

**REPORT OF THE
DISABILITY LAW CENTER OF VIRGINIA**

**Transition of the Virginia
Office for Protection and
Advocacy to a Private
Nonprofit Entity**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 8

**COMMONWEALTH OF VIRGINIA
RICHMOND
2014**

**Transition of the
Virginia Office for Protection
and Advocacy
to a Private Nonprofit Entity**

August 20, 2012



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PREFACE

This document is a study of the privatization of the Virginia Office of Protection and Advocacy, an independent state agency which serves as the legal advocate for Virginians with disabilities. House Bill 1230 (Appendix I), passed by the General Assembly and signed by the Governor, calls for the conversion of the Virginia Office for Protection and Advocacy from a state agency to a private nonprofit no later than January 1, 2014.

On April 25, 2012, at its regularly scheduled meeting, the Governing Board for the Virginia Office for Protection and Advocacy directed the agency to prepare a study of all aspects of conversion of the independent state agency to a private nonprofit entity and the implications of such a conversion. (See letter to Governor McDonnell, Appendix II.) The study will address the concerns raised by Governor McDonnell in his suggested changes to HB 1230, including:

- whether similar protection and advocacy entities in other states are private nonprofit entities, independent state-run organizations, or some other structure,
- whether gubernatorial appointments are made in other states to the protection and advocacy entities, and
- general trends and information on how these entities are structured and operate,
- evaluation of the structure and operations of the Virginia Office of Protection and Advocacy as compared to similar protection and advocacy entities.

Additionally, the Governor suggested an analysis on:

- how federal funds flow to and are used by the Virginia Office of Protection and Advocacy,
- what impact, if any, converting the Virginia Office of Protection and Advocacy to a private nonprofit entity will have on the federal funding, and
- eliminating benefits pursuant to the Workforce Transition Act (§ 2.2-3200 et seq. of the Code of Virginia) to employees who transition employment to the new nonprofit entity.

EXECUTIVE SUMMARY

Converting the Virginia Office for Protection and Advocacy to a private nonprofit organization is consistent with a national trend for the 57 organizations in each state and territory. Such conversion will support the organization's independent role to advocate on behalf of individuals with disabilities. Conversion also represents an opportunity to reduce the size of state government by privatizing a governmental function which can be more effectively accomplished by the private nonprofit sector. The Virginia Office for Protection & Advocacy is entirely federally funded; its operation as a private nonprofit will not jeopardize federal funds, so long as the transition is accomplished in a manner consistent with federal regulations. Additionally, under federal law, the Governor retains the ability to designate another organization to serve as the protection and advocacy program if, at any time in the future, there is good cause for redesignation.

A. Mission of the Virginia Office for Protection and Advocacy (VOPA)

The Virginia Office for Protection and Advocacy was created in 2002 as an independent state agency. VOPA's mission is

*Through zealous and effective advocacy and legal representation to:
protect and advance legal, human, and civil rights of persons with disabilities;
combat and prevent abuse, neglect, and discrimination; and promote independence, choice,
and self-determination by persons with disabilities.*

VOPA investigates allegations of abuse and neglect in state-operated and privately-operated facilities, as well as assists individuals to access necessary services such as special education, Medicaid, and assistive technology. VOPA offers training and educational materials, represents individuals in discrimination claims, promotes systemic reform, and educates policymakers regarding the rights of people with disabilities.

B. The Federal Protection and Advocacy and Client Assistance Programs

The federal protection and advocacy (P&A) system was created to provide federal oversight of each state's systems of care for persons with disabilities. The P&A program consists of seven core programs:

- Protection and Advocacy for Persons with Developmental Disabilities (created 1975)
- Protection and Advocacy for Individuals with Mental Illness (1986)
- Protection and Advocacy for Individual Rights (1993)
- Protection and Advocacy for Assistive Technology (1994)
- Protection and Advocacy for Beneficiaries of Social Security (1999)
- Protection and Advocacy for Individuals with Traumatic Brain Injury; (2002) and
- Protection and Advocacy for Voting Accessibility.¹ (2002)

¹ Protection and Advocacy for Persons with Developmental Disabilities, 42 U.S.C. §15041 *et seq.*, 45 C.F.R. 1386.1 *et seq.*; Protection and Advocacy for Individuals with Mental Illness, 42 U.S.C. §10801 *et seq.*, 42 C.F.R. 51.1 *et seq.*; Protection and Advocacy for Individual Rights, 29 U.S.C. §794e, 34 C.F.R. 381.1 *et seq.*; Protection and Advocacy for Assistive Technology, 29 U.S.C. §3004; Protection and Advocacy Beneficiaries of Social Security, 42 U.S.C. §1320b-21; Protection and Advocacy for Individuals with Traumatic Brain Injury, 42 U.S.C. §300d-53; Protection and Advocacy for Voting Accessibility, 42 U.S.C. §15461.

Under federal law, each state's Governor designates a single state or nonprofit entity to serve as the state's P&A. The designated P&A administers each of the seven P&A programs in that state.

The federal government has also established the Client Assistance Program (CAP) to assist individuals with disabilities in accessing vocational rehabilitation services.² The CAP may be administered by an agency separate from the agency administering the P&A programs. However, the majority of states, including Virginia, house their CAP within the same agency as the designated P&A.

C. The History of Virginia's Protection and Advocacy System

The Commonwealth's experience with the federal protection and advocacy system has been evolving towards greater independence over the last four decades. Virginia's first Protection and Advocacy System, the Virginia Developmental Disabilities Protection and Advocacy System, was created in August 1977 by executive order. It was then an "Office" within the Office of the Secretary of Human Resources. Originally, the Office had the "authority to pursue legal, administrative and other appropriate remedies to insure the protection of the rights of" people with developmental disabilities, but shortly after its creation, the Governor removed the authority to pursue legal remedies.

Without that authority, the system did not meet the federal requirements. So, in 1981, Virginia withdrew from the federal Developmental Disabilities Program, and for a short period of time, Virginia did not have a federal protection and advocacy system.

In 1982, Virginia returned to participating in the Developmental Disabilities Act program. However, the Office was prohibited from initiating litigation against another state agency without the Governor's written approval.

In 1984, in order to provide the agency with more legal authority, the Virginia General Assembly created the Advocacy Department for the Developmentally Disabled. The Director of the Department was appointed by the Governor. The Department had the authority to "[p]ursue administrative remedies with the appropriate state officials and recommend alternatives to the Secretary of Human Resources if a resolution to the problem is not attained."

In 1985, as part of the Virginians with Disabilities Act, the protection and advocacy system was renamed the Department for Rights of the Disabled. The General Assembly

² Client Assistance Program, 29 U.S.C. §732, 34 C.F.R. 370.1 *et seq.*

assigned specific authority to the Department to ensure enforcement of the Virginians with Disabilities Act.

