

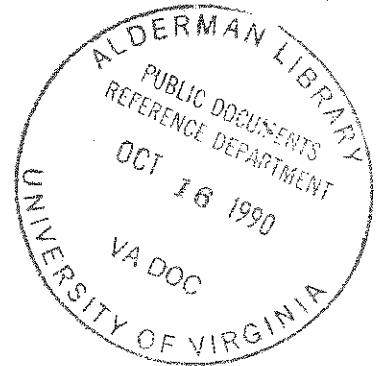
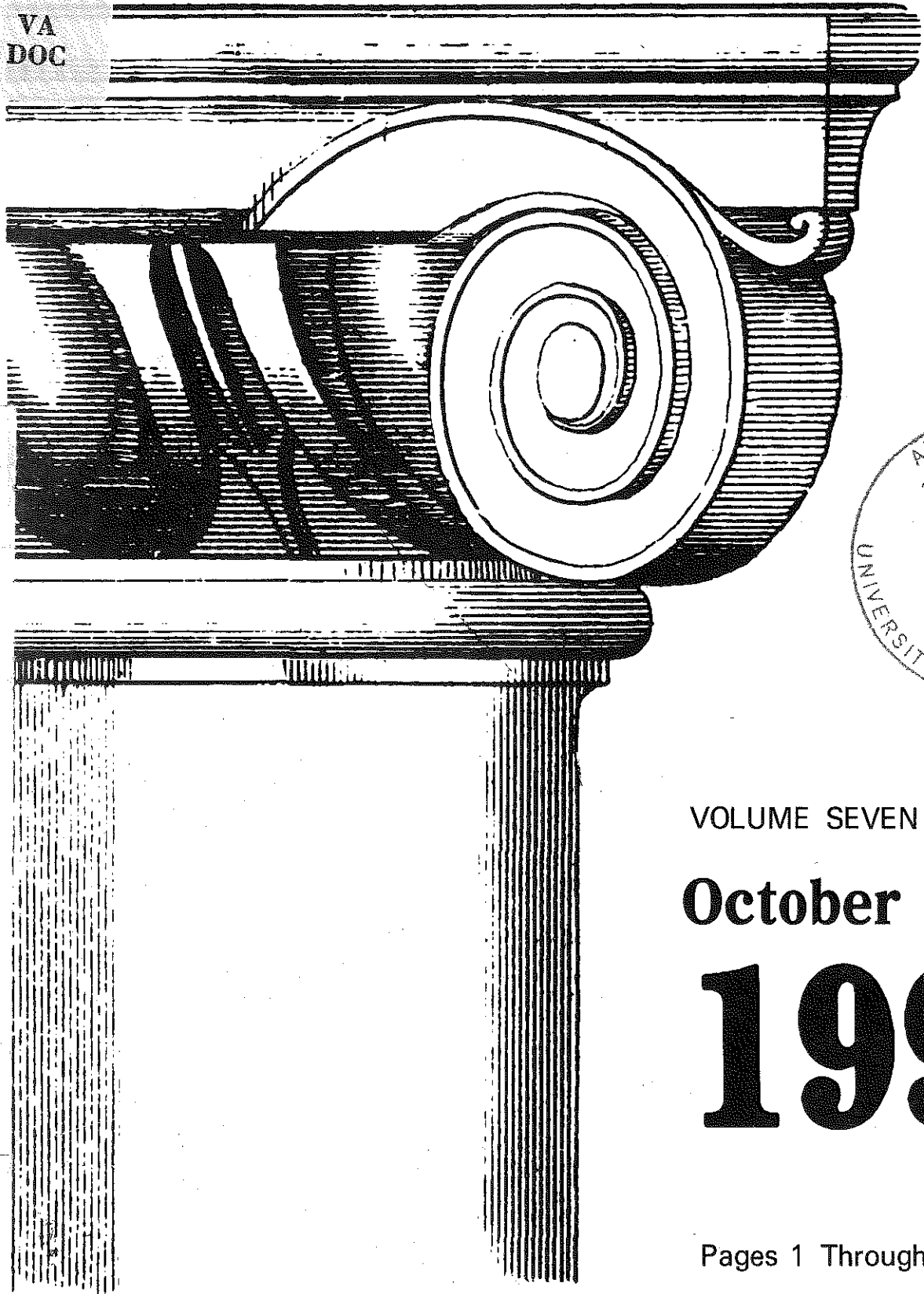
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THE VIRGINIA REGISTER

OF REGULATIONS

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VIRGINIA REGISTER

The *Virginia Register* is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative.

The *Virginia Register* has several functions. The full text of all regulations, both as proposed and as finally adopted or changed by amendment are required by law to be published in the *Virginia Register of Regulations*.

In addition, the *Virginia Register* is a source of other information about state government, including all Emergency Regulations issued by the Governor, and Executive Orders, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of all public hearings and open meetings of state agencies.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of proposed action; a basis, purpose, impact and summary statement; a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations.

Under the provisions of the Administrative Process Act, the Registrar has the right to publish a summary, rather than the full text, of a regulation which is considered to be too lengthy. In such case, the full text of the regulation will be available for public inspection at the office of the Registrar and at the office of the promulgating agency.

Following publication of the proposal in the *Virginia Register*, sixty days must elapse before the agency may take action on the proposal.

During this time, the Governor and the General Assembly will review the proposed regulations. The Governor will transmit his comments on the regulations to the Registrar and the agency and such comments will be published in the *Virginia Register*.

Upon receipt of the Governor's comment on a proposed regulation, the agency (i) may adopt the proposed regulation, if the Governor has no objection to the regulation; (ii) may modify and adopt the proposed regulation after considering and incorporating the Governor's suggestions, or (iii) may adopt the regulation without changes despite the Governor's recommendations for change.

The appropriate standing committee of each branch of the General Assembly may meet during the promulgation or final adoption process and file an objection with the *Virginia Registrar* and the promulgating agency. The objection will be published in the *Virginia Register*. Within twenty-one days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative Committee, and the Governor.

When final action is taken, the promulgating agency must again publish the text of the regulation, as adopted, highlighting and explaining any substantial changes in the final regulation. A thirty-day final adoption period will commence upon publication in the *Virginia Register*.

The Governor will review the final regulation during this time and if he objects, forward his objection to the Registrar and the agency. His objection will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation are substantial, he may suspend the regulatory process for thirty days and require the agency to solicit additional public comment on the substantial changes.

A regulation becomes effective at the conclusion of this thirty-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall

be after the expiration of the twenty-one day extension period; or (ii) the Governor exercises his authority to suspend the regulatory process for solicitation of additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified which date shall be after the expiration of the period for which the Governor has suspended the regulatory process.

Proposed action on regulations may be withdrawn by the promulgating agency at any time before final action is taken.

EMERGENCY REGULATIONS

If an agency determines that an emergency situation exists, it then requests the Governor to issue an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited in time and cannot exceed a twelve-months duration. The emergency regulations will be published as quickly as possible in the *Virginia Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures (See "Adoption, Amendment, and Repeal of Regulations," above). If the agency does not choose to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 of Chapter 1.1:1 (§§ 9-6.14:6 through 9-6.14:9) of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

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VIRGINIA REGISTER OF REGULATIONS

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PROPOSED REGULATIONS

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Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates proposed new text. Language which has been stricken indicates proposed text for deletion.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: VR 115-02-19. Rules and Regulations Pertaining to the Testing Requirements for Poultry Affected by Salmonella Enteritidis.

Statutory Authority §§ 3.1-724 and 3.1-726 of the Code of Virginia.

NOTICE: The Board is WITHDRAWING the proposed regulation titled "Rules and Regulations Pertaining to the Testing Requirements for Poultry Affected by Salmonella Enteritidis" (VR 115-02-19) published in the 6:19 V.A.R. 3019-3020, June 18, 1990.

DEPARTMENT OF COMMERCE

Title of Regulation: VR 190-06-01. Regulations Governing Athlete Agents.

Statutory Authority: § 54.1-525 of the Code of Virginia.

Public Hearing Date: October 25, 1990 - 10 a.m.
(See Calendar of Events section for additional information)

Summary:

The proposed regulations will apply to an estimated population of 15 to 60 individuals or firms acting as athlete agents in the Commonwealth. The exact number of licenses will fluctuate according to the number of athletes who demonstrate the potential for employment by a professional sports team. The proposed regulations establish the qualifications for initial licensure for an individual or a firm, including appropriate experience, the requirement of a \$100,000 surety bond or equivalent professional liability insurance, and the assurance that the applicant has not had his license as an athlete agent in another jurisdiction suspended, revoked or surrendered in conjunction with a disciplinary action. Fees for initial licensure and renewal are established in the regulations in compliance with § 54.1-113 of the Code of Virginia. The requirements for renewal of a license and the consequence of failing to renew the license are also identified in the proposal. The regulations also set forth standards for maintenance of the license, for contracting activities, and for record-keeping as required by the Code of Virginia. The final section of the regulations outlines prohibited acts which could be cause for disciplinary action

against the licensee.

VR 190-06-01. Regulations Governing Athlete Agents.

PART I. GENERAL.

§ 1.1. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Firm" means any partnership, association, corporation, or other legal entity.

"Institution of higher education" means an accredited university, college or community college located in the Commonwealth.

"Licensee" means a person holding a license issued by the director to act as an athlete agent in the Commonwealth.

PART II. ENTRY.

§ 2.1. Qualifications for individual licensure.

Every individual seeking to be licensed as an athlete agent shall submit, on a form provided by the director, the information required by § 54.1-519 of the Code of Virginia and shall meet the following criteria:

1. The applicant shall be at least 18 years old.
2. The applicant shall demonstrate knowledge and expertise in the following areas: contract negotiation, complaint resolution, arbitration or civil resolution of contract disputes, federal taxation and federal estate planning.

§ 2.2. Qualification for firm licensure.

Every firm seeking to be licensed as an athlete agent shall submit, on a form provided by the director, the information required by § 54.1-519 of the Code of Virginia and shall meet the following requirements:

1. For a corporation, an officer of the corporation shall meet the requirements of § 2.1.
2. For a partnership, a general partner shall meet the requirements of § 2.1.

Proposed Regulations

3. For an association, a member of the association shall meet the requirements of § 2.1.

§ 2.3. Criminal convictions.

The director may deny licensure to any applicant who has been convicted of a misdemeanor involving moral turpitude, or of any felony. Any plea of *nolo contendere* shall be considered a conviction for the purposes of this section. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as *prima facie* evidence of such conviction.

§ 2.4. Good standing requirement.

All applicants for licensure as an athlete agent shall be in good standing in every jurisdiction where licensed/registered to perform negotiations on behalf of an athlete with a professional sports team. The applicant shall not have had a license which was suspended, revoked or surrendered in conjunction with any disciplinary action involving his performance as an athlete agent in any jurisdiction prior to applying for licensure in the Commonwealth.

§ 2.5. Bond requirements.

Prior to licensure, the applicant shall be required to deposit with the director, a \$100,000 surety bond on the form provided by the director, or provide proof of equivalent professional liability insurance, and shall comply with the criteria set forth in § 54.1-519 G of the Code of Virginia.

§ 2.6. Reciprocity.

A. An applicant for individual licensure by reciprocity shall meet the conditions set forth in §§ 2.1, 2.3, 2.4 and 2.5 of these regulations or meet conditions deemed by the director to be substantially equivalent to these criteria.

B. A firm applying for licensure by reciprocity shall meet the appropriate conditions set forth in §§ 2.2, 2.3, 2.4 and 2.5 of these regulations or meet conditions deemed by the director to be substantially equivalent to these criteria.

§ 2.7. Fee.

The fee for licensure as an athlete agent shall be \$550 whether by experience/education or by reciprocity, and shall be paid at the time of application. Payment shall be by check, money order or bank draft made payable to the Treasurer of Virginia. All fees are nonrefundable.

PART III. RENEWAL.

§ 3.1. Renewal required.

Licenses for athlete agents are issued for a period of

one year and shall be renewed annually on or before the expiration date indicated on the license.

§ 3.2. Qualification for renewal.

An applicant applying for license renewal as an athlete agent shall meet the following requirements:

1. An individual applying for renewal shall certify that he continues to meet the conditions of §§ 2.3 and 2.4 of these regulations.

2. When a firm applies for renewal, an officer of the corporation, a general partner of the partnership, or a member of the association shall certify that he continues to meet the conditions of §§ 2.3 and 2.4 of these regulations, and that the firm continues to meet the requirement of § 2.5 of these regulations.

§ 3.3. Procedures for renewal.

A. The Department of Commerce shall mail a renewal notice to the licensee at the last known address of record. This notice will outline the procedures for renewal. Failure to receive a notice of renewal shall not relieve the licensee of the obligation to renew the license before its expiration date.

B. Applicants shall apply for renewal on a form provided by the director.

C. The applicant shall also certify, on the form provided by the director, that the required surety bond in the amount of \$100,000 or equivalent professional liability insurance remains in force.

D. When submitting a request for renewal, the licensee shall also submit, on a form provided by the director, the name and address of each person employing the licensee, the amount of fee received and the professional services performed on behalf of that person as required by § 54.1-524 of the Code of Virginia.

§ 3.4. Renewal fee.

The applicant shall submit a renewal fee in the amount of \$450 at the time of renewal.

§ 3.5. Failure to renew license.

If the license is not renewed before its expiration date, or within 30 days thereafter, the license shall be considered void and the licensee shall be required to submit a new application form, a new surety bond in the amount of \$100,000 or proof of equivalent professional liability insurance, and pay an application fee of \$550.

§ 3.6. Denial of renewal.

The director may deny renewal of a license for the same reasons as he may refuse initial licensure or

discipline a licensee.

PART IV. STANDARDS OF PRACTICE.

§ 4.1. Maintenance of license.

A. All licensees shall notify the director, in writing, of a change of address within 30 days of that change.

B. A licensed firm shall notify the director in writing of any change in the following personnel:

1. Any general partner;
2. Any member of the association; and
3. Any officer of the corporation.

This information shall be submitted, within 30 days of the change, on a form provided by the director. The director shall promptly notify the firm in writing that the continuation of the license has been granted or denied in accordance with the requirements of §§ 2.2, 2.3 and 2.4 of these regulations.

C. A licensee must operate under the name in which the license is issued. As long as there is no change in the legal entity, a licensee may secure a name change by submitting a written request to the director for such a change. The request must show the name as it then appears on the license and the new name, and must be accompanied by a Certificate of Amendment from the State Corporation Commission if the licensee is a corporation, or certification by a local court on a form provided by the director if a licensee other than a corporation is trading under a fictitious name.

D. No license issued by the director may be assigned or otherwise transferred. Licenses are issued to legal business entities whether they be sole proprietorships, partnerships, corporations, associations or other legal entities. Whenever there is a change in the sole proprietorship, partnership, or association, a new license is required. Whenever a corporation is dissolved and a new corporation formed, a new license is required.

E. Any evidence of licensure remains the property of the Department of Commerce and upon termination of a license, the closure of a firm, the death of the licensee, or a change in license name or address, the license must be returned to the director by certified mail with the appropriate information within 10 days of the event.

§ 4.2. Contracting with an athlete.

A. The contract between a licensee and an amateur athlete shall be on a form provided by the director.

B. Within five days of fully executing a contract with an amateur athlete, a licensee shall file with the director a

copy of that contract.

C. If the amateur athlete is a student at an institution of higher education located in the Commonwealth, the licensee shall also file a copy of the contract with the athletic director of the institution not later than the fifth day after the contract is fully signed by the athlete.

D. Each licensee shall provide to the director a written schedule of the professional services offered by the licensee and the charges for these services. This schedule may only be amended in accordance with the provisions of § 54.1-520 C of the Code of Virginia.

E. Fees for negotiating a multi-year professional sport services contract shall only be charged in accordance with the requirements of § 54.1-520 D of the Code of Virginia.

F. Any contract between an amateur athlete and a licensee may be cancelled by the amateur athlete within 10 days after the filing of the contract with the licensee. The licensee shall notify the director in writing within 15 days of the licensee's receipt of the cancellation from the athlete.

G. The licensee shall file with the director a schedule of fees which states the amount of fee charged and the professional services rendered for each fee. Changes to this fee schedule will become effective only on the seventh day after such changes have been filed with the director.

