services and the Department of Rehabilitative Services to establish a program for mental health and rehabilitative services for Virginia veterans and members of the Virginia National Guard and Virginia residents in the Armed Forces Reserves not in active federal service and their family members pursuant to § 2.2-2001.1.

10. To establish and maintain a pharmaceutical and therapeutics committee composed of representatives of the Department of Medical Assistance Services, state facilities operated by the Department, community services boards, at least one health insurance plan, and at least one consumer to develop a drug formulary for use at all community services boards, state facilities operated by the Department, and providers licensed by the Department.

Unless specifically authorized by the Governor to accept or undertake activities for compensation, the Commissioner shall devote his entire time to his duties.

§ 37.2-709. State facility reporting requirements; Virginia Office for Protection and Advocacy.

Each director of a state facility shall notify the Director of the Virginia Office for Protection and Advocacy, *established* pursuant to § ~~51.5-39.12~~ 51.5-39.13, in writing within 48 hours of critical incidents or deaths of consumers in the state facility.

§ 51.5-39.13. *Conversion of the Virginia Office for Protection and Advocacy to a nonprofit entity.*

A. *Not later than December 31, 2013, the Director, in consultation with the Board, shall establish a nonprofit entity to provide advocacy, legal, and ombudsman services to persons with disabilities. Such nonprofit entity shall be established in such a manner that the entity is in compliance with all federal law regarding a protection and advocacy system. Such nonprofit entity shall be designated as the agency to protect and advocate for the rights of persons with mental, cognitive, sensory, physical, or other disabilities and to receive federal funds on behalf of the Commonwealth of Virginia to implement the federal Protection and Advocacy for Individuals with Mental Illness Act, the federal Developmental Disabilities Assistance and Bill of Rights Act, the federal Rehabilitation Act, the Virginians with Disabilities Act (§ 51.5-1 et seq.), and such other related programs as may be established in state or federal law.*

B. *Not later than January 1, 2014, the Governor shall designate the nonprofit entity established pursuant to subsection A to serve as the state's protection and advocacy system, and such nonprofit entity shall thereafter be known as the Virginia Office for Protection and Advocacy.*

C. *Employees of the Virginia Office for Protection and Advocacy who transition to employment with the organization designated pursuant to subsection B shall not be subject to the provisions of the Workforce Transition Act (§ 2.2-3200 et seq.).*

§ 51.5-40. Nondiscrimination under state grants and programs.

No otherwise qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving state financial assistance or under any program or activity conducted by or on behalf of any state agency. ~~The Virginia Office for Protection and Advocacy shall promulgate such regulations as may be necessary to implement this section. Such regulations shall be consistent, whenever applicable, with regulations imposed under the federal Rehabilitation Act of 1973, as amended, and the federal Americans with Disabilities Act of 1990.~~

**2. That §§ 51.5-39.1 through 51.5-39.12 of the Code of Virginia are repealed effective January 1, 2014.**

**3. That the provisions of this act amending §§ 2.2-510, 37.2-304, and 37.2-709 of the Code of Virginia shall be effective on July 1, 2014.**

**4. That the Director of the Virginia Office for Protection and Advocacy shall, together with the Secretary of Health and Human Resources or his designee, develop a plan for implementation of the provisions of this act and shall report on such plan to the Governor and the General Assembly no later than December 1, 2013.**

**5. That any regulations adopted by the Board for Protection and Advocacy being abolished by the first enactment of this act that are in effect before January 1, 2014, are hereby repealed as of that date. The Registrar of Regulations shall take appropriate administrative action to effect the repeal of the regulations in the Virginia Administrative Code.**