In 1991, the United States Department of Health and Human Services (“HHS”), found that Virginia’s protection and advocacy system, then known as the Department for the Rights of Virginians with Disabilities, did not comply with federal law, because of its lack of independence. HHS determined that the statutory requirement for gubernatorial approval prior to initiation of litigation was inconsistent with the Developmental Disabilities Act’s requirement of independence. “If gubernatorial approval must be obtained prior to the pursuit of court action, then the Virginia P&A does not have the required authority to pursue legal remedies as mandated by law.” In response, Virginia considered various options, and in the end, amended the statute to remove the gubernatorial approval requirement and other limitations in order to assure greater independence for the program.

Throughout the 1990s, however, the Department for the Rights of Virginians with Disabilities encountered serious interference with its independence. The Department faced delays or prohibitions in hiring necessary staff, prohibitions on travel, and limits on certain kinds of actions.

In response to demands from the disability community for still greater independence, in 2002, Virginia legislatively established VOPA as an “independent state agency,” Va. Code Ann. § 51.5-39.2(A), with independent litigating authority. Pursuant to state law, VOPA operates independently of the Executive Branch and independently of the Attorney General. As a state agency, however, VOPA still faces some limitations on its ability to recruit and hire qualified staff and on its ability to use its resources. VOPA also has a politically-appointed Governing Board.

The 2002 legislation resulted from years of efforts by advocates for people with disabilities who contended that Virginia’s protection and advocacy system needed more independence from the executive branch to properly perform its watchdog function. Those efforts were based on persistent complaints that the System was ineffective and unwilling to criticize or sue state agencies. Indeed, VOPA’s predecessor acknowledged that it had “been stymied, historically, in carrying out its duties.” When the legislation was enacted in 2002, the Governor at the time explained that the statute removed the protection and advocacy system from the executive branch “to ensure that these systems are able to function with the required independence and autonomy.”

D. VOPA's Administration of the Protection and Advocacy System

1. How Federal Funds Flow To and Are Used by VOPA

The Virginia Office for Protection and Advocacy is supported entirely by federal funds and operates under federal law. The federal government provides the federal funds "directly" to VOPA. 42 U.S.C. § 15042(b). However, in practice, the funds are received by the state and accounted for in the state budget. The Appropriation Act authorizes VOPA to spend the funds.

Until July 2010, VOPA received some state general funds to support the enforcement of the Virginians with Disabilities Act and to offset costs inherent in operating a state agency. However, as of Fiscal Year 2011, all state general funds to the agency were terminated.

VOPA receives eight federal program grants, each with specific expectations for advocacy for people with disabilities. (The amount of each grant may vary from year to year, but has remained relatively level for the last decade.)

- **Developmental Disabilities Program** – approximately \$773,000 annually to promote community integration and protect persons with developmental disabilities who have experienced abuse, neglect, or discrimination in education, housing, employment, community programs, treatment, or services.
- **Protection and Advocacy for Individuals with Mental Illness Program** – approximately \$657,000 annually to protect human rights and access to services for residents of mental health facilities, persons recently discharged, or persons living in the community who have a serious mental illness.
- **Client Assistance Program** – approximately \$265,000 annually to protect the rights and benefits of people who are applicants or clients of the Department of Rehabilitative Services, Department for the Blind and Vision Impaired, Centers for Independent Living, or other programs funded under the Rehabilitation Act of 1973, as amended.
- **Assistive Technology Program** – approximately \$86,000 annually to assist individuals with disabilities in obtaining access to assistive technology devices and services
- **Protection and Advocacy of Individual Rights Program** – approximately \$387,000 annually to provide services that help clients overcome discrimination, barriers to living independently, or barriers to accessing benefits. The program also provides services to individuals not eligible for other advocacy programs.

- ***Protection and Advocacy for Beneficiaries of Social Security Program*** – approximately \$100,000 annually to provide assistance and individual representation to Social Security beneficiaries with disabilities who are seeking to return to work, including individual advocacy services and various forms of alternative dispute resolution to address issues that arise in the developing, implementing, and amending a beneficiary’s individual work plan under the Ticket to Work and Self-Sufficiency program.
- ***Traumatic Brain Injury Program*** – approximately \$62,000 annually to improve access to services for people who have experienced a traumatic brain injury and reduce incidences of discrimination.
- ***Help America Vote Act Program*** – approximately \$84,000 annually to monitor the way Virginia and local Boards of Elections implement the Help America Vote Act with regard to persons with disabilities.

In each program, VOPA uses a variety of strategies to resolve legal rights issues, including information and referral services, short-term assistance, negotiation and mediation, individual legal representation, group advocacy, education and training. In some situations, VOPA may litigate or use other formal remedies.

2. VOPA’s Structure, Operations, and Governance

In total, VOPA’s federal funding amounts to approximately \$2.4 million annually. Approximately 82% of VOPA’s annual expenditures are for personnel salary and wages. VOPA employs, full time, ten attorneys, six advocates and six support staff. VOPA also has one advocate who is a part time wage employee, and two support staff who are part-time wage employees.

VOPA is governed by an 11-member board consisting of 11 nonlegislative citizen members. Va Code 51.5- 39.2. Five members are appointed by the Speaker of the House, three by the Senate, and three by the Governor. Virginia Code establishes a complex formula for the appointments, in an attempt to coalesce the requirements of the eight different grants operated by the Office. For example, of the five appointed by the Speaker, two must represent the needs of people with developmental disabilities, one must be a person with a physical disability, one must represent people with cognitive disabilities, and one must represent persons with sensory or physical disabilities. For those appointed by the Senate, one represents cognitive disabilities, one represents persons with mental illnesses, and one represents people with mental

or neurological disabilities. Of the Governor's appointments, one must be a person with a mental illness, one a person with a sensory disability, and one representing mental or neurological disabilities.

3. Challenges in the Current Appointment Process

State law governs the appointment of members to the Governing Board. In theory, the law is designed to meet the complex requirements of the federal grants regarding Board composition and operation. In practice, the appointment process often falls short.

The process for Board appointments has placed VOPA at some risk with its federal funders. For example, although state law requires that VOPA present nominations based on the input of statewide advocacy groups, and the appointing authority is to "seriously consider" those nominations, the appointing authority is not required to choose from among those nominations. Over the last decade, some Board members have been appointed who were not qualified under state law, even some who were unfamiliar with the agency. Moreover, in practice over the last decade, the appointing authority has appointed persons to the Board who do not meet the statutory requirements of the federal grants administered by the agency, placing the agency at considerable risk.