§ 4.3. Record keeping requirements.

A. Licensees shall, upon request or demand of the director, promptly produce to the director or any of his agents, the records required by § 54.1-524 of the Code of Virginia, as well as copies of all fee schedules and all contracts between the licensee and the amateur athlete. These records shall be made available at the licensee's place of business during regular business hours.

B. The records required by § 54.1-524 of the Code of Virginia shall be kept by the licensee for the life of the contract made with an amateur athlete and for a period of three years thereafter.

PART V. STANDARDS OF CONDUCT.

§ 5.1. Prohibited acts.

The following are grounds for disciplinary action by the director:

1. Engaging in any of the prohibited acts identified in § 54.1-521 of the Code of Virginia.
2. Failing to comply with the provisions of Title 54.1, Chapter 5.1 of the Code of Virginia, or any of these regulations.

Proposed Regulations

3. *Furnishing substantially inaccurate or incomplete information when applying for initial licensure or for renewal of licensure as an athlete agent.*

4. *Aiding and abetting an unlicensed person in the violation of any provision of Title 54.1, Chapter 5.1 of the Code of Virginia, or these regulations.*

5. *Combining or conspiring with, or acting as an agent, partner, or associate for an unlicensed athlete agent, or allowing one's license to be used by an unlicensed athlete agent.*

6. *Having been convicted or found guilty, regardless of adjudication, in any jurisdiction of any felony or of a misdemeanor involving moral turpitude, there being no appeal pending therefrom or the time of appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted, shall be admissible as prima facie evidence of such conviction.*

7. *Failing to inform the director in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor identified in subsection F of this section.*

8. *Having an ownership or financial interest in any entity, directly or indirectly, that is involved in the same sport for which the athlete agent is negotiating a contract on behalf of an athlete.*

§ 5.2. Permitted contact with an amateur athlete.

Prior to an amateur athlete's last intercollegiate contest including postseason games, contact between a licensee and an amateur athlete located in the Commonwealth shall be made only in accordance with § 54.1-522 of the Code of Virginia.

These regulations shall be effective January 31, 1991.

GENERAL INSTRUCTIONS

FOR COMPLETION OF ATHLETE AGENT APPLICATION FORM

1. Print in ink or type all answers.
2. All application fees are nonrefundable. Please do not send cash. Send check, money order or bank draft made payable to the "Treasurer of Virginia".
3. Your application must be signed and notarized. All non-resident notaries must use seal.
4. All application items must be properly completed and all required additional information submitted or your application will be returned and processing delayed.
5. If your residence is outside of the Commonwealth of Virginia, you must submit a "Consent to Suits and Service of Process Form" along with your application.
6. Please keep these instructions and a copy of your application for future reference.
7. Receipt of an application and/or deposit of an application fee does not guarantee licensure nor connote eligibility for licensure.
8. All applications must indicate the applicant's legal address of residence to include a street address.
9. All college/university course work requires one copy of an official transcript from the college/university attended. All noncollege course work requires a certified true copy of the certificate of completion for each course.
10. Submit a schedule of fees charged to an athlete including a detailed description of the services provided for each fee.

Applications submitted without all of the above information will be returned and will delay the processing of the application and licensure as an athlete agent in the Commonwealth.

MAIL COMPLETED APPLICATION PACKAGES AND FEES TO:
DEPARTMENT OF COMMERCE
ATHLETE AGENT LICENSURE
P.O. BOX 11066
RICHMOND, VIRGINIA 23294-4917

SECTION 54.1-111(6) OF THE CODE OF VIRGINIA, MAKES IT UNLAWFUL TO MATERIALLY MISREPRESENT FACTS IN AN APPLICATION FOR A LICENSE, CERTIFICATION OR REGISTRATION. VIOLATIONS OF THIS SECTION MAY RESULT IN

CRIMINAL PROSECUTION WHICH COULD RESULT IN ONE YEAR IN JAIL AND/OR UP TO A \$1,000 FINE.

SUCH MISREPRESENTATION IS GROUNDS FOR DENIAL OF LICENSURE.

APPLICATION FORM-ATHLETE AGENT

Complete the entire application. All information must be typewritten or clearly printed in ink.

(Use additional sheets as necessary)

I. GENERAL INFORMATION.

- A. Applicant is: an individual a company
 a corporation a partnership
 an association other legal entity
(Identify)

B. To be completed for officer of a corporation, general partner or member of an association.

(Use additional sheets if necessary)

NAME	HOME ADDRESS	CITY	ZIP CODE	POSITION

C. IF CORPORATION:

State and date of incorporation _____
Domicile _____

Has the Corporation qualified to do business in Virginia in accordance with the laws of the State? Yes No

If Yes, give date _____
Provide certified copy of Corporation Charter.

IF A FOREIGN CORPORATION (not resident to Virginia) Have you been granted a Certificate of Authority by the State Corporation Commission as required under the laws of Virginia (Sec. 13.1-102) Yes No
Provide a copy of Certificate of Authority.

IF PARTNERSHIP General _____ Limited _____

- D. Initial request for licensure.
- Request for licensure by reciprocity.

Proposed Regulations

The following information is to be provided for the individual if a sole proprietor, one officer in a corporation, one associate in an association, or one general partner in a partnership.

II. PERSONAL INFORMATION.

(Use additional sheets as necessary)

NAME _____
 First MI Last
 BUSINESS ADDRESS _____
 CITY _____ COUNTY _____
 STATE _____ ZIP CODE _____
 HOME TELEPHONE NO. (_____) _____
 BUSINESS TELEPHONE NO. (_____) _____
 SOCIAL SECURITY NO. _____
 Have you ever been known by or used any other name? YES NO?
 If YES, state name _____ DATE OF BIRTH _____
 (Day) (Month) (Year)

III. EMPLOYMENT HISTORY.

List the business(es) and occupation(s) engaged in for five (5) years immediately preceding the date of application.

(Use additional sheets as necessary)

BUSINESS NAME _____
 OCCUPATION _____
 BUSINESS ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____
 FROM _____ TO _____
 Month/Year Month/Year
 BUSINESS NAME _____

OCCUPATION _____
 BUSINESS ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____
 FROM _____ TO _____
 Month/Year Month/Year
 BUSINESS NAME _____
 OCCUPATION _____
 BUSINESS ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____
 FROM _____ TO _____
 Month/Year Month/Year

V. TRAINING AND EXPERIENCE.
List all formal training and/or experience you have in the following areas.

(Use additional sheets as necessary)

DRAFTING CONTRACTS
Formal training _____
Experience _____

CONTRACT NEGOTIATION
Formal training _____
Experience _____

COMPLAINT RESOLUTION
Formal training _____
Experience _____

ARBITRATION/CIVIL RESOLUTION OF CONTRACT DISPUTES
Formal training _____
Experience _____

FEDERAL INCOME EXEMPTION
Formal training _____
Experience _____

IV. EDUCATIONAL BACKGROUND.

(Use additional sheets as necessary)

A. NAME OF HIGH SCHOOL
ADDRESS _____
CITY _____ STATE _____ ZIP CODE _____
DATE OF GRADUATION _____

B. NAME OF COLLEGE/UNIVERSITY
ADDRESS _____
CITY _____ STATE _____ ZIP CODE _____
GRADUATE YES NO TOTAL CREDITS EARNED _____
DEGREE AWARDED _____ DATE OF GRADUATION _____

C. NAME OF GRADUATE/LAW SCHOOL
ADDRESS _____
CITY _____ STATE _____ ZIP CODE _____
DEGREE AWARDED _____ DATE OF GRADUATION _____
CREDITS EARNED IF DEGREE NOT AWARDED _____

Proposed Regulations

NAME OF PERSON _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____

NAME OF PERSON _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____

NAME OF PERSON _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____

NAME OF PERSON _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____

NAME OF PERSON _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____

VII. CURRENT ATHLETE CLIENTS.
 List all athletes for whom you are currently providing professional services.

(Use additional sheets as necessary)

NAME OF ATHLETE _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____

FEDERAL ESTATE PLANNING
 Formal training _____
 Experience _____

OTHER APPLICABLE FORMAL TRAINING

OTHER APPLICABLE EXPERIENCE

All applicants are required to submit one official transcript for each college/university attended.

For education/training other than college/university courses (trade school/in-house training, etc.) applicants are required to submit a certified true copy of the certificate of completion for each course.

All material should be sent directly to:

THE DEPARTMENT OF COMMERCE
 ATHLETE AGENT PROGRAM
 3600 WEST BROAD STREET
 5TH FLOOR
 RICHMOND, VIRGINIA 23230-4917

VI. FINANCIALLY INTERESTED PARTIES.
 List all financially interested parties, except bona fide employees on a stated salary, who are financially interested in the operation of the business of the athlete agent as partners, associates or profit sharers.

(Use additional sheets as necessary)

NAME OF PERSON _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____

(Use additional sheets as necessary)

ADDRESS _____ STATE _____ ZIP CODE _____
 CITY _____
 NAME OF ATHLETE _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____
 NAME OF ATHLETE _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____
 NAME OF ATHLETE _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____
 NAME OF ATHLETE _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____

NAME OF ATHLETE _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____
 Reason no longer providing professional services _____

 NAME OF ATHLETE _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____
 Reason no longer providing professional services _____

 NAME OF ATHLETE _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____
 Reason no longer providing professional services _____

 NAME OF ATHLETE _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP CODE _____
 Reason no longer providing professional services _____

VIII. PREVIOUS ATHLETE CLIENTS.
 List all athletes for whom you have previously provided professional services.

CITY _____ STATE _____ ZIP CODE _____

Reason no longer providing professional services _____

NAME OF ATHLETE _____

ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

Reason no longer providing professional services _____

IX. APPLICANT HISTORY/BACKGROUND.

(Use additional sheets as necessary)

1. Are you registered/licensed or have you ever been registered/licensed to practice as an athlete agent by any other state? _____ YES _____ NO

If YES, indicate for each registration/license: Where held _____ Registration/License No. _____ Date of expiration _____

Include copy of each license/certificate issued.

2. Have you ever been denied a registration/license as an athlete agent in any state? _____ YES _____ NO

If YES, explain: _____

3. Have you ever had a registration/license as an athlete agent revoked, suspended, or subject to a disciplinary action (including probation, fine, reprimand or surrender of a license) in any state? _____ YES _____ NO

If YES, explain: _____

4. Have you ever pleaded guilty, entered a plea of nolo contendere or been convicted of a misdemeanor involving moral turpitude, or of any felony in any jurisdiction?

_____ YES _____ NO

If YES, explain: _____

5. Are there any outstanding judgments against you related to your activities as an Athlete Agent in Virginia or any other state? _____ YES _____ NO

If YES, explain: _____

6. Have you ever been denied or refused bond? _____ Yes _____ No

If Yes, explain: _____

7. Has any surety or any bond on which you were covered been required to pay any money on your behalf? _____ YES _____ NO.

If YES, explain: _____

I hereby certify that the above information is correct to the best of my knowledge and belief, that no information has been suppressed that might affect this application. In submitting this application, I certify that I have read and understand the contents of the Athlete Agent Regulations and agree to abide by the provisions of said regulations and any subsequent amendments that may be promulgated by the Director of the Department of Commerce.

NAME _____
Signature of Applicant

AFFIDAVIT

RECORDS

In accordance with § 54.1-521 of the Code of Virginia, every licensed Athlete Agent is required to maintain the following information and submit it to the Director annually prior to license renewal.

NAME _____ First _____ MI _____ Last _____

HOME ADDRESS _____

City _____ State _____ Zip Code _____

Is this a new address? Yes _____ No _____

BUSINESS ADDRESS _____

City _____ State _____ Zip Code _____

Is this a new address? Yes _____ No _____

BUSINESS PHONE () _____ WORK PHONE () _____

SOCIAL SECURITY NO. _____

LICENSE NO. _____

DATE ISSUED _____

DATE OF EXPIRATION _____

Please provide the following information:
(Use additional sheets as necessary)

NAME OF ATHLETE _____

ADDRESS _____ STATE _____ ZIP CODE _____

CITY _____

AMOUNT OF FEE RECEIVED FROM ATHLETE _____

SPECIFIC PROFESSIONAL SERVICES PERFORMED _____

Current client _____ Previous client _____

Date services ended _____

NAME OF ATHLETE _____

SOME OF _____

City (or County) of _____

Subscribed and sworn to before me, the undersigned Notary Public in and for the State and City or County aforesaid this _____ day of _____ 19 _____

My commission expires the _____ day of _____ 19 _____

_____ Notary Public

CHECKLIST

- HAVE YOU INCLUDED????
- _____ Completed application, signed and notarized?
 - _____ The application fee of \$1,000 by check, money order or bank draft made payable to the "Treasurer of Virginia"?
 - _____ A surety bond in the amount of \$100,000 or proof of equivalent professional liability insurance?
 - _____ A completed "Consents to Suits and Service of Process Form" if your legal residence is outside of the Commonwealth of Virginia?
 - _____ A copy of a certificate of completion for any trade school/in-house, etc. training?
 - _____ A schedule of fees charged to an athlete including a detailed description of the services provided for each fee?
 - _____ Additional sheets as necessary?
 - _____ Copies of licenses from other states or organizations?
- Have you requested that original transcripts be sent to the Department of Commerce from each college/university attended?

ADDRESS _____
CITY _____ STATE _____ ZIP CODE _____
AMOUNT OF FEE RECEIVED FROM ATHLETE _____
SPECIFIC PROFESSIONAL SERVICES PERFORMED _____

Current client _____ Previous client _____
Date services ended _____

NAME OF ATHLETE _____
ADDRESS _____
CITY _____ STATE _____ ZIP CODE _____
AMOUNT OF FEE RECEIVED FROM ATHLETE _____
SPECIFIC PROFESSIONAL SERVICES PERFORMED _____

Current client _____ Previous client _____
Date services ended _____

NAME OF ATHLETE _____
ADDRESS _____
CITY _____ STATE _____ ZIP CODE _____
AMOUNT OF FEE RECEIVED FROM ATHLETE _____
SPECIFIC PROFESSIONAL SERVICES PERFORMED _____

Current client _____ Previous client _____
Date services ended _____

NAME OF ATHLETE _____
ADDRESS _____
CITY _____ STATE _____ ZIP CODE _____
AMOUNT OF FEE RECEIVED FROM ATHLETE _____
SPECIFIC PROFESSIONAL SERVICES PERFORMED _____

Current client _____ Previous client _____
Date services ended _____

I certify that my surety bond/equivalent professional liability insurance (circle one) in the amount of \$100,000 remains in force.

SIGNATURE

AFFIDAVIT

State of _____
County of City of _____

The undersigned, being duly sworn, deposes and says that he/she is the person who executed this form, that the above statements are true, and that no information has been suppressed which might affect this information.

Signature of Applicant

Subscribed and Sworn before me this _____ day of _____, 19____.
My commission expires: _____

Signature of Notary Public

Proposed Regulations

DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

NOTE: The Board of Game and Inland Fisheries is exempted from the Administrative Process Act (§ 9-6.14:4 of the Code of Virginia); however, it is required by § 9-6.14:22 to publish all proposed and final regulations.

Title of Regulation:

VR 325-01. Definitions and Miscellaneous.

VR 325-01-1. In General.

VR 325-03. Fish.

VR 325-03-1. Fishing Generally.

VR 325-03-2. Trout Fishing.

VR 325-03-3. Seines and Nets.

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Public Hearing Date: October 20, 1990 - 9:30 a.m.

(See Calendar of Events section for additional information)

Public Hearing Notice:

The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§ 29-1.501 and 29.1-502 of the Code of Virginia, the following proposed new board regulations. A public hearing on the advisability of adopting, or amending and adopting, the proposed regulations, or any part thereof, will be held at the Marriott Hotel in Salons 5-8, 500 East Broad Street, Richmond, Virginia, beginning at 9:30 a.m. on Saturday, October 20, 1990, at which time any interested citizen present shall be heard. If the board is satisfied that the proposed regulations, or any part thereof, are advisable, in the form in which published or as amended as a result of the public hearing, the board may adopt such proposals at the time, acting upon the proposals separately or in block.