The process for political appointment to the Board risks violation of federal law in other ways, as well. Senate appointments are made by the Senate Rules Committee, which does not have a mechanism for making appointments that arise out of the regular cycle. For example, a Senate-appointed Board member sought to resign, for family reasons, in December, 2011. That Board member was advised by her Senator that the Senate Rules Committee did not have a means of making an appointment until its reconvened-session meeting in the spring of 2012. Because federal law states that the P & A cannot have a vacancy on the Board for more than 60 days, the Board member agreed to stay on the Board until February, 2012 at some personal sacrifice. However, the Senate Rules Committee did not meet for its reconvened session in April as originally expected, but instead met in May. The Board vacancy then extended past the 60 day limit.

The process employed for appointment by the Governor can be slow and cumbersome, as well. In one instance, although the Governor's staff recognized the

need for a replacement appointment, staff were unable to process that appointment for more than eight months.

The process for the removal of Board members also impedes VOPA's ability to comply with federal law. Under the Virginia Code, a Board member cannot be removed by the Board itself, even when a member fails to attend meetings or to comply with other requirements under the federal grants. According to the Virginia Code, a Board member can only be removed by the appointing authority and only for a criminal offense or a declaration of incompetence. The appointing authority can only remove a Board member by bringing an action in state court. While this does provide the Board with some protection against political interference, there is no mechanism for the removal of a Board member who is not fulfilling duties required by federal law.

E. National Protection and Advocacy and Client Assistance Program Practices

1. Trends in Protection and Advocacy and CAP Administration

Most P&As are housed in private, nonprofit agencies. Of 57 state and territorial P&As, 47 are housed in nonprofit agencies, 9 are in state or territorial agencies, and 1 is housed in a state university.³ Thirty-three state P&As also administer the CAP program.

The trend has been to move state or territorial P&A agencies out of state government. In recent years, New Jersey and North Carolina have moved state agency P&As to nonprofit organizations. Both Ohio and New York are in the process of privatizing their P&A and CAP programs.

The reasons states have privatized their P&As have varied, but the most common reason has been to ensure the independence and autonomy of the P&A. In addition, states have moved their P&A and CAP function to a nonprofit to reduce the size of government as well as assure the P&A and the CAP maximum flexibility to comply with federal funding rules without state law restrictions on budget, hiring, travel, or Board operations.

2. Other Similarly Sized State Protection & Advocacy and Client Assistance Programs

VOPA is a medium-sized P&A, with an annual grants income of \$2.4 million. VOPA surveyed the eight protection and advocacy organizations that are most

³ Connecticut, Indiana, Kentucky, New York, North Dakota, Ohio, New York, American Samoa, and Puerto Rico have state/territorial agency P&As, although Ohio and New York are transitioning from a state agency to a not-for-profit agency. Alabama's P&A is part of the Alabama State University School of Law.

similar in size to VOPA. See Appendix III.

Every similarly-sized organization surveyed is a private nonprofit. Every organization has a governing Board that is self-nominating. None of the governing boards have any gubernatorial or legislative appointments. There is no similarly sized protection and advocacy organization that is in state government.

	Funds	Board Size	Staff Size	Self-Nominating Board?	Political Appointments to Board?
NJ	2.5 mil	17	37	Y	N
AZ	2.1 mil	19	26	Y	N
MA	2.1 mil	20	22	Y	N
TN	2.25 mil	14	32	Y	N
WA	2 mil	10 - 12	16	Y	N
GA	3.3 mil	10	36	Y	N
NC	3.2 mil	17	42	Y	N
WI	1.9 mil*	17	60	Y	N

(*total budget 5 mil)

3. National Standards for Protection and Advocacy Systems

VOPA reviewed the standards developed by the National Disability Rights Network (NDRN), the national association of P&A and CAP agencies, and adopted by a consensus vote of executive directors in October 2011. These standards reflect the generally accepted norms for an effective protection and advocacy system.

The national standards include foundational principles to guide each organization, one of which is that the organization must be independent from service providers and from state agencies that serve people with disabilities. The standards also emphasize the necessity for the organization to be free from influence by state agencies so as to be able to educate policymakers without threat of interference.

The standards emphasize that the P&A's primary loyalty is to people with disabilities and their full inclusion into community life, without competing concerns for the protection of state interests.

The NDRN Standards provide that

- management should be structured to support effective legal and rights advocacy.
- The board and advisory councils should be led by individuals with disabilities and represent the cultural, ethnic, racial, and disability diversity in its state.
- The P&A should hire, retain, and promote persons with disabilities.

The NDRN Standards identify systems advocacy as a core function that should be a significant component of each P&A/CAP's activities, including bringing impact litigation and informing state or federal legislative action.

F. Transition of the Virginia Office for Protection and Advocacy

During the 2012 General Assembly session, the legislature passed HB1230 by an overwhelming margin. The legislation calls for the privatization of Virginia's protection and advocacy system. The Governor signed that bill on May 18, 2012.

HB1230 called for the development of a transition plan to be provided to the legislature. Although HB1230 required the plan to be developed by December 1, 2013, VOPA's Governing Board established a deadline of December 1, 2012.

The Governing Board has stated its intention that all staff who are employed by VOPA at the time of transition will be offered jobs with the new entity. HB1230 contemplated this as well. The job offers would, of necessity, require staff to resign from the state agency in order to accept the new offer. Thus, no employee who transitions to the new nonprofit would be eligible for benefits under the Workforce Transition Act. (See Va Code §2.2-3200(B)). HB1230 expressly stated that employees who transition to the new nonprofit would not be eligible for WTA benefits.

G. Redesignation Process

Under the federal law creating the protection and advocacy system, each state's Governor has the ability to designate the organization who will carry out the program. Although federal law authorizes the Governor of each state to make the initial designation of the protection and advocacy system, the Governor cannot redesignate the P&A without "good cause." 42 USC §15043(a)(4).

There are strict procedures in federal law for how a Governor can “resdesignate,” or select a different organization to serve as the protection and advocacy system. (See Appendix IV.) The Governor must provide notice to the P&A of the intent to redesignate and must specify the cause. The State must give the P&A an opportunity to respond to the assertion that there is “good cause” to redesignate. The P&A then has the opportunity to appeal to the Secretary of Health and Human Services, challenging the redesignation. If the P&A does not challenge the redesignation, and if it is shown that the newly-designated organization has the capacity to carry out the program effectively, the Secretary of Health and Human Services generally accepts the redesignation.

CONCLUSION

In converting its protection and advocacy system to a private nonprofit organization, Virginia joins a nationwide trend to ensure maximum independence of the state’s disability rights system. Further, it represents an opportunity to reduce the size of state government and privatize a governmental function in a manner that more effectively serves the interests of Virginia’s disabled citizens. Conversion to a nonprofit is permissible under federal law, pursuant to an established notice process. Moreover, conversion to a nonprofit ensures greater compliance with federal law and an enhanced ability to serve as the watchdog for individual rights in Virginia.

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.



COPY

COMMONWEALTH of VIRGINIA

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Richmond, VA 23230

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www.vopa.state.va.us

April 30, 2012

The Honorable Robert F. McDonnell
Office of the Governor
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219

RE: House Bill 1230

Dear Governor McDonnell:

The General Assembly passed House Bill 1230, calling for the privatization of the Virginia Office for Protection and Advocacy. The General Assembly accepted in part your suggested changes and the bill is now before you for final consideration.

On April 25, 2012, the Governing Board of the Virginia Office for Protection and Advocacy (VOPA) took several steps in support of VOPA's transition to a private, non-profit entity. The Board directed the staff of VOPA to prepare a report on the implications of conversion to a private, non-profit entity, including the considerations raised in your suggested changes. VOPA will provide this report to the Disability Commission and to the Chairmen of the Senate Committee on Education and Health and the House Committee on Health, Education and Welfare. We hope to be able to discuss a draft of the report with you or the Secretary of Health and Human Resources prior to finalizing it, to be certain that it addresses any additional concerns you might have.

The Board also directed VOPA staff to proceed with the development of a transition plan and to take those initial steps of the transition that can be taken at this time, including the creation of an appropriate non-profit corporation and the registration of the non-profit corporation with the Internal Revenue Service. VOPA intends to present its proposed transition plan to you and the relevant legislative committees before December 1, 2012.

The Governing Board of the Virginia Office for Protection and Advocacy supports VOPA's transition to a private, non-profit entity, consistent with its mission and resources. If at any point it becomes clear that this transition will not improve VOPA's ability to serve Virginians with disabilities, the Board will abandon the effort. The patron of HB1230, Delegate Orrock, has given us his commitment to work with our leadership to achieve the best possible outcome for people with disabilities.

*Know your right to vote visit www.vopa.virginia.gov
Virginia's Protection and Advocacy System
Serving Persons with Disabilities*

The Honorable Robert F. McDonnell

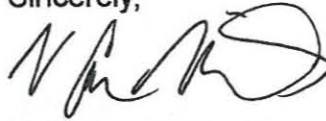
April 30, 2012

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I hope this information is helpful to you as you consider HB1230. Please do not hesitate to contact me if we can provide you with any assurances that will enable you to support the bill.

Sincerely,

A handwritten signature in black ink, appearing to read "V. Colleen Miller". The signature is fluid and cursive, with a large loop at the end.

V. Colleen Miller, Esq.
Executive Director

P & A ED Contact Info	Federal Funds	Grants/Other State Funding?	Total Annual Budget	Board-Member Selection	How many board members?	Any advisory council other than PAIMI?	Staff	Attorneys	Advocates	Others	Impressions/Additional Comments
Disability Rights New Jersey Joe Young (609) 292-9742 jyoung@drnj.org	2.5 million	AT program in NJ (460K); in-kind expenses (state pays for rent utility and postage)	3.1 million (not counting in- kind expenses which is probably another 350K)	Self-selection: membership committee. Staff does recruitment and the membership committee reviews and recommends to the board.	17	Used to have one for everyone. PAD now too. Because of getting the AT grant they have an advisory council for that too.	37	10	15	Intake Coordinator; 4 Secretaries; Receptionist, 2 Program Assistants (self-advocates), HR/IT person, 2 Physical people	Interested to see how things go. Major difference is that being a state attorney came with more prestige in court. Freedom to hire and take action is better in the private sector. One benefit that remained as part of the legislation to abolish the state agency was to allow for the same access to institutions/records (free of charge).

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Arizona Center for Disability Law Peri Jude Radecic (520) 327-9547 Ext. 323 cell (520) 275-3399 pradecid@azdisabil itylaw.org	2.1 million (maybe a little lower but in the ballpark - maybe 1.8/1.9 - might have some carry-over from last year in that figure)	No state funding. Other funding comes from fundraising, several direct mail appeals, and other fund development efforts with the board (development chair). Other efforts include writing grants (150-200K this year - trying to double that for next year) and trying to get a major donation campaign started. Attorney fees are another funding source, though they budget low for that since it's hard to know what's going to come in. Bits and pieces coming from special ed and other mediations (25K). Pending major class action will bring in 250-300K, but they've had it for 10 years.	2.8 (She would like to keep it there next year through fundraising and grant writing, but is scared about PABSS and the 9% sequestration.)	Board selects future board members - ED helps with recruitment. Board has a recruitment and retention committee. No outside appointments, strictly self-selection.	19 at the most (15-19, but they like to have 19 generally)	No - will have an ad hoc committee to help make recommendations for a building purchase in Tucson, but nothing other than that, no.	26 (split between Tucson and Phoenix (two largest population centers) but only 8 in Tucson. She's in the Tucson office but drives back and forth and Skypes between offices.)	8 (including ED and her Deputy Director)	8. Includes intake.	Receptionist in Pheonix (can transfer calls between offices). Automated system in Tucson. All of the intake happens out of the Phoenix office. Office manager in each office, serving as an administrative assistant to ED. 2 legal secretaries in each office. Two directors of finance and administration. One accountant. One person who advises on IT matters (website, DAD). ED does the press, lobbying and everything else.	Largest concern with the move to the private sector is going to be budget support; if there were cheaper rates from the state as a state agency (for instance on rent or health care, etc.), those are going to have to be absorbed entirely into the budget with the move to the private market, which will be a struggle at the start. Ms. Radecic suspects that the joys of being a non-profit, however, will outweigh that additional difficulty because there will no longer be pressure from the state government. Board management is really important! Help your board recruit a good board - board leadership is really key! Have to really be an active board in a different way than would be the case, for instance, with gubernatorial board

P & A ED Contact Info	Federal Funds	Grants/Other State Funding?	Total Annual Budget	Board-Member Selection	How many board members?	Any advisory council other than PAIMI?	Staff	Attorneys	Advocates	Others	Impressions/Additional Comments
Disability Law Center, Inc. (MA) Alan Kerzin (617) 723-8455 akerzin@dlc- ma.org	2.09 million	Close to 18% from a mass legal assistance corporation (state appropriation). The rest is grants and fundraising.	2.5 million	Nominating committee (ED/board president suggest people, interviewing process, and then the interested party comes before the board). Have created pretty strict rules regarding composition (1/2 of the board need to be attorneys; 1/4 of the board need to be low-income clients for example).	Max of 20	No (looking at setting up a PAD advisory council and a friends of DLC fundraising committee)	22 (2 offices)	More attorney heavy (12)	1 paralegal advocate who works on PAD and voting	2 paralegals (intake); support staff	Non-profit structure is just much more flexible. No negative. More autonomy.