Summary:

Summaries are not provided since, in most instances the summary would be as long or longer than the full text.

VR 325-01. DEFINITIONS AND MISCELLANEOUS.

VR 325-02-1. IN GENERAL.

§ 4. Same - Game Fish.

Rescind this section in its entirety.

VR 325-03. FISH.

VR 325-03-1. FISHING GENERALLY.

§ 2. Creel limits.

The creel limits for the various species of fish shall be as follows:

1. Largemouth, smallmouth and spotted bass, five a day in the aggregate ; ~~except, that on Briery Creek Lake (Prince Edward County) the limit shall be two per day in the aggregate .~~

2. Landlocked striped bass and landlocked striped bass X white bass hybrids, in the aggregate, four a day; except, that in Smith Mountain Reservoir and its tributaries, including the Roanoke River upstream to Niagara Dam, the limit shall be two a day in the aggregate. *For anadromous (coastal) striped bass above the fall line in all coastal rivers, the limit shall be zero (catch and release only).*

3. White bass, 25 per day.

4. Walleye or yellow pike perch and chain pickerel or jackfish, eight a day of each ; *except, that in Gaston Reservoir and Buggs Island (Kerr) Reservoir there shall be no daily limit for chain pickerel or jackfish .*

5. Northern pike and muskellunge, two a day.

6. Sauger, eight per day.

7. Bluegill (bream) and other sunfish, excluding crappie or silver perch and rock bass or redeye, 50 a day in the aggregate; crappie or silver perch and rock bass or redeye, 25 a day of each species. There shall be no limit on any of the species included in this subdivision 7 in Gaston and Buggs Island (Kerr) Reservoirs and that portion of the New River from the Virginia - North Carolina state line downstream to the confluence of the New and Little Rivers in Grayson County .

§ 3. Size limit.

Except as provided in this regulation and VR 325-03-2, §§ 5, 11, 12 and 13, there shall be no size limit on any species of fish.

1. There shall be a 30-inch minimum size limit on muskellunge, and a 20-inch minimum size limit on northern pike and a ~~20-inch minimum size limit on~~ , landlocked striped bass (rockfish) and ~~15-inch minimum size limit on~~ landlocked striped bass X white bass hybrids.

2. There shall be a 14-inch minimum size limit on largemouth, smallmouth and spotted bass in Occoquan Reservoir from the reservoir dam upstream to the Lake Jackson Dam on Occoquan Creek and upstream to the Yates Ford Bridge (Route 612) on Bull Run Creek. It shall be unlawful to have any such bass less than 14 inches in length in one's possession on the above described waters of this reservoir.

Proposed Regulations

3. There shall be a 12-inch minimum size limit on largemouth, smallmouth and spotted bass in the Chickahominy, Claytor, Philpott and Flannagan Reservoirs, and in Lake Moomaw (Gathright Project) ; ~~and in the waters of Fort A.P. Hill .~~ It shall be unlawful to have any largemouth, smallmouth or spotted bass less than 12 inches in length in one's possession while on any of the waters mentioned in the preceding sentence.

4. There shall be a 14-inch minimum size limit on largemouth, smallmouth and spotted bass on the Roanoke (Staunton) and Dan Rivers and their tributaries and impoundments (Gaston, John Kerr, Leesville and Smith Mountain Reservoirs) downstream from Niagara Dam on the Roanoke River and the Brantly Steam Plant Dam on the Dan River; except, that as many as two of such bass of a lesser size caught in such waters may be retained in the creel, but no more than two such bass may be in possession on such waters that are less than 14 inches in length.

5. It shall be unlawful to have any largemouth, smallmouth or spotted bass from 12 to 15 inches in length, both inclusive, in one's possession on North Anna Reservoir and its tributaries, on Briery Creek Lake (Prince Edward County), on Chesdin Reservoir or the Appomattox River from the Brasfield (Chesdin) Dam to Bevel's Bridge on Chesterfield County Route 602, on Beaverdam Reservoir (Loudon County) and on the waters of Quantico Marine Reservation.

~~6. It shall be unlawful to have any walleye or yellow pike perch less than 15 inches in length in one's possession on Gaston Reservoir.~~

7 ~~6~~ . It shall be unlawful to have any smallmouth, largemouth or spotted bass from 11 to 14 inches in length, both inclusive, in one's possession on the Shenandoah River, including the North and South Forks downstream from the Route 42 bridge on the North Fork and from the confluence of the North and South Rivers on the South Fork below Port Republic; on the New River from Claytor Dam to the West Virginia boundary line; on the James River from the confluence of the Jackson and Cowpasture rivers downstream to the Interstate 95 bridge at Richmond; on North Fork Pound Reservoir; or on the Clinch River within the boundaries of Scott, Wise, Russell or Tazewell Counties .

~~8. It shall be unlawful to have any largemouth, smallmouth or spotted bass less than 18 inches in length [in one's possession] on Briery Creek Lake (Prince Edward County).~~

§ 5. Permit required for importation, etc., of certain species.

In accordance with authority conferred by § 29.1-103 of the Code of Virginia, the board finds and declares the

following species to be predatory or undesirable within the meaning and intent of those terms as used in § 29.1-542 of the Code, in that their introduction into the Commonwealth will be detrimental to the native fish resources of Virginia: Rudd (genus *Scardinius*), tilapia, (~~genus any of the genera~~ *Tilapia Serotherodon* or *Oreochromis*), piranha (any of the ~~genus genera~~ *Serrasalmus*, *Roseveltella*, or *Pygocentrus*), walking catfish (any of the genus *Clarias*), cichlid (Texas), perch (*Chichlasoma cyanoguttatum*), grass carp (any genus *Ctenopharyngodon*) ~~or~~ , African clawed frog (*Xenopus laevis*) or zebra mussel (*Dreissena polymorpha*) .

It shall be unlawful, pursuant to § 29.1-542 of the Code, to import, cause to be imported, possess, buy, sell or offer for sale or liberate within the Commonwealth any live *specimens, live hybrids or viable eggs* of the above-named species unless a permit therefor is first obtained from the department, except that the African clawed frog may be imported or sold, but not liberated, without such permit, when such action can be shown to be an essential part of a specific research or educational project designed to advance scientific knowledge by achieving precisely formulated objectives.

§ 6. Permit required to stock fish into public inland waters ; ~~exception~~ .

It shall be unlawful to stock any species of fish ~~except brook, rainbow and brown trout~~, into any public inland waters of the Commonwealth, without first obtaining a permit to do so from the department. Nothing in this section shall be construed as restricting the use of native species of fish in privately-owned ponds and lakes.

§ 10. Department-owned or controlled lakes, ponds or streams - General regulations.

A. Motors and boats.

Unless otherwise posted at each recognized entrance to any department-owned or controlled lake or pond or stream, the use of boats propelled by gasoline motors, sail or mechanically operated recreational paddle wheel is prohibited. Department employees *and other government agency officials* may use gasoline motors in the performance of official duties.

B. Method of fishing.

Taking any fish at any department-owned or controlled lake or pond by any means other than by use of one or more attended poles with hook and line attached is prohibited.

C. Hours for fishing.

Unless otherwise posted at each recognized entrance to any department-owned or controlled lake, pond or stream, the hours of use shall be from one hour before sunrise to one hour after sunset.

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D. Seasons; hours and methods of fishing; size and creel limits; hunting.

The open seasons for fishing, as well as fishing hours, methods of taking fish and the size, possession and creel limits, and hunting, for department-owned or department-controlled lakes, ponds or streams shall conform to the general regulations of the board unless otherwise excepted by posted notice displayed at each recognized entrance to the lake, pond or stream, in which case the posted regulations shall be in effect.

E. Other uses.

Camping overnight or building fires, except in developed and designated areas, swimming, wading in public fishing lakes, except by fishermen actively engaged in fishing and trapping for furbearers, is prohibited. Trapping may be authorized by special permit from the warden when requested to issue such permit or permits by the fish division.

F. Fishing tournaments, etc.

It shall be unlawful to organize, conduct, supervise or solicit entries for fishing tournaments, rodeos or other fishing events on waters owned by the department, for which prizes are offered, awarded or accepted, either in money or other valuable considerations.

VR 325-03-2. TROUT FISHING.

§ 13. Special provision applicable to certain portions of Conway River, Green Cove Creek, Little Stoney Creek, North Creek, North Fork Buffalo River, St. Mary's River, and Whitetop Laurel and Ramsey's Draft.

It shall be lawful to fish using only artificial lures with single hooks in that portion of the Conway River and its tributaries in Greene and Madison counties within the Rapidan Wildlife Management Area, in that portion of Green Cove Creek in Washington County from Route 859 downstream to its mouth, in that portion of Little Stoney Creek in Giles County within the Jefferson National Forest, in that portion of North Creek in Botetourt County and its tributaries upstream from the first bridge above North Creek Campground, in the North Fork Buffalo River and its tributaries in Amherst County within the George Washington National Forest, in that portion of St. Mary's River in Augusta County and its tributaries upstream from the gate at the George Washington National Forest property line, and in that portion of Whitetop Laurel in Washington County upstream from the first railroad trestle above Taylor Valley to the mouth of Green Cove Creek at Creek Junction, and in that portion of Ramsey's Draft and its tributaries in Augusta County within the George Washington National Forest. All trout caught in the Conway River and its tributaries under eight inches in length and all trout caught in the other above named streams under nine inches in length shall be immediately returned to the water unharmed. It shall be unlawful for

any person to have in his possession any natural bait, or trout under eight inches in length on the Conway River or its tributaries or any trout under nine inches in length on the other above named streams.

§ 14. Special provision applicable to Stewarts Creek Trout Management Area and certain portions of Rapidan and Staunton rivers and tributaries.

It shall be lawful year round to fish for trout using only artificial lures with single barbless hooks within the Stewarts Creek Trout Management Area in Carroll County, and in the Rapidan and Staunton rivers and their tributaries upstream from a sign at the lower Shenandoah National Park boundary in Madison County. All trout caught in these waters must be immediately returned to the water. No trout may be in possession at any time in these areas.

§ 14-1. Special provision applicable to certain portions of South River.

It shall be lawful to fish from October 1 through May 15, both dates inclusive, using only artificial lures with single barbless hooks, in the South River from the CSX Railroad bridge located 0.1 miles below Broad Street in the City of Waynesboro to a sign posted 2.5 miles upstream at the upstream boundary of Ridgeview Park. From October 1 through May 15, all trout caught in these waters must be immediately returned to the water unharmed, and it shall be unlawful for any person to have in his possession any natural bait or trout. During the period of May 16 through September 30, these waters shall revert to general trout regulations and the above restrictions will not apply.

VR 325-03-3. SEINES AND NETS.

§ 1. Haul seines to take fish for sale.

A. Authorization to take fish for sale.

A haul seine permit shall authorize the person to whom issued to take fish for sale as specified with a haul seine from the waters designated in this section.

B. Permit holder to be present when seine operated.

The holder of a haul seine permit must be present with the same at all times when it is being operated. The holder, however, may have others to assist him and such persons assisting are not required to have a permit.

C. Length and size of nets.

The length of haul seine nets shall not be more than 500 yards. The size of mesh shall be 1-1/2 inch bar mesh.

D. Season and fish to be taken in Chesapeake City; set nets prohibited.

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In the Northwest River, the open season to take carp, grinnel, or bowfin, and catfish, generally known in that section as roundfish, and herring with a haul seine shall be from November 1 through May 15, both dates inclusive. All set nets shall be prohibited in the Northwest River.

E. Season and fish to be taken in Virginia Beach City.

In Back Bay and its natural tributaries (not including Lake Tecumseh and Red Wing Lake), North Landing River from the North Carolina line to Pungo Ferry (not including Blackwater River), the open season to take all fish, except game fish, with a haul seine shall be from November 1 through March 31, both dates inclusive.

F. Season and fish to be taken in Southampton County.

In the Nottoway River, from Cary's Bridge to the North Carolina line, the open season to take shad, herring, mullet, and suckers, only, with a haul seine shall be from March 1 through May 15, both dates inclusive.

G. Labeling packages containing fish taken with haul seine.

It shall be unlawful for any person to ship or otherwise transport any package, box or other receptacle containing fish taken under a haul seine permit unless the same bears a label showing the name and address of the owner of the seine and a statement of the kind of fish contained therein.

H. Reporting.

The holder of a permit to take fish for sale by means of haul seines shall keep a record of the pounds of fish taken by species and location (name and county of water body), and the pounds of each species sold.

§ 3. Gill nets.

A. Authorization to take fish.

A gill net permit shall authorize the holder thereof to take nongame fish during the times and in the waters and for the purposes provided for in this section. Such gill net shall not be more than 300 feet in length. The mesh size shall be not less than 1-1/2 inch bar or square mesh (3-inch stretch mesh). Each net shall be identified by a department tag provided with such permit. *Only one department tag will be issued per gill net permit, and these must have matching numbers. Persons intending to operate more than one net must purchase matching number permits and tags for each net.* All nets must be checked daily and all game fish returned to the wild.

B. Permit holder to be present when gill net is being set and checked for fish.

The holder of a gill net permit must be present with the net at all times when it is being set and checked for fish.

The holder may have others to assist him, and such persons assisting are not required to have a permit. However, those assisting the permittee must meet the fishing license requirements of the Commonwealth.

B. C. Time and place permitted in Southampton County.

Gill nets may be used in Southampton County only in the Nottoway River from Cary's Bridge to the North Carolina line from March 1 through May 15, both dates inclusive, to take fish for private table use only and not for sale.

G. D. Times and places permitted in Virginia Beach City; fish which may be taken.

Gill nets may be used in Virginia Beach City in Back Bay and its natural tributaries (not including Lake Tecumseh and Red Wing Lake) and North Landing River from the North Carolina line to Pungo Ferry (not including Blackwater River) for the taking of mullet only for table use and also for sale from July 1 through November 1, both dates inclusive; and for the taking of other nongame fish, except mullet, for table use and also for sale from November 1 through March 31, both dates inclusive. Gill nets set in Back Bay waters shall be at least 300 feet from any other net and at least 300 feet from the shoreline. All such nets must be marked at both ends and at least every 100 feet along the length of the net with a five-inch by 12-inch minimum dimensions float.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: VR 460-04-8.11. Home and Community-Based Services for Individuals with Acquired Immunodeficiency Syndrome (AIDS) and AIDS Related Complex.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Public Hearing Date: N/A - Written comments may be submitted until December 7, 1990.

(See Calendar of Events section for additional information)

Summary:

The Department of Medical Assistance Services is proposing regulations for Home and Community-Based Services for individuals diagnosed as having the HIV virus or AIDS related complex (ARC). The department will be offering this service under a § 1915 of the Social Security Act federal waiver.

House Joint Resolution No. 427 directed the department to develop home and community-based care alternatives to institutionalization for individuals having AIDS or ARC. These waived services are to be provided to individuals who would otherwise

require nursing facility or inpatient hospital levels of care. Approval is pending from the Health Care Financing Administration of the request to provide this waiver service.

VR 460-04-8.11. Home and Community-Based Services for Individuals with Acquired Immunodeficiency Syndrome (AIDS) and AIDS Related Complex.

§ 1. Definitions.

"Activities of daily living" means assistance with personal care tasks (i.e., bathing, dressing, toileting, etc.).

"Acquired immune deficiency syndrome (AIDS)" means the set of symptoms related to specific opportunistic diseases indicative of an immune deficiency state in the absence of any other cause of reduced resistance reported to be associated with at least one of those opportunistic diseases. Individuals diagnosed with AIDS may experience symptoms associated with severe dementia, HIV encephalopathy, HIV wasting syndrome and rare forms of pneumonia (pneumocystic carinii (PCP)) and cancer (Kaposi's Sarcoma (KS)).

"AIDS-Related Complex (ARC)" means the lesser disease response to the HIV infection which may, nonetheless, have many of the devastating effects of the AIDS virus, but not the specific conditions used to define a case of AIDS.

"Aids Service Organizations (ASOs)" means the regional and local service organizations developed to provide education, prevention and health and social services to individuals infected with the HIV virus.

"Case management" means continuous reevaluation of need, monitoring of service delivery, revisions to the Plan of Care and coordination of services for AIDS individuals receiving home and community-based services in order to assure effective and efficient delivery of direct services.

"Current functional status" means the individual's degree of dependency in performing activities of daily living.

"DMAS" means the Department of Medical Assistance Services.

"DSS" means the Department of Social Services.

"Episodic respite care" means in-home services specifically designed to provide relief to the caregiver for a nonroutine, short-term period of time for a specified reason (e.g., respite care offered for 7 days, 24 hours a day while the caregiver takes a vacation).

"Home and community-based care" means a variety of in-home services reimbursed by DMAS (case management, personal care, skilled nursing, respite care and nutritional supplements) designed to offer individuals an alternative to hospital or nursing facility care. Individuals may be

preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service(s) to avoid inpatient hospital placement. An individual may only receive home and community-based services up to the amount which would be equal to or less than the cost of hospital care. The preadmission screening team or DMAS shall give prior authorization for any Medicaid-reimbursed home and community-based care.

"Human Immunodeficiency Virus (HIV)" means the virus which leads to acquired immune deficiency syndrome (AIDS). The virus weakens the body's immune system and, in doing so, allows "opportunistic" infections and diseases to attack the body.

"Nutritional supplements" means nonlegend drug nutritional supplements covered under this waiver which are deemed by a physician to be necessary as the primary source of nutrition for the AIDS/ARC individual's health care plan (due to the prevalence of conditions of wasting, malnutrition and dehydration) and not available through any other food program.

"Preadmission screening" means the process to: (i) evaluate the medical, nursing, and social needs of individuals referred for prescreening, (ii) analyze what specific services the individuals need, (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs, and (iv) authorize Medicaid funded community-based care for those individuals who meet hospital or nursing facility level of care and require such care.

"Preadmission screening team" means the multidisciplinary team contracted with DMAS to perform preadmission screening. DMAS will contract with regional and local AIDS Service Organizations (ASO) to perform the prescreening assessment, level of care determination and Plan of Care development for Medicaid-eligible individuals with AIDS/ARC. Preadmission screening teams for individuals with AIDS/ARC may also be the nursing home preadmission screening teams contracted with DMAS to perform preadmission screening for Medicaid-eligible individuals at risk of placement in a nursing facility. At a minimum, the preadmission screening team must be comprised of the recipient, nursing and social work staff and a physician.

"Program" means medical assistance services as administered by the Department of Medical Assistance Services.

"Participating provider" means an institution, facility, agency, partnership, corporation, or association that has a valid contract with DMAS and meets the standards and requirements set forth by DMAS.

"Personal care services" means long-term maintenance or support services necessary to enable the individual to remain at or return home rather than enter a hospital or

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nursing facility. Personal care services include assistance with personal hygiene, nutritional support, and the environmental maintenance necessary for recipients to remain in their homes.

"Plan of Care" means the written plan of services certified by the screening team physician as needed by the individual to ensure optimal health and safety for the delivery of home and community-based care.

"Respite care" means in-home services specifically designed to provide a temporary, periodic relief to the primary caregiver of an individual who is incapacitated or dependent due to AIDS or ARC. Respite care services include assistance with personal hygiene, nutritional support and environmental maintenance authorized as either episodic relief or as a routine relief of the caregiver.

"Routine respite care" means in-home services specifically designed to provide relief from continuous care to the caregiver on a periodic basis over an extended period of time (i.e., respite care offered regularly one day a week for six hours).

"Skilled nursing" means professional nursing care provided by a registered nurse or licensed practical nurse in the individual's home or other community setting and necessary to avoid institutionalization of the individual with AIDS by assessment and monitoring of the medical condition, providing interventions, and communicating with the physician regarding changes in the patient's status.

"State Plan for Medical Assistance" or "the Plan" or "the State Plan" means the document containing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

§ 2. General coverage and requirements for home and community-based care services for individuals with AIDS/ARC.

A. Coverage statement.

1. Coverage shall be provided under the administration of the Department of Medical Assistance Services for individuals with HIV infection, who have been diagnosed and are experiencing the symptoms associated with AIDS or ARC, who would otherwise require the level of care provided in a hospital or nursing facility.

2. These services shall be medically appropriate, cost-effective and necessary to maintain these individuals in the community.

B. Patient eligibility requirements.

1. DMAS will apply the financial eligibility criteria contained in the State Plan for the categorically needy

and the medically needy. Virginia has elected to cover the optional categorically needy group under 42 CFR 435.211, 435.231 and 435.217. The income level used for 435.211, 435.231 and 435.217 is 300% of the current Supplemental Security Income payment standard for one person.

Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. The medically needy individuals participating in the waiver will also be considered as if they were institutionalized for the purpose of applying the institutional deeming rules.

2. Virginia will reduce its payment for home and community-based service provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community-based services provided to an individual eligible for home and community-based waiver services by the amount that remains after deducting the following amounts in the following order from the individual's income:

a. For individuals to whom § 1924(d) applies:

(1) An amount for the maintenance needs of the individual which is equal to 300% of the categorically needy income standard for a noninstitutionalized individual.

(2) For an individual with only a spouse living at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act, the same as that applied for the institutionalized patient.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act, the same as that applied for the institutionalized patient.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including:

(a) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(b) Necessary medical or remedial care recognized

under state law, but not covered under the state's Medicaid Plan.

b. For all other individuals:

(1) An amount for the maintenance needs of the individual which is equal to 300% of the categorically needy income standard for a noninstitutionalized individual.

(2) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including:

(a) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(b) Necessary medical or remedial care recognized under state law, but not covered under the state's Medicaid Plan.

C. Assessment and authorization of home and community-based care services for individuals with AIDS/ARC.

1. The individual's status as an AIDS/ARC individual in need of home and community-based care services shall be determined by the preadmission screening team after completion of a thorough assessment of the individual's needs and available support. Screening by the preadmission screening team and preauthorization of home and community-based care services by DMAS staff is mandatory before Medicaid will assume payment responsibility of home and community-based care services.

2. An essential part of the preadmission screening team's assessment process is determining the level of care required by applying existing criteria for hospital or nursing facility care according to the Virginia Medicaid Hospital Criteria or the Virginia Medicaid Nursing Facility Criteria, or both.

3. The team shall explore alternative settings and services to provide the care needed by the individual. If hospital placement or a combination of other services are determined to be appropriate, the screening team shall initiate referrals for service. If Medicaid-funded home and community-based care services are determined to be the critical service to delay or avoid hospital or nursing facility placement, the screening team shall develop an appropriate Plan of Care, compute cost-effectiveness and make a recommendation for waiver services.

4. Virginia's home and community-based care services for individuals with AIDS/ARC may only be recommended by the preadmission screening team if:

a. The physician who is part of the designated preadmission screening team specifically states the

individual has a diagnosis of AIDS or ARC,

b. The preadmission screening team can document that the individual is experiencing medical and functional symptoms associated with AIDS or ARC which would, in the absence of waiver services, require the level of care provided in a hospital, or nursing facility, the cost of which would be reimbursed under the State Medicaid Plan,

c. The individual requesting waiver services is not an inpatient of a nursing facility or hospital,

d. Waiver services can reasonably be expected to cost equal to or less than institutional services and ensure the individual's safety and welfare in the home and community.

5. The preadmission screening team must submit all preadmission screening information and a recommendation to DMAS for final determination of level of care and authorization for home and community-based care services. DMAS authorization must be obtained prior to referral and Medicaid reimbursement for waiver services.

§ 3. General conditions and requirements for all participating providers for home and community-based services for individuals with AIDS/ARC.

All providers must meet the general requirements and conditions for provider participation. In addition, there are specific requirements for each of the service providers (case management, personal care, respite care and skilled nursing) which are set forth in §§ 4 through 7.

A. General requirements.

All providers approved for participation shall, at a minimum, perform the following activities:

1. Immediately notify DMAS, in writing, of any change in the information which the provider previously submitted to DMAS.

2. Assure freedom of choice to recipients in seeking medical care from any institution, pharmacy, practitioner, or other provider qualified to perform the service(s) required and participating in the Medicaid Program at the time the service was performed.

3. Assure the recipient's freedom to reject medical care and treatment.

4. Accept referrals for services only when staff is available to initiate services.

5. Provide services and supplies to recipients in full compliance with Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the grounds of race, color, religion, or national origin and of § 504 of

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the Rehabilitation Act of 1973 which prohibits discrimination on the basis of a handicap.

6. Provide services and supplies to recipients in the same quality and mode of delivery as provided to the general public.

7. Charge DMAS for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges to the general public.

8. Accept Medicaid payment from the first day of eligibility.

9. Accept as payment in full the amount established by the DMAS.

10. Use program-designated billing forms for submission of charges.

11. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope and details of the health care provided.

a. Such records shall be retained for at least five years from the last date of service or as provided by applicable state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of storage, location, and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.

12. Furnish to authorized state and federal personnel, in the form and manner requested, access to records and facilities.

13. Disclose, as requested by DMAS, all financial, beneficial ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid.

14. Hold confidential and use for authorized DMAS purposes only all medical assistance information regarding recipients.

15. Change of ownership. When ownership of the provider agency changes, DMAS shall be notified within 15 calendar days.

B. Requests for participation.

Requests will be screened to determine whether the provider applicant meets the basic requirements for participation.

C. Provider participation standards.

For DMAS to approve contracts with home and community-based care providers the following standards as defined in the provider manuals shall be met:

1. Staffing requirements;
2. Financial solvency;
3. Disclosure of ownership; and
4. Assurance of comparability of services.

D. Adherence to provider contract and special participation conditions.

In addition to compliance with the general conditions and requirements, all providers enrolled by the Department of Medical Assistance Services shall adhere to the conditions of participation outlined in their individual provider contracts and in the applicable DMAS provider service manual.

E. Recipient choice of provider agencies.

If there is more than one approved provider agency in the community, the individual will have the option of selecting the provider agency of his choice.

F. Termination of provider participation.

DMAS may administratively terminate a provider from participation upon 60 days' written notification. DMAS may also cancel a contract immediately or may give notification in the event of a breach of the contract by the provider as specified in the DMAS contract. Such action precludes further payment by DMAS for services provided recipients subsequent to the date specified in the termination notice.

G. Reconsideration of adverse actions.

Adverse actions may include, but are not limited to disallowed payment of claims for services rendered which are not in accordance with DMAS policies and procedures, caseload restrictions, and contract limitation or termination. The following procedures will be available to all providers when DMAS takes adverse action which includes termination or suspension of the provider agreement.

1. The reconsideration process shall consist of three phases:

a. A written response and reconsideration to the preliminary findings.

b. An informal conference.

c. A formal evidentiary hearing.

2. The provider shall have 30 days to submit information for written reconsideration, 15 days from the date of the notice to request an informal conference, and 15 days from the date of the initial agency decision to request a formal evidentiary hearing.

3. An appeal of adverse actions shall be heard in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and the State Plan. Judicial review of the final agency determination shall be made in accordance with the Administrative Process Act.

H. Participating provider agency's responsibility for the Recipient Information Form (DMAS-122).

It is the responsibility of the provider agency to notify DMAS and the DSS, in writing, when any of the following circumstances occur:

1. Home and community-based care services are implemented.

2. A recipient dies.

3. A recipient is discharged or terminated from services.

4. Any other circumstances (including hospitalization) which cause home and community-based care services to cease or be interrupted for more than 30 days.

I. Changes or termination of care.

Agencies providing direct service are responsible for revisions to their individual service plan but must have any change which increases the amount of service or any change not agreed to by the recipient authorized by the case manager (refer to § 4 of these regulations).

1. Decreases in amount of authorized care by the provider agency.

a. The provider agency may decrease the amount of authorized care only if the recipient agrees with the provider that a decrease in care is needed and that the amount of care in the revised Plan of Care is appropriate.

b. The provider is responsible for devising the new Plan of Care and calculating the new hours of service delivery.

c. The provider shall discuss the decrease in care with the recipient or family, document the conversation in the recipient's record, and shall notify the recipient or family and the recipient's case manager of the change by letter. The participating provider shall give the recipient or family 10 days written notification of the intent to decrease services. The letter shall provide the reasons for and effective date of the decrease. The effective date of the decrease in service shall be at least five days from the date of the decrease notification letter.

d. If the recipient disagrees with the decrease proposed, the provider shall contact the case manager to review the recipient's service needs and authorize the needed level of service.

2. Increases in amount of authorized care. If a change in the recipient's condition (physical, mental, or social) necessitates an increase in care, the provider shall develop a Plan of Care for services to meet the changed needs and contact the case manager assigned to the recipient who will, if appropriate, authorize the increase in service. The provider may implement the increase in hours once approval from the case manager is obtained.

3. Nonemergency termination of home and community-based care services by the provider. The provider shall give the recipient or family five days' written notification of the intent to terminate services. The letter shall provide the reasons for and effective date of the termination. The effective date of services termination shall be at least five days from the date of the termination notification letter.

4. Emergency termination of home and community-based care services by the participating provider. In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered the DMAS must be notified prior to termination. The five-day written notification period shall not be required.

5. Termination of home and community-based care services for a recipient by the case manager. The effective date of termination shall be at least 10 days from the date of the termination notification letter. The case manager has the responsibility and the authority to terminate home and community-based care services to the recipient for any of these reasons:

a. Home and community-based care services are no longer the critical alternative to prevent or delay institutional placement.

b. The recipient no longer meets the level-of-care criteria.

c. The recipient's environment does not provide for

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his health, safety, and welfare.

d. An appropriate and cost-effective Plan of Care cannot be developed.

J. Suspected abuse or neglect.

Pursuant to § 63.1-55.3 of the Code of Virginia, if a participating provider agency knows or suspects that a home and community-based care recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse/neglect/exploitation shall report this to the local DSS.

K. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and annually recertify each provider for contract renewal with DMAS to provide home and community-based services. A provider's noncompliance with DMAS policies and procedures, as required in the provider's contract, may result in a written request from DMAS for a corrective action plan which details the steps the provider will take and the length of time required to achieve full compliance with deficiencies which have been cited.

§ 4. Case management services.

The following are specific requirements governing the provision of case management services. Case management is one of five services covered under the home and community based care program for individuals with AIDS/ARC.

A. General.

Case management services are offered to enable continuous assessment, coordination and monitoring of the needs of the persons diagnosed with AIDS or ARC throughout the term of the individual's receipt of waiver services. Every AIDS/ARC individual authorized for home and community-based services shall be offered case management services as an adjunct to other offered services. A Medicaid-eligible individual may not be authorized for home and community-based services unless that individual is both diagnosed with AIDS or ARC and is experiencing symptoms which require delivery of a home and community-based service other than case management. An individual authorized for home and community-based services for conditions of AIDS/ARC may continue to receive case management services during periods when other home and community-based services are not being utilized as long as receipt of case management services can be shown to continue to prevent the individual's institutionalization.

B. Special provider participation conditions.

To be a participating case management provider the following conditions shall be met:

1. The provider shall employ case management staff responsible for the reevaluation of need, monitoring of service delivery, revisions to the Plan of Care and coordination of services. This staff shall possess, at a minimum:

a. A baccalaureate degree in human services (i.e., social work, psychology, sociology, counseling, or a related field) or nursing;

b. Knowledge of the infectious disease process (specifically HIV) and the needs of the terminally-ill population, knowledge of the community service network and eligibility requirements and application procedures for applicable assistance programs;

c. Ability to access other health and social work professionals in the community to serve as members of a multidisciplinary team for reevaluation and coordination of services activities, ability to organize and monitor an integrated service plan for individuals with multiple problems and limited resources, ability to access (or have expertise in) medical and clinical expertise related to HIV infection and ability to demonstrate liaisons with clinical facilities providing diagnostic evaluation or treatment for persons with HIV; and

d. Skills in communication, service plan development, client advocacy and monitoring of a continuum of managed care.

Documentation of all staffs' credentials shall be maintained in the provider agency's personnel file for review by DMAS staff. Providers of case management may utilize the services of volunteers or employees who do not meet this criteria to perform the day-to-day interactions with recipients commonly included in the case management process. There shall be, however, a case manager responsible for supervision of these volunteers or employees to include at a minimum weekly case consultations, decision-making related to the individual's Plan of Care and appropriateness for waiver services and training of the volunteers or employees interacting with the waiver recipient. The use of volunteers or other employees to perform the day-to-day interactions does not relieve the case manager from responsibility for direct contact (as defined below) with the recipient and overall responsibility for care management.