P & A ED Contact Info	Federal Funds	Grants/Other State Funding?	Total Annual Budget	Board-Member Selection	How many board members?	Any advisory council other than PAIMI?	Staff	Attorneys	Advocates	Others	Impressions/Additional Comments
Disability Law & Advocacy Center of TN Shirley Shea (615) 298-1080 shirleys@dlactn.org	2.25 million	Some grant money but really minimal. Less than 1%.	Not much larger than the federal funding.	Advertising through a group called The Center for Non-profit Management (obtained some really good board members that way). Staff/other board members out in the community ID people they think would be good board members and recommend them to a governance committee of 5-6 board members with shared responsibilities (normally 2-3 board members sit in on the interview). Entire board makes the final decision together.	14	No.	32	4	11	1 paralegal, 1 legal secretary, 3 fiscal dept., 2 administration staff (ED, Executive Assistant), 3 secretaries, 3 regional managers who also do advocacy work (three ground regions and three offices), 2.5 working in the intake unit (larger percentage of staff is certainly non-legal at this P&A)	She's willing to help in any way possible so give her a buzz if needed! She seemed great and very willing to help. She may not be extremely helpful, though, because she doesn't seem to know AS much about the transfer itself; we might look to past employees for more information about how internal attitudes related to the governor's thoughts that the P&A was better suited for the private sector.

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Disability Rights Washington Mark Stroh (206) 324-1521 mstroh@dr-wa.org	2 million	95% federal funding, no state funding currently. The 5% usually would be program income from litigation and grants that they apply for and receive. Small amount of money from donations.		Self-selection (members of board elect - have done so since 1990)	10 to 12	PAIMI, Disability Advisory Council (generally convene issue specific advisory focus groups on occasion)	16+ 5-7 interns	9 - doing the intake (more of a legal model)	2 (systemic advocacy non-litigation), 1 (advocacy, self-advocacy, communications) Mr. Stroh stressed that they were involved in systems advocacy not lay-advocacy.	Controller, legal secretary, receptionist, administrator (does everything)	A finance committee and development committee are crucial to a successful organization in the private sector.

P & A ED Contact Info	Federal Funds	Grants/Other State Funding?	Total Annual Budget	Board-Member Selection	How many board members?	Any advisory council other than PAIMI?	Staff	Attorneys	Advocates	Others	Impressions/Additional Comments
Georgia Advocacy Office, Inc. Ruby Moore (404) 885-1234 Rmoore@thegao.o rg	3.3 million	A little more than a quarter million per year in other funding. Dept. of Community Affairs gives some funding as part of a statewide citizen advocacy project (all state funds they get are passed straight through to citizen advocates or self advocates). Legal fees - about 750K waiting to come in currently. Other federal funds: Office of Disability Employment Policy funds some of their Employment First work. GA council on DD - 50K.	Not much more - all together its just another 400K. They also write grants and get private donations. Not a big treasure trove of money coming from somewhere else.	No outside appointments. Nominating procedure - done with the board and the ED and the executive level staff looking to be sure they have representation from all demographics and geography, while simultaneously searching for candidates with core skills. No providers on the board because they want to minimize conflicts of interest as much as possible (also why they don't take state funds).	10 - 2 more hoping to come on and one about to leave	Advisory council for all the employment work they do(more of a steering committee). PABSS. State- wide citizen advocacy Advisory council. (There are independent boards of directors within the organizations that this P&A "hosts" through the early stages of development until they are independent and can spin off on their own (so not a part of the "P&A proper"). All of the things they host are current with their mission: pushing for self and citizen advocacy (Employment First GA, People First GA). State really won't host like this P&A does so they're taking a more grassroots approach in an attempt to ensure that these organizations fail before ever getting started.)	36 (78% with disabilities)	7	Almost all (all employees except for the ED's assistant, a receptionist, and the CFO and his two finance staff are engaged in advocacy). 2 resource advocates (one's an attorney) who are 2 of their most senior staff - one has been there 25 years. One advocate also runs the PABBS program.	SRC leadership team (internal social world valorization training - among host organizations as well - to define a common mission and talk about how people with disabilities are regarded). Program accountability review team (cross program group who throughout the year randomly pulls 1/3 of open cases in a program and looks at the quality of advocacy in those cases and reports back to the ED. Clinical team (people who have medical backgrounds/licensed clinical social workers in an effort to have that expertise in their arsenal when it's needed). Investigations unit.	The biggest hazard in a transition like this one is internal and external questioning of when and why and what it means. With any shift like this one, too, a certain percentage of people tend to fall out. It's hard to match the salaries and benefits of state employment so it might be a good idea to work with finance staff to craft wages and benefits comparable to what employees are used to.) If there is unionization, that's even another can of worms. Even despite these problems, though, with VA's dire need for services (and with role-clarity issues abound). It can become difficult to manage external affairs whilst reorganizing internall, but she applauds our efforts. Anything she can do to help is an option (even if its just providing a friendly ear!).

P & A ED Contact Info	Federal Funds	Grants/Other State Funding?	Total Annual Budget	Board-Member Selection	How many board members?	Any advisory council other than PAIMI?	Staff	Attorneys	Advocates	Others	Impressions/Additional Comments
Disability Rights North Carolina Vicki Smith (919) 856-2195 vicki.smith@disabilityrightsnc.org	3.2 million	Grants. Fundraising.	3.3 (3 million is federal and the rest is a couple of small grants and fundraising)	Specific requirements in the bylaws. Membership grid that tracks disability and other types of diversity (age, disability, location, attorney, fiscal management experience). Terms of office: first term is a one year term. Second term is a three year term. (longevity) Last term is a two year term. (transition) Vacancies are posted according to what the grid says they need (right now that's Hispanic people in a specific region of the state). Looking specifically for a development chair to provide board leadership in light of the	17 (governance committee, program policy committee, joint finance/audit committee (have to have one outside person on that one), development committee)	No - Friends of Disability for Development (this group is for people who don't want to be on the board or do but when there is no slot to fill, and they help with fundraising and getting money/development.)	42	10	6	Organized by function. (See attachment for organizational chart of staff. Organized by function and what positions they have/how many in each position.) Legally based so more attorneys than non-attorneys. Objectives say that there has to be a 3-1 ratio of attorneys to advocates. Non-attorney advocates are in (checking in on 100 institutions) - investigations and monitoring unit. When an investigation is opened we're doing an objective investigation as opposed to an attorney-client relationship.	Copies/checklists/to-do lists and everything that she's ready to share. Already shared with NY and OH.