2. Designate a qualified staff person as case manager who shall:

a. Contact the waiver recipient, at a minimum, once every 30 days. If the waiver recipient has a volunteer(s) or other staff assigned for regular face-to face contact, this contact by the case manager may be a telephone contact. Otherwise, the contact by the case manager shall be a face-to-face

interaction.

b. Contact the providers of direct waiver service(s), at a minimum, once every 30 days. Collateral contacts with other supports shall be made periodically, as determined by the needs of the recipient and extent of the support system.

c. Maintain a file for each recipient which includes:

(1) An ongoing progress report which documents all communications between the case manager and recipient, providers, and other contacts. If the case manager is supervising a volunteer or employee who is assigned to provide day-to-day case management interactions with the recipient, the volunteer or employee must submit to the case manager a monthly summary of all interactions between the volunteer or employee and the recipient,

(2) The recipient's assessment documentation and documentation of reassessments of level of care and need for services conducted quarterly by the case manager and the individual's case management team,

(3) The initial Plan of Care and all subsequent revisions,

(4) Communication from DMAS, physician, service providers, and any other parties.

d. Reviews of the Plan of Care every three months, or more frequently if necessary, and continue any revisions indicated by the changed needs or support of the recipient. These reviews shall be documented in the recipient's file. The documentation shall note all members of the case management team who provided input to the Plan of Care.

3. Maintain a ratio of case manager staff to recipient caseload which allows optimum monitoring and reevaluation ability. The caseload ability of the case manager may vary according to other duties, availability of resources, stage of recipients in caseload, and utilization of volunteers. A ratio of one case manager to a caseload size of 25 waiver recipients is deemed desirable, but can be exceeded as long as quality of case management services are not affected.

C. Nutritional supplement authorization.

Nutritional supplements which do not contain a legend drug may be purchased for the recipient of waiver services for conditions of AIDS/ARC when the nutritional supplements are certified by the physician as the primary source of nutrition and necessary for the successful implementation of the individual's health care plan and the individual is not able to purchase these food supplements through other available means. The amount of

nutritional supplements shall be limited by medical necessity and cost effectiveness. Case management providers shall authorize the purchase of physician-ordered nutritional supplements through the Plan of Care approved by DMAS. The case management provider shall complete an invoice authorizing the purchase which the recipient can use to purchase the nonlegend drug nutritional supplements from an approved Medicaid provider.

§ 5. Personal care services.

The following requirements govern the provision of personal care services:

A. General.

Personal care services are offered to individuals in their homes as long-term maintenance or support services which are necessary in order to enable the individual to remain at or return home rather than enter a hospital or nursing facility. Personal care services provide eligible individuals with personal care aides who perform basic health-related services, such as helping with activities of daily living, assisting with ambulation, exercises, assisting with normally self-administered medications, reporting changes in recipient's conditions and needs, or providing household services essential to health in the home. Generally, personal care services include assistance with personal hygiene, nutritional support, and the environmental maintenance necessary for recipients to remain in their homes.

B. Special provider participation conditions.

The personal care provider shall:

1. Demonstrate a prior successful delivery of health care services.

2. Operate from a business office.

3. Employ (or subcontract with) and directly supervise at least a registered nurse (RN) who will provide ongoing supervision of all personal care aides.

a. The RN shall be currently licensed to practice in the Commonwealth of Virginia and have at least two years of related clinical nursing experience (which may include work in a acute care hospital, public health clinic, home health agency, or nursing home).

b. The RN supervisor shall make an initial assessment home visit prior to the start of care for all new recipients admitted to personal care.

c. The RN shall make supervisory visits as often as needed to ensure both quality and appropriateness of services. A minimum frequency of these visits is every 30 days.

d. During visits to the recipient's home, the RN

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shall observe, evaluate, and document the adequacy and appropriateness of personal care services with regard to the recipient's current functioning status, medical, and social needs. The personal care aide's record shall be reviewed and the recipient's (or family's) satisfaction with the type and amount of service discussed. The RN summary shall note:

- (1) Whether personal care services continue to be appropriate.
- (2) Whether the plan is adequate to meet the need or changes are indicated in the plan.
- (3) Any special tasks performed by the aide and the aide's qualifications to perform these tasks.
- (4) Recipient's satisfaction with the service.
- (5) Hospitalization or change in medical condition or functioning status.
- (6) Other services received and their amount.
- (7) The presence or absence of the aide in the home during the RN's visit.

e. The registered nurse shall be available to the personal care aide for conference pertaining to individuals being served by the aide and shall be available to aide by telephone at all times that the aide is providing services to personal care recipients.

f. The RN supervisor shall evaluate the aide's performance and the recipient's individual needs to identify any gaps in the aide's abilities to function competently and shall provide training as indicated.

4. Employ and directly supervise personal care aides who will provide direct care to personal care recipients. Each aide hired by the provider agency shall be evaluated by the provider agency to ensure compliance with minimum qualifications as required by DMAS. Each aide:

- a. Shall be able to read and write.
- b. Shall complete 40 hours of training consistent with DMAS standards. Prior to assigning an aide to a recipient, the provider agency shall ensure that the aide has satisfactorily completed a training program consistent with DMAS standards.
- c. Shall be physically able to do the work.
- d. Shall have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of possible abuse, neglect or exploitation of incapacitated or older adults and children.

e. Shall not be a member of the recipient's family (e.g., family is defined as parents, spouses, children, siblings, grandparents, and grandchildren).

C. Provider inability to render services and substitution of aides.

1. When a personal care aide is absent and the agency has no other aide available to provide services, the provider agency is responsible for ensuring that services continue to recipients. The agency may either obtain a substitute aide from another agency, if the lapse in coverage is to be less than two weeks in duration, or may transfer the recipient to another agency. If no other provider agency is available, the provider agency shall notify the recipient or family so they may contact the local health department to request a nursing home preadmission screening if nursing home placement is desired.

2. During temporary, short-term lapses in coverage (not to exceed two weeks in duration), the following procedure shall apply:

a. The personal care agency having recipient responsibility shall provide the registered nurse supervision for the substitute aide.

b. The agency providing the substitute aide shall send to the personal care agency having recipient care responsibility a copy of the aide's signed daily records signed by the recipient.

c. The provider agency having recipient responsibility shall bill DMAS for services rendered by the substitute aide. The two agencies involved shall negotiate the financial arrangements of paying the substitute aide.

3. If a provider agency secures a substitute aide, the provider agency shall be responsible for ensuring that all DMAS requirements continue to be met, including documentation of services rendered by the substitute aide and documentation that the substitute aide's qualifications meet DMAS requirements.

D. Required documentation in recipients' records.

The provider agency shall maintain all records of each personal care recipient. At a minimum these records shall contain:

1. The most recently updated Long Term Care Assessment Instrument, the Prescreening Authorization, the Screening Team Plan of Care, all provider agency plans of care, and all DMAS-122s.
2. All DMAS Utilization Review forms and plans of care.
3. Initial assessment by the RN supervisory nurse

completed prior to or on the date services are initiated.

4. Nurses' notes recorded and dated during any contacts with the personal care aide and during supervisory visits to the recipient's home.

5. All correspondence to the recipient and to DMAS.

6. Reassessments made during the provision of services.

7. Contacts made with family, physicians, DMAS, formal, informal service providers and all professionals concerning the recipient.

8. All personal care aide records. The personal care aide record shall contain:

a. The specific services delivered to the recipient by the aide and the recipient's responses.

b. The aide's arrival and departure times.

c. The aide's weekly comments or observations about the recipient to include observations of the recipient's physical and emotional condition, daily activities, and responses to services rendered.

d. The aide's and recipient's weekly signature to verify that personal care services during that week have been rendered.

e. Signatures, times and dates shall not be placed on the aide record prior to the last date of the week that the services are delivered.

§ 6. Respite care services.

These requirements govern the provision of respite care services.

A. General.

Respite care services may be offered to individuals in their homes as an alternative to more costly institutional care. Respite care is distinguished from other services in the continuum of long-term care because it is specifically designed to focus on the need of the caregiver for temporary relief. Respite care may only be offered to individuals who have a primary caregiver living in the home who requires temporary relief to avoid institutionalization of the individual. The authorization of respite care is limited to 30 24-hour days over a 12-month period. Reimbursement shall be made on an hourly basis.

B. Special provider participation conditions.

To be approved for respite care contracts with DMAS, the respite care provider shall:

1. Demonstrate prior successful health care delivery.

2. Operate from a business office.

3. Employ or subcontract with and directly supervise a registered nurse (RN) who will provide ongoing supervision of all respite care aides.

a. The RN shall be currently licensed to practice in the Commonwealth and have at least two years of related clinical nursing experience which may include work in an acute care hospital, public health clinic, home health agency, or nursing home.

b. Based on continuing evaluations of the aides' performance and the recipients' individual needs, the RN supervisor shall identify any gaps in the aides' abilities to function competently and shall provide training as indicated.

c. The RN supervisor shall make an initial assessment visit prior to the start of care for any recipient admitted to respite care.

d. The RN supervisor shall make supervisory visits as often as needed to ensure both quality and appropriateness of services.

(1) When respite care services are received on a routine basis, the minimum acceptable frequency of these visits shall be every 30 days.

(2) When respite care services are not received on a routine basis, but are episodic in nature, the RN supervisor shall not be required to conduct a supervisory visit every 30 days. Instead, the RN supervisor shall conduct the initial home visit with the respite care aide immediately preceding the start of care and make a second home visit within the respite care period.

(3) When respite care services are routine in nature and offered in conjunction with personal care, the 30-day supervisory visit conducted for personal care may serve as the RN visit for respite care. However, the RN supervisor shall document supervision of respite care separately. For this purpose, the same recipient record can be used with a separate section for respite care documentation.

e. During visits to the recipient's home, the RN shall observe, evaluate, and document the adequacy and appropriateness of respite care services with regard to the recipient's current functioning status, medical, and social needs. The respite care aide's record shall be reviewed and the recipient's or family's satisfaction with the type and amount of service discussed. The RN shall document in a summary note:

(1) Whether respite care services continue to be

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appropriate.

(2) Whether the Plan of Care is adequate to meet the recipient's needs or if changes need to be made in it.

(3) The recipient's satisfaction with the service.

(4) Any hospitalization or change in medical condition or functioning status.

(5) Other services received and their amount.

(6) The presence or absence of the aide in the home during the visit.

f. In all cases, the RN shall be available to the respite care aide to discuss the recipients being served by the aide.

g. The RN providing supervision to respite care aides shall be available to them by telephone at all times that services are being provided to respite care recipients. Any lapse in RN coverage shall be reported immediately to DMAS.

4. Employ and directly supervise respite care aides who provide direct care to respite care recipients. Each aide hired by the provider agency shall be evaluated by the provider agency to ensure compliance with minimum qualifications. Each aide:

a. Shall be able to read and write.

b. Shall have completed 40 hours of training consistent with DMAS standards. Prior to assigning an aide to a recipient, the provider agency shall ensure that the aide has satisfactorily completed a training program consistent with DMAS standards.

c. Shall be evaluated in job performance by the RN supervisor.

d. Shall have the physical ability to do the work.

e. Shall have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of possible abuse or neglect of incompetent or incapacitated individuals.

f. Shall not be a member of a recipient's family (e.g., family is defined as parents, spouses, siblings, grandparents, and grandchildren).

5. The respite care agency may employ a licensed practical nurse (LPN) to deliver respite care services which shall be reimbursed by DMAS under the following circumstances:

a. The individual receiving care has a need for routine skilled care which cannot be provided by

unlicensed personnel. These individuals would typically require a skilled level of care if in a nursing home (i.e., recipients on a ventilator, recipients requiring nasogastric or gastrostomy feedings).

b. No other individual in the recipient's support system is able to supply the skilled component of the recipient's care during the caregiver's absence.

c. The recipient is unable to receive skilled nursing visits from any other source which could provide the skilled care usually given by the caregiver.

d. The agency can document the circumstances which require the provision of services by an LPN.

C. Inability to provide services and substitution of aides.

When a respite care aide is absent and the respite care provider agency has no other aide available to provide services, the provider agency is responsible for ensuring that services continue to recipients.

1. If a provider agency cannot supply a respite care aide to render authorized services, the agency may either obtain a substitute aide from another agency, if the lapse in coverage is to be less than two weeks in duration, or may transfer the recipient's care to another agency.

2. If no other provider agency is available who can supply an aide, the provider agency shall notify the recipient or family and case manager.

3. If a substitute aide is secured from another respite care provider agency or other home care agency, the following procedures apply:

a. The respite care agency having recipient responsibility shall be responsible for providing the RN supervision for the substitute aide.

b. The agency providing the substitute aide shall send to the respite care agency having recipient care responsibility a copy of the aide's daily records signed by the recipient, and the substitute aide. All documentation of services rendered by the substitute aide shall be in the recipient's record. The documentation of the substitute aide's qualifications shall also be obtained and recorded in the personnel files of the agency having recipient care responsibility.

c. The provider agency having recipient responsibility shall bill DMAS for services rendered by the substitute aide. The two agencies involved shall negotiate the financial arrangements of paying the substitute aide.

4. Substitute aides obtained from other agencies may

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be used only in cases where no other arrangements can be made for recipient respite care services coverage and may be used only on a temporary basis. If a substitute aide is needed for more than two weeks, the case shall be transferred to another respite care provider agency that has the aide capability to serve recipients.

5. If a provider agency secures a substitute aide it is the responsibility of the provider agency having recipient care responsibility to ensure that all DMAS requirements continue to be met, including documentation of services rendered by the substitute aide and documentation that the substitute aide's qualifications meet DMAS requirements.

D. Required documentation for recipients records.

The provider agency shall maintain all records of each respite care recipient. These records shall be separated from those of other nonhome and community-based care services, such as companion services or home health. These records shall be reviewed periodically by the DMAS staff. At a minimum these records shall contain:

1. Long Term Care Assessment Instrument, the Prescreening Authorization, all Respite Care Assessment and Plans of Care, and all DMAS-122s.
2. All DMAS Utilization Review Forms and Plans of Care.
3. Initial assessment by the RN supervisor completed prior to or on the date services are initiated.
4. Registered nurse's notes recorded and dated during contacts with the respite care aide and during supervisory visits to the recipient's home.
5. All correspondence to the recipient and to DMAS.
6. Reassessments made during the provision of services.
7. Significant contacts made with family, physicians, DMAS, and all professionals concerning the recipient.
8. Respite care aide record of services rendered and recipient's responses. The aide record shall contain:
 - a. The specific services delivered to the recipient by the respite care aide, or LPN, and the recipient's response.
 - b. The arrival and departure time of the aide for respite care services only.
 - c. Comments or observations recorded weekly about the recipient. Aide comments shall include but not be limited to observation of the recipient's physical and emotional condition, daily activities, and the

recipient's response to services rendered.

d. The signature by the aide, or LPN, and the recipient once each week to verify that respite care services have been rendered.

e. Signature, times, and dates shall not be placed on the aide record prior to the last date of the week that the services are delivered.

9. Copies of all aide records shall be subject to review by state and federal Medicaid representatives.

10. If a respite care recipient is also receiving any other service (meals on wheels, companion, home health services, etc.), the respite care record shall indicate that these services are also being received by the recipient.

§ 7. Skilled nursing services.

These requirements govern the provision of skilled nursing services.

A. General.

Skilled nursing services may be offered to individuals with AIDS/ARC when such services are deemed necessary by the physician to avoid institutionalization by assessment and monitoring of the medical condition, providing interventions, and communicating with the physician regarding changes in the patient's status. The hours of private duty nursing shall be limited by medical necessity and cost effectiveness.

B. Special provider participation conditions.

To be approved for skilled nursing contracts with DMAS, the skilled nursing provider shall:

1. Be a home health agency certified by the Virginia Department of Health for Medicaid participation, with which DMAS has a contract for private duty nursing.
2. Demonstrate a prior successful health care delivery.
3. Operate from a business office.
4. Employ or subcontract with and directly supervise a registered nurse (RN) or a licensed practical nurse with a current and valid license issued by the Virginia State Board of Nursing.

The RN shall be currently licensed to practice in the Commonwealth and have at least two years of related clinical nursing experience which may include work in an acute care hospital, public health clinic, home health agency, or nursing home.

MEDICAID HIV SERVICES PRE-SCREENING

PRE-ADMISSION SCREENING AGENCY: _____ PROVIDER NUMBER: _____

CLIENT NAME: _____ MEDICAID NUMBER: _____

If no Medicaid number now, has the individual formally applied for Medicaid? _____
 0 - Yes 1 - No

REFERRAL SOURCE: Circle appropriate response.

- 0 - self
- 1 - family/friend
- 2 - physician
- 3 - hospital/clinic
- 4 - home health agency
- 5 - local social service/health agency
- 6 - social security office
- 7 - community organization
- 8 - AIDS service organization
- 9 - Other (_____)

REASON FOR APPLICATION: Circle appropriate response.

- 0 - Recent deterioration of Medical Status
- 1 - Other funding sources depleted
- 2 - Primary caregiver needs relief
- 3 - Other (_____)

RISK GROUP: Circle appropriate response.

- 0 - IVDU-Heterosexual
- 1 - IVDU-Homosexual
- 2 - Heterosexual (M or F)
- 3 - Homosexual

STAGE OF DISEASE AT SCREENING:

- 4 - Hemophilic/Blood transfusion
- 5 - Pediatric
- 6 - Other (_____)
- 9 - Unknown
- 1 - Level I Diagnosis
- 2 - Level II Early Chronic
- 3 - Level III Late Chronic
- 4 - Level IV Terminal

IF THE CLIENT:

- Is currently Medicaid eligible or has formally applied
- AND
- Is at Level II or greater in the stage of the disease process

THEN CONTINUE ASSESSING THE CLIENTS NEEDS BY COMPLETING:

- The DMAS-95 assessment document
- The client's plan of care
- Determine whether the client meets the criteria for skilled hospital level of care
- Recommend whether an appropriate and cost-effective plan of care can be authorized

AND

- Send the pre-admission screening forms to: Dept. of Medical Assistance Services
 Community Based Care, HIV Waiver
 600 East Broad Street, Suite 1100
 Richmond, Virginia 23219

DMAS-#
6/90

MEDICAID HIV WAIVER SERVICES PLAN OF CARE

CLIENT: _____ MEDICAID NUMBER: _____

INFORMAL SUPPORT NETWORK

Name Address Work Phone Home Phone

PRIMARY: _____

OTHERS: _____

RELATIONSHIP OF PRIMARY CAREGIVER(S):

LIVING SITUATION OF PRIMARY CAREGIVER:

- 0 - no caregiver
- 1 - parent
- 2 - other relative
- 3 - spouse
- 4 - partner/lover
- 5 - friend
- 6 - Other (_____)
- 0 - no caregiver
- 1 - with client
- 2 - separate residence but close in proximity
- 3 - separate residence, over an hour away

SERVICE NEEDS:

A. SERVICES INFORMAL SUPPORTS ARE KILLING AND ABLE TO PROVIDE

Needs	Check Those That Apply	Support Available (Use Codes Provided Below)	Frequency (Use Codes Provided)
ADLs	_____	_____	_____
Housekeeping	_____	_____	_____
Living space	_____	_____	_____
Meals	_____	_____	_____
Shopping	_____	_____	_____
Transportation	_____	_____	_____
Supervision	_____	_____	_____
Medicine	_____	_____	_____
Financial	_____	_____	_____
Other: _____	_____	_____	_____

SUPPORT:

FREQUENCY:

- 0 - no caregiver
- 1 - fully capable and willing
- 2 - able but limited by outside employment
- 3 - able but limited by attitudes
- 4 - client does not want help
- 5 - client does not need this help
- 9 - Unknown
- 0 - daily
- 1 - 4-6 times a week
- 2 - 2-3 times a week
- 3 - once a week or less
- 9 - Unknown

B. MEDICAID NON-WAIVERED SERVICES

Type	Currently Receives - Y or N	Frequency Unit	Start of Care	Provider Name
Home Health	_____	_____	_____	_____
Rehabilitation (Specify type: _____)	_____	_____	_____	_____
Medications	_____	_____	_____	_____
Outpatient Clinic	_____	_____	_____	_____
DME/Supplies	_____	_____	_____	_____
Physician	_____	_____	_____	_____
Transportation	_____	_____	_____	_____
Hospice	_____	_____	_____	_____
EPSDT	_____	_____	_____	_____
Laboratory Services	_____	_____	_____	_____
Other: (_____)	_____	_____	_____	_____
Other: (_____)	_____	_____	_____	_____

COMMENTS: _____

C. OTHER NON-MEDICAID SERVICES

Type	Currently Receives - Y or N	Frequency/ Unit	Start of Care	Provider Name
Health Education	_____	_____	_____	_____
Support Groups	_____	_____	_____	_____
Buddies/Companions	_____	_____	_____	_____
Psychological/Counseling	_____	_____	_____	_____
Drug Abuse Treatment	_____	_____	_____	_____
Dental	_____	_____	_____	_____
Housing	_____	_____	_____	_____
Home Delivered Meals	_____	_____	_____	_____
Entitlements/benefits assistance	_____	_____	_____	_____
Legal	_____	_____	_____	_____
Child care	_____	_____	_____	_____
Foster care	_____	_____	_____	_____
Other: (_____)	_____	_____	_____	_____
Other: (_____)	_____	_____	_____	_____

COMMENTS: _____

D. MEDICAID HIV WAIVER SERVICES

Type	Frequency/Unit Authorized	Start of Care	Provider Chosen
Case Management	_____	_____	_____
Skilled Nursing Care	_____	_____	_____
Respite:			
-Routine	_____	_____	_____
-Episodic	_____	_____	_____
Personal Care	_____	_____	_____
Nutritional Supplements	_____	_____	_____

COMMENTS: _____

_____ (name of client) requires the level of care which can only be received in either a hospital, nursing facility or at home with home and community based care services and other appropriate care as indicated on this Plan of Care to meet the identified medical/functional/nursing needs of the individual.

_____ Home Care is Recommended - Home care for this individual is appropriate to adequately meet the client's needs and assures that all other resources have been explored prior to seeking Medicaid authorization for this client.

- _____ Home environment is found to be safe and therapeutic.
- _____ Community resources are available to support the non-waiver service needs of the client.

_____ Home Care is Not Recommended

_____ Appropriate Plan of Care could not be developed. Reason _____

- _____ Family/Caregiver decided Home Care was not a viable option.
- _____ No provider agency available.
- _____ Other _____

I certify that this patient is experiencing symptoms that meet the Center for Disease Control's definition of ARC or AIDS. The patient is under care and the established plan of care will be reviewed by me at least every three months.

Physician's signature _____ Date _____

FREEDOM OF CHOICE

In accordance with the policies and procedures of the Department of Medical Assistance Services, I have been informed of the Medicaid-funded long-term care options available and have chosen:

- | | |
|-------------------------------|------------------|
| _____ Case Management | PROVIDERS CHOSEN |
| _____ Personal Care | _____ |
| _____ Respite Care | _____ |
| _____ Nutritional Supplements | _____ |
| _____ Private Duty Nursing | _____ |

Client _____ Date _____

ASO Pre-Admission Screening Staff _____ Date _____

IDENTIFY OTHER MEMBERS OF THE PRE-ADMISSION SCREENING TEAM:

DMAS-# _____
6/90 _____

DEPARTMENT OF TAXATION

Title of Regulation: VR 630-2-322.02. Individual Income Tax: Age Subtraction.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: November 8, 1990 - 10 a.m.

(See Calendar of Events section for additional information)

Summary:

This regulation sets forth the Department of Taxation's policies relating to the Age Subtraction for taxpayers age 62 and over that was enacted by the 1990 General Assembly, effective for taxable years beginning on and after January 1, 1990. This age subtraction replaces the "Retirement Income Subtraction for Taxpayers Age 55 and Over" that was enacted by the 1989 Special Session, effective for taxable year 1989.

Generally, individuals age 62, 63 or 64, with a federal adjusted gross income of \$6,000 or more, will be allowed a \$6,000 subtraction, reduced by the total amount of social security benefits or Tier 1 railroad retirement benefits received. If the individual's federal adjusted gross income is less than \$6,000, the allowable subtraction will be limited to their federal adjusted gross income, reduced by the total amount of social security benefits or Tier 1 railroad retirement benefits received. For individuals age 65 and over, the subtraction amount is increased to \$12,000, with the same limitations and required reductions for total social security benefits or Tier 1 railroad retirement benefits received.

VR 630-2-322.02. Individual Income Tax: Age Subtraction.

§ 1. Definitions.

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"FAGI" means federal adjusted gross income.

"Railroad retirement benefits equivalent to social security benefits" means Tier 1 railroad retirement benefits received, as defined under § 86 of the Internal Revenue Code.

"Subtraction base amount" means the lesser of the (i) amount of federal adjusted gross income; or (ii) the subtraction income ceiling amount.

"Subtraction income ceiling amount" means (i) \$12,000 for taxpayers aged 65 and over; or (ii) \$6,000 for taxpayers ages 62 to 64. The subtraction income ceiling amounts will be indexed annually for taxable years after 1991.

§ 2. Eligibility for age subtraction.

In order to be eligible to claim the age subtraction, a taxpayer must meet one of the following criteria with regard to age.

A. A taxpayer must attain at least age 62, but not more than age 64, on or before December 31 of the taxable year to be eligible for the subtraction of up to a maximum of \$6,000. An individual is deemed to be 62 on the day preceding his birthday. Therefore, an individual who turns 62 on January 1 is deemed to have been 62 on the preceding December 31.

B. A taxpayer must attain age 65 on or before December 31 of the taxable year to be eligible for the subtraction of up to a maximum of \$12,000. An individual is deemed to be 65 on the day preceding his birthday. Therefore, an individual who turns 65 on January 1 is deemed to have been 65 on the preceding December 31.

§ 3. Subtraction amount.

A. Generally.

Taxpayers meeting the age criteria set forth in § 2 may be eligible to claim a subtraction from federal adjusted gross income in computing their Virginia adjusted gross income. In computing the allowable subtraction, the subtraction base amount, as defined in § 1, must be reduced by total social security benefits or equivalent railroad retirement benefits received for the taxable year. Tier 2 railroad retirement benefits are not taken into account in reducing the subtraction base amount.

B. Taxpayers ages 62 to 64.

1. Taxpayers with no more than \$6,000 of federal adjusted gross income will be allowed an age subtraction equal to the amount of their federal adjusted gross income, reduced by total social security and equivalent railroad retirement benefits received.

2. Taxpayers with more than \$6,000 of federal adjusted gross income will be allowed an age subtraction equal to \$6,000, reduced by total social security and equivalent railroad retirement benefits received.

C. Taxpayers ages 65 and over.

1. Taxpayers with no more than \$12,000 of federal adjusted gross income will be allowed an age subtraction equal to the amount of their federal adjusted gross income, reduced by total social security and equivalent railroad retirement benefits received.

2. Taxpayers with more than \$12,000 in federal adjusted gross income will be allowed an age subtraction equal to \$12,000, reduced by total social security and equivalent railroad retirement benefits received.

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received.

D. Taxable years after 1991.

The \$12,000 and \$6,000 subtraction income ceiling amounts will be indexed annually, beginning with taxable years after 1991, by an amount equivalent to the most recent percentage increase in the social security wage base.

§ 4. Filing status.

This section sets forth the rules that shall be used by single or married taxpayers in determining federal adjusted gross income for purposes of computing the subtraction base amount and age subtraction.

A. Single taxpayers.

A taxpayer who files as a single individual for federal income tax purposes shall consider his total federal adjusted gross income, as reported on the federal income tax return.

B. Married taxpayers.

Married taxpayers may elect to file separate Virginia returns, a joint Virginia return, or to file separately on a combined return, subject to the provisions of § 58.1-324 of the Code of Virginia. Each married taxpayer will compute the age subtraction as follows:

1. Separate returns or filing separately on a combined return.

a. Each married taxpayer age 62 or over, who files separately, whether or not on a combined return, shall consider all amounts of federal adjusted gross income attributable to him, separately. When such married taxpayers file a joint federal income tax return, the provisions of VR 630-2-324 shall be used to determine the separate federal adjusted gross income of each taxpayer. No item of federal adjusted gross income attributable to one spouse shall be allocated to the other spouse.

b. If only one spouse is age 62 or over, only the federal adjusted gross income attributable to such spouse shall be considered for purposes of computing the subtraction base amount, regardless of whether any federal adjusted gross income is attributable to the spouse under age 62.

2. Joint returns.

a. In the event that both individuals are age 62 or over, file a joint Virginia income tax return, and both have federal adjusted gross income, each spouse shall compute a separate subtraction base amount as if separate returns were filed. In no event may the federal adjusted gross income of one

spouse be allocated to the other spouse.

b. If only one spouse is age 62 or over, only the federal adjusted gross income attributable to such spouse shall be considered for purposes of computing the subtraction base amount, regardless of whether any federal adjusted gross income is attributable to the spouse under age 62.

C. Examples.

The following examples illustrate the effect of filing status on the computation of the age subtraction.

EXAMPLE 1. Taxpayer A, a widow age 64, reports federal adjusted gross income of \$27,721 which includes a \$9,500 taxable annual survivor annuity from her late husband's former employer. In addition, she receives a \$5,000 taxable annual pension from her former employer. She also receives \$10,284 in social security benefits, \$2,621 of which is taxable and included in her FAGI; \$8,100 in interest income; and \$2,500 in dividend income. Taxpayer A's age subtraction is computed as follows:

The subtraction base amount is the lesser of:		
Total federal adjusted gross income (including taxable social security benefits of \$2,621); or	\$27,721	
Subtraction income ceiling amount	\$ 6,000	\$ 6,000
Less: Social security benefits received		\$10,284
Maximum subtraction		\$ 0

Taxpayer A's subtraction will be \$0 because social security benefits received exceed the subtraction base amount.

EXAMPLE 2. Taxpayer B, a single individual age 67 reports federal adjusted gross income of \$11,645. This includes a \$5,000 taxable annual pension and \$6,645 in interest income. Taxpayer B also receives \$10,788 in social security benefits, none of which are included in FAGI. Taxpayer B's age subtraction is computed as follows:

The subtraction base amount is the lesser of:		
Total federal adjusted gross income; or	\$11,645	
Subtraction income ceiling amount	\$12,000	\$11,645
Less: Social security benefits received		\$10,788
Maximum subtraction		\$ 857

EXAMPLE 3. Taxpayers H, age 66, and W, age 62, are husband and wife filing a joint return. H receives \$14,000 annually in taxable retirement benefits. W receives \$6,000 annually in taxable retirement benefits. W also receives

\$9,360 in annual social security benefits and \$300 in interest income. H and W also receive investment income of \$5,500 from an investment brokerage account which they hold jointly. Joint federal adjusted gross income for H and W is \$25,800. Taxpayers H and W compute their age subtraction as follows:

Step 1: Allocation of income to individual spouses.

	H	W
Pension income	\$14,000	\$ 6,000
Taxable social security benefits		0
Interest income		300
Other investment income	2,750	2,750
Total	\$16,750	\$ 9,050

Step 2: Computation of the subtraction:

The subtraction base amount is the lesser of:

Total federal adjusted gross income; or	\$16,750	\$ 9,050
Subtraction income ceiling amount	\$12,000	\$ 6,000
Subtraction base amount	\$12,000	\$ 6,000
Less: Social security benefits received	0	9,360
Maximum subtraction	\$12,000	\$ 0

H and W may take a total subtraction of \$12,000 on their joint return.

EXAMPLE 4. Taxpayers H, age 63, and W, age 60, are husband and wife filing a joint return reporting \$26,300 of federal adjusted gross income. H received a \$21,000 taxable annuity. W received \$6,000 in taxable pension benefits; \$ 5,000 in social security benefits; and \$300 in interest income.

Taxpayers H and W compute their total retirement income as follows:

Step 1: Allocation of income to individual spouses. (Because of her age, W is not eligible for the subtraction. Therefore, the subtraction is computed on H's allocable federal adjusted gross income, only.)