P & A ED Contact Info	Federal Funds	Grants/Other State Funding?	Total Annual Budget	Board-Member Selection	How many board members?	Any advisory council other than PAIMI?	Staff	Attorneys	Advocates	Others	Impressions/Additional Comments
Disability Rights Wisconsin Tom Masseau (608) 267-0214 Tom.Masseau@dr wi.org	1.9 million	5 state grants. One comes through department of health and social services (legal grant - 900K). One allows them to operate a family care ombudsman program (800k). Also receive a grants for the Medicare part b health line. Grant that allows advocacy for people receiving SSI. Also negotiating with the state to get a grant for dual eligible population.	Just over 5 million	Nomination. Traditional process with solicitation/nominations (in accordance with geographic/disability/ethnic requirements) completed by 3 nominating committee board members. Carter model (different that the Ford model approach) is used in that the board creates end goals/policies and the staff comes up with activities/means to meet those end goals. Hands-off board with the ED as a go-between.	17 (at our max)	No.	New to the agency - only been there 4 months. There's going to be a restructure at some point, but just over 60 currently.	70% (run from supervising, managing, regular)		Administrative staff, IT, lay-advocates. Low in terms of administrative employees. Attorneys pretty much prepare their own briefs. Top heavy with attorneys.	Keep everything transparent - both internally and with partners. Mission and values are still going to be there despite the transition to the private sector, but with more autonomy absent the government intervention.
Reasons for Leaving State Gov't (public/private)											
Tennessee	P&A system was only in state gov't for a year. Then governor (Alexander) determined that it would be better served out in the community (happened long before she came). Governor chose a mom and pop educational advocacy organization just working Davidson County/Nashville area and designated them as the state advocacy system. He found it would be better if it were not part of state employment. Happened right at the beginning of the P&A system. One of the states that moved it out relatively quickly. (Doesn't know much about the reasoning behind it within the organization as she wasn't there during the transition.)										

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North Carolina	For over 20 years the disability community wanted the P&A out of state government. Friendly redesignation. 2003, the board of the in-state agency voted and recommended that they needed to move out of state government. Primary reason: disability community wanted it! What the disability community did not know that there was unknown financial mismanagement revealed in the transfer, so that was an added benefit of the move to the private sector. Transferred 5 years ago.										

Subpart B-- What requirements apply to a notice of proposed redesignation?

§ 370.11 What requirements apply to a notice of proposed redesignation?

(a) Prior to any redesignation of the agency that conducts the CAP, the Governor shall give written notice of the proposed redesignation to the designated agency, the State Rehabilitation Advisory Council (SRAC), and the State Independent Living Council (SILC) and publish a public notice of the Governor's intention to redesignate. Both the notice to the designated agency, the SRAC, and the SILC and the public notice must include, at a minimum, the following:

- (1)** The Federal requirements for the CAP (section 112 of the Act).
- (2)** The goals and function of the CAP.

- (3) The name of the current designated agency.
- (4) A description of the current CAP and how it is administered.
- (5) The reason or reasons for proposing the redesignation, including why the Governor believes good cause exists for the proposed redesignation.
- (6) The effective date of the proposed redesignation.
- (7) The name of the agency the Governor proposes to administer the CAP.
- (8) A description of the system that the redesignated (i.e., new) agency would administer.

(b) The notice to the designated agency must--

- (1) Be given at least 30 days in advance of the Governor's written decision to redesignate; and
- (2) Advise the designated agency that it has at least 30 days from receipt of the notice of proposed redesignation to respond to the Governor and that the response must be in writing.

(c) The notice of proposed redesignation must be published in a place and manner that provides the SRAC, the SILC, individuals with disabilities or their representatives, and the public with at least 30 days to submit oral or written comments to the Governor.

(d) Following public notice, public hearings concerning the proposed redesignation must be conducted in an accessible format that provides individuals with disabilities or their representatives an opportunity for comment. The Governor shall maintain a written public record of these hearings.

(e) The Governor shall fully consider any public comments before issuing a written decision to redesignate.

§ 370.12 How does a designated agency preserve its right to appeal a redesignation?

- (a) To preserve its right to appeal a Governor's written decision to redesignate (see § 370.13), a designated agency must respond in writing to the Governor within 30 days after it receives the Governor's notice of proposed redesignation.
- (b) The designated agency shall send its response to the Governor by registered

or certified mail, return receipt requested, or other means that provides a record that the Governor received the designated agency's response.

§ 370.13 What are the requirements for a decision to redesignate?

(a) If, after complying with the requirements of § 370.11, the Governor decides to redesignate the designated agency, the Governor shall provide to the designated agency a written decision to redesignate that includes the rationale for the redesignation. The Governor shall send the written decision to redesignate to the designated agency by registered or certified mail, return receipt requested, or other means that provides a record that the designated agency received the Governor's written decision to redesignate.

(b) If the designated agency submitted to the Governor a timely response to the Governor's notice of proposed redesignation, the Governor shall inform the designated agency that it has at least 15 days from receipt of the Governor's written decision to redesignate to file a formal written appeal with the Secretary.

§ 370.14 How does a designated agency appeal a written decision to redesignate?

(a) A designated agency may appeal to the Secretary a Governor's written decision to redesignate only if the designated agency submitted to the Governor a timely written response to the Governor's notice of proposed redesignation in accordance with § 370.12.

(b) To appeal to the Secretary a Governor's written decision to redesignate, a designated agency shall file a formal written appeal with the Secretary within 15 days after the designated agency's receipt of the Governor's written decision to redesignate. The date of filing of the designated agency's written appeal with the Secretary will be determined in a manner consistent with the requirements of 34 CFR 81.12.

(c) If the designated agency files a written appeal with the Secretary, the designated agency shall send a separate copy of this appeal to the Governor by registered or certified mail, return receipt requested, or other means that provides a record that the Governor received a copy of the designated agency's appeal to the Secretary.

(d) The designated agency's written appeal to the Secretary must state why the Governor has not met the burden of showing that good cause for the redesignation exists or has not met the procedural requirements under §§ 370.11 and 370.13.

(e) The designated agency's written appeal must be accompanied by the

designated agency's written response to the Governor's notice of proposed redesignation and may be accompanied by any other written submissions or documentation the designated agency wishes the Secretary to consider.

(f) As part of its submissions under this section, the designated agency may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

§ 370.15 What must the Governor of a State do upon receipt of a copy of a designated agency's written appeal to the Secretary?

(a) If the designated agency files a formal written appeal in accordance with §370.14, the Governor shall, within 15 days of receipt of the designated agency's appeal, submit to the Secretary copies of the following:

- (1) The written notice of proposed redesignation sent to the designated agency.
- (2) The public notice of proposed redesignation.
- (3) Transcripts of all public hearings held on the proposed redesignation.
- (4) Written comments received by the Governor in response to the public notice of proposed redesignation.
- (5) The Governor's written decision to redesignate, including the rationale for the decision.
- (6) Any other written documentation or submissions the Governor wishes the Secretary to consider.
- (7) Any other information requested by the Secretary.

(b) As part of the submissions under this section, the Governor may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

§ 370.16 How does the Secretary review an appeal of a redesignation?

(a) If either party requests a meeting under § 370.14(f) or § 370.15(b), the meeting is to be held within 30 days of the submissions by the Governor under § 370.15, unless both parties agree to waive this requirement. The Secretary promptly notifies the parties of the date and place of the meeting.