	H
Taxable annuity income	\$21,000
Taxable Social Security benefits	0
Interest income	0
Total	\$21,000

Step 2: Computation of the subtraction:

The subtraction base amount is the lesser of:

Total federal adjusted gross income; or	\$21,000
Subtraction income ceiling amount	\$ 6,000
Subtraction base amount	\$ 6,000
Less: Social security benefits	

received (H, only)	0
Maximum subtraction	\$ 6,000

H and W may take a total subtraction in the amount of \$6,000 on their joint return.

EXAMPLE 5. Taxpayers H, age 70, and W, age 62, are husband and wife filing separately on a combined return. H receives taxable pension income of \$21,200 and social security benefits of \$8,500, \$2,275 of which is taxable. W receives \$6,600 in wages. H and W also receive \$2,800 in interest income and \$1,700 in dividend income from a joint brokerage account. Taxpayers H and W compute their age subtractions as follows:

Step 1: Allocation of income to individual spouses.

	H	W
Pension income	\$21,200	\$ 0
Wages	0	6,600
Taxable social security benefits	2,275	0
Interest income	1,400	1,400
Dividend income	850	850
Total	\$25,725	\$ 8,850

Step 2: Computation of the subtraction:

The subtraction base amount is the lesser of:

Total federal adjusted gross income; or	\$25,725	\$ 8,850
Subtraction income ceiling amount	\$12,000	\$ 6,000
Subtraction base amount	\$12,000	\$ 6,000
Less: Social security benefits received	8,500	0
Maximum subtraction	\$ 3,500	\$ 6,000

H may take a subtraction of \$3,500; W may take a subtraction of \$6,000.

§ 5. Limitations of benefits.

A. Disability income subtraction.

Taxpayers qualifying for the disability income subtraction allowed under subdivision C(4)(a) of § 58.1-322 of the Code of Virginia shall not be allowed to claim the age subtraction and the disability income subtraction simultaneously. Such taxpayers must elect to claim either the disability income subtraction or the age subtraction.

B. Part-year residents.

1. A part-year resident may claim a subtraction for income received while a resident of another state independent of, and in addition to, the age subtraction. If a part-year resident receives income while a resident of Virginia, then the part-year resident may also qualify for an age subtraction. In computing the age subtraction of a part-year resident, the subtraction amount may be computed as the

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lesser of (i) federal adjusted gross income up to \$12,000 for taxpayers ages 65 and over (or \$6,000 for taxpayers ages 62 to 64) received while a resident of Virginia reduced by social security or equivalent railroad retirement benefits received while a resident of Virginia, or (ii) the applicable annual subtraction base amount reduced by total social security and equivalent railroad retirement benefits received for the year, multiplied by a proration percentage. The proration percentage, not to exceed 100%, is federal adjusted gross income allocated to the period of Virginia residence in the numerator to total federal adjusted gross income earned for the year in the denominator.

2. *Examples.* The following examples illustrate how part-year residents compute the age subtraction.

EXAMPLE 1. In taxable year 1990 Taxpayer B is a single individual age 62 receiving \$26,000 in total federal adjusted gross income. Of \$9,360 in total social security benefits, \$3,120 are received while B resides in Virginia. B receives \$20,500 of federal adjusted gross income for the period January 1 to August 31, 1990, before moving to Virginia. \$5,500 of federal adjusted gross income was received for the remainder of the year, after B moved to Virginia on September 15, 1990. B may include the \$20,500 he received in income before moving to Virginia in the subtraction he claims on Form 760PY for income attributable to his period of residence before moving to Virginia.

B will compute his age subtraction as the lesser of:

Federal adjusted gross income earned while B resides in Virginia or subtraction income ceiling amount, whichever is less	\$ 5,500
Less: Benefits received from the Social Security Administration while residing in Virginia	\$ 3,120
	\$ 2,380; or
The prorated sum of the subtraction base amount (annual basis) less benefits received from the Social Security Administration for the year. (\$6,000-9,360) x \$5,500/\$26,000	\$ 0

B's age subtraction will be \$0.

EXAMPLE 2. In taxable year 1990 Taxpayer C is a single individual age 66 receiving \$9,000 in total FAGI. C receives no social security or equivalent railroad retirement benefits. Taxpayer C receives \$1,000 of federal adjusted gross income before moving to Virginia on July 1, 1990, and \$8,000 of federal adjusted gross income after moving to Virginia. Taxpayer C is required to add \$3,500 of municipal bond interest to his FAGI to arrive at his VAGI. Taxpayer C may include the \$1,000 he received in federal adjusted gross income before moving to

Virginia in the subtraction he claims on Form 760PY for income attributable to his period of residence before moving to Virginia.

C will compute his age subtraction as the lesser of:

Federal adjusted gross income earned while C resides in Virginia or subtraction income ceiling amount, whichever is less; or	\$ 8,000
Prorated subtraction base amount (\$ 9,000* x \$8,000/\$9,000)	\$ 7,002

C's age subtraction will be \$7,002.

*Note: Subtraction base amount does not include the \$3,500 municipal bond interest added to FAGI.

EXAMPLE 3. In taxable year 1990 Taxpayer D is a single individual age 66 receiving \$28,000 in total federal adjusted gross income. D receives \$11,700 in social security benefits evenly throughout the year. Taxpayer D receives \$8,000 of income before moving to Virginia on April 1, 1990, and \$20,000 of income after moving to Virginia. Taxpayer D may include the \$8,000 he received in income before moving to Virginia in the subtraction he claims on Form 760PY for income attributable to his period of residence before moving to Virginia.

D will compute his age subtraction as the lesser of:

Federal adjusted gross income earned while D resides in Virginia or subtraction income ceiling amount, whichever is less	\$12,000
Less: benefits received from the Social Security Administration while a Virginia resident (\$11,700 x 9 months/12 months)	\$ 8,775
	\$ 3,225; or
The prorated sum of D's annual subtraction base amount less benefits received from the Social Security Administration for the year. (\$12,000 - \$11,700) x \$20,000/\$28,000	\$ 214

D's age subtraction is limited to \$214.

EXAMPLE 4. Taxpayer Z, age 67, retires and moves to Virginia in October of 1990. She receives total social security benefits of \$3,510 for the year entirely during her period of residence in Virginia. \$6,600 of Taxpayer Z's total FAGI of \$14,000 is received while she is a Virginia resident. Taxpayer Z may include the \$8,490 she received in income before moving to Virginia in the subtraction she claims on Form 760PY for income attributable to her period of residence before moving to Virginia.

Z will compute her age subtraction as the lesser of:

Federal adjusted gross income earned while Z resides in Virginia or subtraction income ceiling amount, whichever is less	\$ 6,600
Less: benefits received from the Social Security Administration while a Virginia	

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resident \$ 3,090; or

The prorated sum of Z's annual subtraction base amount less benefits received from the Social Security Administration for the year.
 (\$12,000 - \$ 3,510) x \$ 6,600/\$14,000 \$ 3,999

Z's age subtraction is limited to \$ 3,090.

§ 6. Nonresidents.

The subtraction for a nonresident will be computed as though the taxpayer were a resident for purposes of arriving at Virginia Adjusted Gross Income.

* * * * *

Title of Regulation: VR 630-2-492. Declaration of Estimated Income Tax by Individuals: Failure by Individual to Pay Estimated Tax.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: November 8, 1990 - 10 a.m.
 (See Calendar of Events section for additional information)

Summary:

This amendment reflects the 1990 law change that eliminates the addition to the tax imposed for the underpayment of estimated income tax in instances when the underpayment is \$150 or less for the taxable year. The amended regulation clarifies that in order to qualify for the \$150 estimated tax threshold exception, the taxpayer's installment payments must be timely filed and the sum of all underpayments must be \$150 or less. A taxpayer will be unable to avoid the addition to the tax merely by paying all but \$150 of his estimated tax on the due date of the final installment.

VR 630-2-492. Failure by Individual to Pay Estimated Tax.

§ 1. Additions to the tax.

In the case of any underpayment of estimated tax by an individual, except as provided in § 4, there shall be added to the individual income tax for the taxable year an amount determined at the rate established for interest, under § 58.1-15 of the Code of Virginia upon the amount of the underpayment (determined under § 2), for the period of the underpayment (determined under § 3). The amount of such addition to the tax shall be reported and paid at the time of filing the individual income tax return for the taxable year.

§ 2. Amount of underpayment.

For purpose of § 1, the amount of the underpayment shall be the excess of:

1. The amount of the installment which would be required to be paid if the estimated tax were equal to 90% (66-2/3% in the case of a self-employed farmer or fisherman referred to in § 5 of VR 630-2-490.2) of the tax shown on the individual income tax return for the taxable year, or if no return was filed, 90% (66-2/3% in the case of self-employed farmers or fishermen referred to in § 5 of VR 630-2-490.2) of the tax for such year, over

2. The amount, if any, of the installment paid on or before the last date prescribed for such payment.

§ 3. Period of underpayment.

The period of the underpayment shall run from the date the installment was required to be paid to the earlier of the following dates:

1. May 1, if a calendar year, or the 15th day of the fourth month following the close of the taxable year, if a fiscal year; or

2. With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subdivision 1 of § 2 for such installment date.

EXAMPLE 1: Taxpayer C filed her return for taxable year 1988 on May 1, 1989, showing a tax liability of \$10,000. She had previously paid \$1,500 of estimated tax on each of May 1, June 15 and September 15, 1988, and January 15, 1989, and made no other payments before the return was filed. Because each \$1,500 payment was less than 90% of \$2,500 (one-quarter of the tax shown as due on the return), the addition to the tax applies to each underpayment on each installment date, computed as follows (and assuming an annual interest rate of 12%):

Amount of each underpayment installment:	
90% of \$2,500 *	\$2,250
less installment paid	\$1,500
	\$ 750
1st installment-period: 5/1/88 to 5/1/89	\$ 90
(12% X 365/365 X \$750)	
2nd installment-period: 6/15/88 to 5/1/89	\$ 78.75
(12% X 320/365 X \$750)	
3rd installment-period: 9/15/88 to 5/1/89	\$ 56.25
(12% X 228/365 X \$750)	
4th installment-period: 1/15/89 to 5/1/89	\$ 26.25
(12% X 106/365 X \$750)	
Total addition to tax	\$251.25

EXAMPLE 2: Taxpayer had a total tax liability of \$5,000, 90% (or \$4,500) of which would be due in

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quarterly installments of \$1,125 each. He made payments as follows: \$200 on May 1, \$800 on June 15, \$3,000 on September 15 and \$0 on January 15. The \$1,875 overpayment from September 15 would be applied to the other quarterly underpayments in the following order and amounts: \$925 to May 1, \$325 to June 15, and \$625 to January 15.

§ 4. ~~Exception~~ Exceptions .

A. *Notwithstanding the provisions of the preceding sections, no addition to the tax shall be imposed if the sum of underpayments, as defined in § 2, is \$150 or less for the taxable year. The sum of such underpayments shall not be reduced by an overpayment in any subsequent quarter.*

A. *Notwithstanding the provisions of the preceding sections B. In addition to the exception in subsection A above , the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would be required to be paid on or before such date if the estimated tax were any of the following:*

1. The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of 12 months, or

2. An amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to personal exemptions for the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding taxable year, or

3. An amount equal to 90% (66-2/3% in the case of self-employed farmers or fishermen referred to in § 5 of VR 630-2-490.2) of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this subdivision the taxable income shall be placed on an annualized basis by:

a. Multiplying by 12 (or, in the case of a taxable year of less than 12 months, the number of months in the taxable year) the taxable income (computed without deduction of personal exemptions) for the months in the taxable year ending before the month in which the installment is required to be paid,

b. Dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, and

c. Deducting from such amount the deductions for personal exemptions allowable for the taxable year (such personal exemptions being determined as of the last date prescribed for payment of the installment); or

4. An amount equal to 90% of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. The periods involved, for a calendar year taxpayer, are January 1 to April 30, January 1 to May 31, and January 1 to August 31. Virginia taxable income for the applicable period is computed as follows: there is subtracted from the federal adjusted gross income for the four, five or eight month period, as applicable, (i) the Virginia subtractions specified in § 58.1-322 of the Code of Virginia, (ii) the greater of itemized deductions or standard deduction, (iii) child and dependent care deduction, and (iv) the dollar amount of exemptions claimed on the return; and there is added to federal adjusted gross income the Virginia additions specified in § 58.1-322 of the Code of Virginia. Virginia income tax is calculated on the resulting Virginia taxable income. If the estimated tax installment relating to the period is at least 90% of such tax, no addition to tax is required.

B. C. Examples.

1. *Taxpayer D had a total tax liability of \$4,000 for taxable year 1990. D made no estimated tax payments for the first three quarters of 1990. D paid estimated tax of \$3,900 for the fourth quarter of 1990. Even though the tax liability for tax year 1990 (\$100) is less than \$150, the exception in § 4 A does not apply. D would be assessed an addition to the tax for the first three quarters of 1990 because the sum of the underpayments for the first three quarters (\$2,700) exceeded \$150. The addition to the tax is computed as follows (assuming an annual interest rate of 12%):*

<i>Amount of each underpayment installment:</i>	
<i>90% of \$1,000 = \$900</i>	
<i>1st installment - 5/1/90 to 1/15/91</i>	<i>\$ 76.93</i>
<i>(12% x 260/365 x \$900)</i>	
<i>2nd installment - 6/15/90 to 1/15/91</i>	<i>63.32</i>
<i>(12% x 214/365 x \$900)</i>	
<i>3rd installment - 9/15/90 to 1/15/91</i>	<i>36.10</i>
<i>(12% x 122/365 x \$900)</i>	
<i>Total addition to the tax</i>	<i>\$176.35</i>

2. *Taxpayer J had a total tax liability of \$1,000 for tax year 1990. J paid timely quarterly payments of \$200 throughout the year. Each estimated payment was 88% of the tax due (200/225 = 88%). Even though each underpayment installment was less than 90% of the tax due, there would be no addition to the tax due because the sum of J's underpayments*

(\$100) is less than the underpayment threshold of \$150 specified in § 4 A.

1. 3. Taxpayer E filed a return for calendar year 1987 showing a tax liability of \$4,750. For calendar year 1988 E made timely estimated tax payments which, together with withholding payments, totalled \$4,750. E's return for calendar year 1988 revealed a total tax liability of \$6,000, which was underpaid by \$1,250 or more than 10%. Since the total amount of estimated tax paid by each installment date equalled the amount that would have been required to be paid on or before each of such dates if the estimated tax were the tax shown on the return for the preceding year, the exception in § 4 A-1 B.1 applies and no addition to the tax will be imposed.

2. 4. Assume the same facts as in Example 1 except that Taxpayer E adopted a daughter and son on January 1, 1988, and made estimated tax payments in calendar year 1988 totalling \$4,700. The exception under § 4 A-1 4 B.1 does not apply because the 1988 estimated tax payments are less than the tax shown on his 1987 return. However, § 4 A-2 4 B.2 permits E to recalculate his 1987 tax liability using his two additional \$700 exemptions. Assuming that E has reached the 5.75% tax bracket, the \$1,400 would yield tax savings of \$80.50 (5.75% of \$1,400). The \$80.50 tax savings would reduce his recomputed 1987 tax liability to \$4,669.50. Because the total amount of estimated tax paid by each installment date exceeds the amount which would have had to be paid on or before each of such dates if the estimated tax were \$4,669.50, no addition to the tax will be imposed.

3. 5. Taxpayer F's 1987 return revealed a total tax liability of \$311, but she qualified for an age credit in the amount of \$311 so that no tax was due for 1987. She had one exemption for both 1987 and 1988, and \$200 in withholding and estimated tax payments were made for calendar year 1988. Her 1988 tax liability was \$1,000. The exception of § 4 A-1 4 B.1 does not apply because the 1988 payments are less than the \$311 tax liability shown on her 1987 return. However, § 4 A-2 4 B.2 provides an exception because the 1988 payments of \$200 at least equal the tax (figured using the applicable nonrefundable credits) which would have been due on her 1987 income, using 1988 rates and personal exemptions.