(b) Within 30 days of the informal meeting permitted under paragraph (a) of this section or, if neither party has requested an informal meeting, within 60 days of the submissions required from the Governor under § 370.15, the Secretary issues to the parties a final written decision on whether the redesignation was for good cause.

(c) The Secretary reviews a Governor's decision based on the record submitted under §§ 370.14 and 370.15 and any other relevant submissions of other interested parties. The Secretary may affirm or, if the Secretary finds that the redesignation is not for good cause, remand for further findings or reverse a Governor's redesignation.

(d) The Secretary sends copies of the decision to the parties by registered or certified mail, return receipt requested, or other means that provide a record of receipt by both parties.

§ 370.17 When does a redesignation become effective?

A redesignation does not take effect for at least 15 days following the designated agency's receipt of the Governor's written decision to redesignate or, if the designated agency appeals, for at least 5 days after the Secretary has affirmed the Governor's written decision to redesignate.

§ 1386.20 Designated State Protection and Advocacy agency.

(a) The designating official must designate the State official or public or private agency to be accountable for proper use of funds and conduct of the Protection and Advocacy agency.

(b) An agency of the State or private agency providing direct services, including guardianship services may not be designated as a Protection and Advocacy agency.

(c) In the event that an entity outside of the State government is designated to carry out the program, the designating official or entity must assign a responsible State official to receive, on behalf of the State, notices of disallowances and compliance actions as the State is accountable for the proper and appropriate expenditure of Federal funds.

(d) (1) Prior to any redesignation of the agency which administers and operates the State Protection and Advocacy (P&A) System, the designating official must give written notice of the intention to make the redesignation to the agency currently administering and operating the State Protection and Advocacy System by registered or certified mail. The notice must indicate that the proposed redesignation is being made for good cause. The designating official must also publish a public notice of the proposed action. The agency and the public shall have a reasonable period of time, but not less than 45 days to respond to the notice.

(2) The public notice must include:

(i) The Federal requirements for the Protection and Advocacy system for individuals with developmental disabilities (Section 142 of the Act); and, where applicable, the requirements of other Federal advocacy programs administered by the State Protection and Advocacy System;

(ii) The goals and function of the State's Protection and Advocacy System including the current Statement of Objectives and Priorities;

(iii) The name and address of the agency currently designated to administer and operate the Protection and Advocacy system; and an indication of whether the agency also operates other Federal advocacy programs;

(iv) A description of the current Protection and Advocacy agency and the system it administers and operates including, as

applicable, descriptions of other Federal advocacy programs it operates;

- (v) A clear and detailed explanation of the good cause for the proposed redesignation;
- (vi) A statement suggesting that interested persons may wish to write the current State Protection and Advocacy agency at the address provided in paragraph (d)(2)(iii) of this Section to obtain a copy of its response to the notice required by paragraph (d)(1) of this Section. Copies shall be provided in accessible formats to individuals with disabilities upon request;
- (vii) The name of the new agency proposed to administer and operate the Protection and Advocacy System under the Developmental Disabilities program. This agency will be eligible to administer other Federal advocacy programs;
- (viii) A description of the system which the new agency would administer and operate, including a description of all other Federal advocacy programs the agency would operate;
- (ix) The timetable for assumption of operations by the new agency and the estimated costs of any transfer and start-up operations; and
- (x) A statement of assurance that the proposed new designated State P&A System will continue to serve existing clients and cases of the current P&A system or refer them to other sources of legal advocacy as appropriate, without disruption.

(3) The public notice as required by paragraph (d)(1) of this Section, must be in a format accessible to individuals with developmental disabilities or their representatives, e.g., tape, diskette. The designating official must provide for publication of the notice of the proposed redesignation using the State register, State-wide newspapers, public service announcements on radio and television, or any other legally equivalent process. Copies of the notice must be made generally available to individuals with developmental disabilities and mental illness who live in residential facilities through posting or some other means.

(4) After the expiration of the public comment period required in paragraph (d)(1) of this Section, the designating official must conduct a public hearing on the redesignation proposal. After consideration of all public and agency comments, the designating official must give notice of the final decision to the currently designated agency and the public through the

same means used under paragraph (d)(3) of this Section. This notice must include a clear and detailed explanation of the good cause finding. If the notice to the currently designated agency states that the redesignation will take place, it also must inform the agency of its right to appeal this decision to the Assistant Secretary, Administration for Children and Families and provide a summary of the public comments received in regard to the notice of intent to redesignate and the results of the public hearing and its responses to those comments. The redesignation shall not be effective until 10 working days after notifying the current Protection and Advocacy agency or, if the agency appeals, until the Assistant Secretary has considered the appeal.

(e) (1) Following notification pursuant to paragraph (d)(4) of this Section, the Protection and Advocacy agency which is the subject of such action, may appeal the redesignation to the Assistant Secretary. To do so, the Protection and Advocacy agency must submit an appeal in writing to the Assistant Secretary within 20 days of receiving official notification under paragraph (d)(4) of this Section, with a separate copy sent by registered or certified mail to the designating official who made the decision concerning redesignation.

(2) In the event that the agency subject to redesignation does exercise its right to appeal under paragraph (e)(1) of this Section, the designating official must give public notice of the Assistant Secretary's final decision regarding the appeal through the same means utilized under paragraph (d)(3) of this Section within 10 working days of receipt of the Assistant Secretary's final decision under paragraph (e)(6) of this Section.

(3) The designating official within 10 working days from the receipt of a copy of the appeal must provide written comments to the Assistant Secretary (with a copy sent by registered or certified mail to the Protection and Advocacy agency appealing under paragraph (e)(1) of this Section), or withdraw the redesignation. The comments must include a summary of the public comments received in regard to the notice of intent to redesignate and the results of the public hearing and its responses to those comments.

(4) In the event that the designating official withdraws the redesignation while under appeal pursuant to paragraph (e)(1) of this Section, the designating official must notify the Assistant Secretary, and the current agency, and must give public notice of his or her decision through the same means utilized under paragraph (d)(3) of this Section.

(5) As Part of their submission under paragraph (e)(1) or (e)(3) of this Section, either Party may request, and the Assistant Secretary may grant, an opportunity for an informal meeting with the Assistant Secretary at

which representatives of both Parties will present their views on the issues in the appeal. The meeting will be held within 20 working days of the submission of written comments by the designating official under paragraph (e)(2) of this Section. The Assistant Secretary will promptly notify the Parties of the date and place of the meeting.

(6) Within 30 days of the informal meeting under paragraph (e)(5) of this Section, or, if there is no informal meeting under paragraph (e)(5) of this Section, within 30 days of the submission under paragraph (e)(3) of this Section, the Assistant Secretary will issue to the Parties a final written decision on whether the redesignation was for good cause as defined in paragraph (d)(1) of this Section. The Assistant Secretary will consult with Federal advocacy programs that will be directly affected by the proposed redesignation in making a final decision on the appeal.

(f) (1) Within 30 days after the redesignation becomes effective under paragraph (d)(4) of this Section, the designating official must submit an assurance to the Assistant Secretary that the newly designated Protection and Advocacy agency meets the requirements of the statute and the regulations.

(2) In the event that the Protection and Advocacy agency subject to redesignation does not exercise its rights to appeal within the period provided under paragraph (e)(1) of this Section, the designating official must provide to the Assistant Secretary documentation that the agency was redesignated for good cause. Such documentation must clearly demonstrate that the Protection and Advocacy agency subject to redesignation was not redesignated for any actions or activities which were carried out under Section 142 of the Act, these regulations or any other Federal advocacy program's legislation or regulations.

§ 1386.21 Requirements and authority of the Protection and Advocacy System.

(a) In order for a State to receive Federal financial Participation for Protection and Advocacy activities under this Subpart, as well as the State Developmental Disabilities Council activities (Subpart C of this Part), the Protection and Advocacy System must meet the requirements of Section 142 of the Act (42 U.S.C. 6042) and that system must be operational.

(b) Allotments must be used to supplement and not to supplant the level of non-federal funds available in the State for activities under the Act, which shall include activities on behalf of individuals with developmental disabilities to remedy abuse, neglect and violations of rights as well and information and referral activities.

ARTICLES OF INCORPORATION
for
disAbility Law Center of Virginia
A Member of the National Disability Rights Network

We the undersigned hereby form a non-stock corporation without members under the provisions of Chapter 10 of Title 13.1 of the Code of Virginia (1950), as amended, and to that end set forth the following:

FIRST: The name of the corporation is “disAbility Law Center of Virginia.”

SECOND: The Corporation shall not have members.

THIRD: This Corporation is organized exclusively for charitable, educational, or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, such purposes to include but not be limited to accepting the designation of the Governor of Virginia as Virginia’s protection and advocacy system and client assistance program and thereafter operating protection and advocacy systems and client assistance programs as prescribed by applicable federal law and regulations.

FOURTH: The Corporation shall have and exercise all powers and authorities now or hereafter permitted or conferred upon non-stock corporations under the laws of the Commonwealth of Virginia.

FIFTH: No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its trustees, directors, officers, or any other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the “Third” Article above. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, lobbying, or otherwise attempting to influence legislation, and the Corporation shall not by the publication or distribution of statements or otherwise participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of this document, the Corporation shall not carry on any activities not permitted to be carried on by (a) an organization which is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or, (b) an organization, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

SIXTH: The Corporation's Incorporators are Maureen S. Hollowell (President), Elizabeth Priaux, and Donald CW Tillman. The Incorporators shall hold an organizational meeting pursuant to Virginia Code § 13.1-822(2), at which time they shall elect the Corporation's Board of Directors in accordance with these Articles and the Corporation's Bylaws.

The Corporation's Board of Directors shall meet at least annually, and shall be comprised of the chair of the advisory council required by 42 C.F.R. § 51.22(c) (the PAIMI Advisory Council Chair), who shall serve *ex officio*, ten (10) elected Directors, and the Executive Director. The Executive Director shall serve *ex officio* and shall not have the power to vote on matters considered by the Board.

Among the elected Directors may be included a representative of the Corporation's Disabilities Advisory Council as described in 42 U.S.C. § 15044(a)(1)(C). Each Director shall have one vote, except that the Executive Director shall not have a vote. Proxy voting shall be allowed except as restricted by these Articles or the Corporation's Bylaws.

The Board of Directors may, by a majority vote, increase its number to a maximum of fifteen (15) voting Directors, including *ex officio* Director(s).

Elected Directors shall possess at the time of election such characteristics and qualifications as may be needed or required to create, maintain, or enhance the Corporation's compliance with all applicable laws and regulations regarding the composition and qualifications of its Board of Directors. Such laws and regulations specifically include but may not be limited to 42 U.S.C. § 15044, 42 U.S.C. § 10805(c) and 42 C.F.R. § 51.22.

The terms of office for the elected Directors shall be staggered as follows: At the first annual meeting of the Board, two (2) Directors shall be elected for one-year terms; two (2) Directors shall be elected for two-year terms, three (3) Directors shall be elected for three year terms, and three (3) Directors shall be elected for four-year terms. All subsequent terms of office will be for four years. Directors who have served two consecutive four-year terms may not be elected as a Director during the two year period beginning on the date on which the second four-year term expires.

As terms of office expire, they shall be filled by election at the annual meeting of the Corporation's Board of Directors. If any Director resigns, is removed, or for any other reason cannot complete his term of office, the Board shall within 60 days and in accordance with the Corporation's Bylaws elect a replacement to serve the remainder of that Director's term.

Any Director may be removed from office at a meeting called specifically for that purpose, following due notice, upon an affirmative vote of three fourths ($\frac{3}{4}$) of the remaining Directors then in Office.

The Board shall select and appoint the Corporation's Executive Director, who shall serve at its pleasure.

SEVENTH: Upon dissolution of the Corporation, and after all liabilities of the Corporation have been paid, satisfied, and discharged or adequate provisions made therefore, all remaining assets of the Corporation shall be distributed for one or more exempt purposes within the meaning of 501(c)(3) of the Internal Revenue Code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not disposed of shall be disposed of by the Circuit Court of the county in which the principal office of the Corporation is then located, exclusively for such exempt purposes or to such organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

EIGHTH: The post office address of the Corporation's initial registered office shall be at 1910 Byrd Avenue, Suite 5, Richmond, Virginia 23230, and its initial Registered Agent at such address shall be V. Colleen Miller, who is a resident of Virginia and a member of the Virginia State Bar.

NINTH: Any person who is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a director or executive officer of the Corporation, or is or was so serving with respect to another corporation, partnership, joint venture, trust, or other enterprise at the request of the Corporation, shall be indemnified by the Corporation against liability, costs, and expenses (including but not limited to reasonable attorney fees) to the full extent permitted by applicable law. The Corporation may, but shall not be required to, indemnify any and all other officers, employees, or agents of the Corporation to the same extent as directors and executive officers.

TENTH: Except in case of willful misconduct or a knowing violation of criminal law or of any federal or state securities law, no officer or director of the Corporation shall be liable in damages in any amount whatsoever in any proceeding brought by or in the right of the Corporation.

Maureen S. Hollowell , 8/1/12
Maureen S. Hollowell, Incorporator Date

Elizabeth D. Prialux X , 8/15/12
Elizabeth Prialux, Incorporator Date

Donald CW Tillman , 8/6/12
Donald CW Tillman, Incorporator Date