4. 6. Taxpayer G, who claims one exemption and itemizes deductions, made four timely installment payments of estimated tax totalling \$4,400 for calendar year 1988. His calendar year 1988 tax liability was \$5,000 and his receipt of Virginia adjusted gross income accelerated as the year progressed, as the following worksheet illustrates:

	1/1/88 to 4/30/88	1/1/88 to 5/31/88	1/1/88 to 8/31/88
Virginia adjusted			

gross income	\$15,000	\$27,000	\$64,000
1. Annualized Va. adjusted gross income for period(s) shown	\$40,500 \$45,000	\$64,800	\$96,000
2. Annualized itemized deductions for period(s) shown or Standard Deduction if not itemized	6,000	12,000	9,000
3. Total dollar amount of exemptions	800	800	800
4. Taxable income lines 2 and 3 from 1	39,700 38,200	52,000	86,200
5. Virginia tax on the amount shown on line 4	2,048 1,954	2,755 2,748	4,722 4,714
(or	22.5% (or	45% (or	67.5%
Installments due through the applicable period	90% of 25% of line 5: \$460.80 \$439.65	90% of 50% of line 5: \$1,239.75 \$1,236.60	90% of 75% of line 5: \$3,187.95 \$3,181.95
Installments paid through the applicable period	\$1,100	\$2,200	\$3,300

Because the total of estimated payments through each of the three periods is at least (and, in fact, exceeds) 90% of the tax on the annualized taxable income for the applicable period(s), no addition to tax applies because of the exception in § 4 A-3 4 B.3 .

5. 7. Taxpayer H who is single, claims one exemption and itemizes deductions, had \$100,000 of federal adjusted gross income for calendar year 1989 and a tax liability of \$5,000. H expected her income to be \$70,000 and had paid estimated tax in four \$975 installments. Her calendar year 1988 tax liability was \$4,000. As the following worksheet illustrates, her estimated tax payment for each of the four, five and eight month periods is at least (and, in fact, exceeds) 90% of the tax liability for the applicable period and no addition to the tax applies because of the exception in § 4 A-4 4 B.4 .

	1/1/89 to 4/30/89	1/1/89 to 5/31/89	1/1/89 to 8/31/89
1. Federal AGI for period(s) shown	\$17,500	\$29,000	\$69,000
2. a. Add Virginia additions and/or			
b. Subtract Virginia subtractions for period(s) shown	-2,000	-2,000	-3,000
3. Subtract			
a. Itemized deductions for period(s) shown, or (if greater			
b. Standard Deduction on the income shown	-2,000	-5,000	-6,000

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4. Subtract Child and Dependent Care Deduction for the period(s) shown	- 0 -	- 0 -	- 0 -
5. Subtract dollar amount of exemptions	-800	-800	-800
6. Virginia taxable income for period(s) shown	12,700	21,200	59,200
7. Virginia tax on amounts shown on line 6	505	969	3,154
8. 90% of line 7	455	872	2,839
9. Installments paid through the applicable period	975	1,950	2,925

§ 5. Application of section in case of tax withheld on wages.

For purposes of applying this section:

1. The estimated tax shall be computed without any reduction for the amount which the individual estimates as his credit under § 58.1-480 of the Code of Virginia and its regulations (relating to tax withheld at source on wages), and

2. The amount of the credit allowed under § 58.1-480 of the Code of Virginia and its regulations (dealing with withheld amounts credited to individual taxpayer) for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each installment date (determined under § 58.1-491 of the Code of Virginia and its regulations) for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

§ 6. Short taxable year.

A. In any case in which the taxable year for which an underpayment of estimated tax exists is a short taxable year due to a change in annual accounting periods, in determining the tax (i) shown on the return for the preceding taxable year (for purposes of subdivision 1(a) of subsection D C of § 58.1-492 of the Code of Virginia), (ii) based on the personal exemptions and rates for the current taxable year but otherwise on the basis of the facts shown on the return for the preceding taxable year, and the law applicable to such year (for purposes of subdivision 1(b) of subsection D C of § 58.1-492 of the Code of Virginia), the tax will be reduced by multiplying it by the number of months in the short taxable year and dividing the resulting amount by 12.

B. If the taxable year for which an underpayment of estimated tax exists is a short taxable year due to a change in annual accounting periods, in annualizing the income for the months in the taxable year preceding an installment date, for purposes of subdivision 1(c) of

subsection D C of § 58.1-492 of the Code of Virginia, the personal exemptions allowed as deductions shall be prorated by multiplying such deduction by the ratio of months in the short taxable year to 12 months.

C. If "the preceding taxable year" referred to in subdivision 1(b) of subsection D C of § 58.1-492 of the Code of Virginia was a short taxable year, for purposes of determining the applicability of the exception described in subdivision 1(b) of subsection D C of § 58.1-492 of the Code of Virginia, the tax, computed on the basis of the facts shown on the return for the preceding year, shall be the tax computed in the manner described in VR 630-2-340. If the tax rates or the taxpayer's status with respect to personal exemptions for the taxable year in which the underpayment occurs differs from such rates or status applicable to the preceding taxable year, the tax determined in accordance with this subsection shall be recomputed to reflect the rates and status applicable to the year in which the underpayment occurs.

* * * * *

Title of Regulation: Corporation Income Tax.
VR 630-3-302. Definitions - Sales.
VR 630-3-414. Sales Factor.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: November 8, 1990 - 10 a.m.
 (See Calendar of Events section for additional information)

Summary:

These regulations implement HB 916 (1990 Acts of Assembly, Chapter 294). The act changes the definition of "sales" for purposes of the sales apportionment factor to include only the net gain from the disposition of intangible property instead of the gross proceeds. The act is effective for taxable years beginning on or after January 1, 1990.

VR 630-3-302 amends the definition of "sales" to include only net gain on the sale of intangibles. Other nonsubstantive changes are made to update code references and to conform to the style of the Virginia Register.

VR 630-3-414 is amended to define "net gain" for purposes of the sales apportionment factor.

VR 630-3-302. Corporation Income Tax: Definitions - Sales.

The following words and terms, when used in these regulations, shall have the following meaning unless the context clearly indicates otherwise:

"Affiliated" - "1. For the purpose of Va. Code § 58.1-442 means a group of corporations may not file a consolidated

or combined return unless each corporation each of which is itself subject to Virginia income tax and in which ~~(a)~~ (i) one corporation owns at least ~~eighty percent~~ 80% of the voting stock of the other or others, or ~~(b)~~ (ii) if at least ~~eighty percent~~ 80% of the voting stock of two or more corporations is owned by the same interests.

For the purpose of § 58.1-442 of the Code of Virginia, ~~2~~ ~~it~~ it is not necessary for all members of a controlled group to be subject to Virginia income tax in order for some of the members, otherwise eligible, to file a consolidated or combined return. For example, two or more corporations subject to Virginia income tax may be 80% owned by a foreign corporation not subject to Virginia income tax. All of the subsidiaries subject to Virginia income tax may file a consolidated or combined return without the foreign parent corporation.

"Compensation : " ~~1~~ For means, for the purpose of allocation and apportionment under § 58.1-406 of the Code of Virginia the term "compensation," as used in computing the payroll factor under Va. Code § 58.1-412 of the Code of Virginia, means all remuneration or wages for employment as defined in I.R.C. § 3121(a) except that compensation includes the excess wages over the contribution base defined in I.R.C. § 3121(a)(1).

~~2~~ 1. Generally compensation will be the gross wages, salaries, tips, commissions and other remuneration paid to employees and reported to the Internal Revenue Service. The department will accept the gross amounts reported to the IRS on Forms W-2/W-3, Form 940 or the accounting records of the corporation provided that all of the employees of the corporation are included in such reports or records.

~~3~~ 2. If the corporation has any employees who are not subject to the F.I.C.A. and F.U.T.A. payroll taxes or are not subject to U.S. income tax because they are nonresident aliens, compensation includes all wages, salaries, tips, commissions and other remuneration paid to or for such employees in addition to the compensation in ~~(2)~~ ~~(A)~~ subdivision 1 above.

~~4~~ 3. The corporation shall determine compensation on a consistent basis so as not to distort the compensation paid to employees located within and without Virginia. In the event the corporation is not consistent in its reporting, it shall disclose in its return to Virginia the nature and extent of such inconsistency.

~~5~~ 4. The terms "employees" and "personal services" shall have the same meaning as used in the context of employment in I.R.C. § 3121(b).

~~6~~ 5. The term "paid or accrued" shall mean either ~~(a)~~ means either (i) cash or property paid to employees and reported to the I.R.S. as in ~~(A)~~ subdivision 1 above, or ~~(b)~~ (ii) amounts properly accrued on the books of the corporation under its

accounting method for federal income tax purposes, but not both.

"Corporation : " ~~1~~ The term "corporation" means any entity created as such under the laws of the United States, any state, territory or possession thereof, the District of Columbia, or any foreign country or any political subdivision of any of the foregoing, or any association, joint stock company, partnership or any other entity subject to corporation income taxes under the United States Internal Revenue Code. See I.R.C. § 7701.

~~2~~ A "Domestic corporation : " means a corporation, as defined in ~~(1)~~ above, is a "domestic corporation" if it is organized, created or existing under the applicable laws of the State Commonwealth of Virginia. Compare I.R.C. § 7701(a)(4).

~~3~~ "Foreign corporation : " The term "foreign corporation" means a corporation, as defined in ~~(1)~~ above, which is not a domestic corporation ; as defined in ~~(2)~~ above . Registration of a foreign corporation with the State Corporation Commission for the privilege of doing business in Virginia shall not make a corporation a domestic corporation.

"Foreign source income" means income computed in accordance with the following principles:

1. The federal taxable income of corporations organized under the laws of the United States, any of the ~~forty~~ 50 states or the District of Columbia (U.S. domestic corporations) includes their worldwide income. Virginia law provides a subtraction for "foreign source income" if any is included in federal taxable income. Corporations that are not U.S. domestic corporations include in federal taxable income only income from U.S. sources or income effectively connected with a U.S. trade or business. Such corporations will not have any "foreign source income" included in federal taxable income.

2. Foreign source income does not include all income from sources without the United States but is limited to specified types of income and is also limited by the federal ~~definitions~~ source rules in I.R.C. §§ 861 through 864 *et seq.* and the regulations thereunder in determining the source of a particular item of income.

3. Corporations having foreign source income determine the amount of the subtraction by the following procedure:

a. The specified types of gross income included in federal taxable income are segregated. The types of income are: interest, dividends, rents, royalties, license and technical fees, also gains, profits and other income from the sale of intangible or real property.

b. The federal ~~definitions~~ source rules are applied

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to determine the source of each item, particularly whether or not the item is effectively connected with the conduct of a U.S. trade or business.

c. The federal procedure in Treasury Reg. § 1.861-8 is applied to allocate and apportion expenses to income derived from U.S. and foreign sources.

d. The gross income from sources without the U.S. from ~~(2)~~ subdivision 2 less the expenses allocated and apportioned to such income in ~~(3)~~ subdivision 3 is the foreign source income for purposes of the Virginia subtraction.

4. All income and expenses included in foreign source income and property or other activity associated with such income and expenses shall be excluded from the factors in the Virginia formula for allocating and apportioning Virginia taxable income to sources within and without Virginia.

"Income and deductions from Virginia sources" - "1-
The term "income and deductions from Virginia sources" includes means items of income, gain, loss and deduction attributable to the ownership, sale, exchange or other disposition of any interest in real or tangible personal property in Virginia or attributable to a business, trade, profession or occupation carried on in Virginia or attributable to intangible personal property employed in a business, trade, profession or occupation carried on in Virginia.

2- A. If the entire business of a corporation is not deemed to have been transacted or conducted within this State Commonwealth by Va. Code § 58.1-405 of the Code of Virginia, then the "income from Virginia sources" means that portion of the corporation's Virginia taxable income resulting from the allocation and apportionment formulas set forth in Va. Code §§ 58.1-406 through 58.1-421 of the Code of Virginia .

a. 1. Allocable income is limited to certain dividends. See Va. Code § 58.1-407 of the Code of Virginia .

b. 2. Apportionable income is Virginia taxable income less allocable income. Apportionment formulas are then applied to determine the part of apportionable income that is income from Virginia sources. Generally, a corporation will have income from Virginia sources if there is sufficient business activity within Virginia to make any one or more of the following apportionment factors positive: (i) vehicle miles (for motor carriers); (ii) cost of performance (for financial corporations); (iii) completed contracts (for certain construction corporations); (iv) revenue car miles (for railway companies); and (v) property, payroll or sales (for all other corporations).

3. See Va. Code §§ 58.1-408 through 58.1-421 of the Code of Virginia and the regulations thereunder for details. Accordingly, a foreign corporation may be

subject to Virginia income tax on the portion of its income deemed to be derived from Virginia sources under apportionment formulas even though no specific portion of its gross or net income may be separately identified as being derived directly from Virginia.

3- B. Certificate of authority.

a. 1. Va. Code §§ ~~13.1-102.1 and 13.1-265.1~~ §§ 13.1-757 and 13.1-919 of the Code of Virginia provide that if a corporation's only activity in Virginia is limited to certain activity in connection with investment in notes, bonds or other instruments secured by the deeds of trust on property located in Virginia, such corporations shall not be deemed to be transacting business in Virginia for purposes of Va. Code §§ ~~13.1-102 and 13.1-265~~ §§ 13.1-757 and 13.1-919 of the Code of Virginia which require foreign corporations to obtain a certificate of authority from the State Corporation Commission before transacting business in Virginia. All corporations having income from Virginia sources are subject to Virginia income tax regardless of whether or not they are required to obtain a certificate of authority.

b. 2. A foreign corporation whose only connection with Virginia is the receipt of interest on notes, bonds or other instruments secured by deeds of trust on property located in Virginia will have no payroll or real or tangible personal property located in Virginia. Although the interest may be paid by a Virginia resident, for purposes of the sales factor the gross receipts will not be assigned to Virginia because there is no income producing activity in Virginia. See Va. Code § 58.1-416 of the Code of Virginia . If the corporation is a financial corporation as defined in Va. Code § 58.1-418 of the Code of Virginia there would be no costs of performance in Virginia. Therefore, such a corporation would have no income from Virginia sources and, since such a corporation is not required to obtain a certificate of authority, it would not be required to file a Virginia income tax return. See Reg. § 630-3-441. However, if such a corporation acquires real or tangible personal property in Virginia by foreclosure or any other means the corporation will have property (or cost of performance) in Virginia. Therefore the corporation will have income from Virginia sources and be required to file a Virginia income tax return.

4- C. In the course of computing income from Virginia sources a corporation may be required to make computations solely for that purpose or maintain records used only for that purpose. The effects on tax liability of a method used to determine any components of income from Virginia sources and the burden of maintaining records not otherwise maintained and of making computations not otherwise made shall be taken into consideration in determining whether such method is sufficiently precise.

5. *D. Example.* Corporation A is a manufacturer of paper products conducting all of its manufacturing, selling and shipping operations outside Virginia. It makes no sales to customers in Virginia. It therefore has no gross income which may be identified as being derived directly from Virginia. However, the corporation does operate a facility in Virginia solely for the purchase of pulpwood for shipment to its manufacturing plants in other states.

While corporation A has no gross income derived directly from Virginia, it has property and payroll in this state. Accordingly, Corporation A has income from Virginia sources based on apportionment factors.

"Sales" - "1. The term "sales" means the gross receipts of the corporation from all sources not allocated under Va. Code § 58.1-407 of the Code of Virginia (dividends) whether or not such gross receipts are generally considered as sales, except in the case of the sale or other disposition of intangible property, gross receipts shall be disregarded and only the net gain from the transaction shall be included.

2. A. Manufacturing sales.

In the case of a taxpayer whose business activity consists of manufacturing and selling, or purchasing and reselling goods or other property of a kind which would properly be included in the inventory of the taxpayer primarily for sale to customers in the ordinary course of its trade or business, gross receipts means gross sales, less returns and allowances, and includes service charges, carrying charges, or time-price differential charges incidental to such sales.

3. B. Sales made in other types of business activity:

a. 1. If the business activity consists of providing services such as the operation of an advertising agency, or the performance of equipment service contracts, "sales" includes the receipts from performance of such service including fees, commissions, and similar items.

b. 2. In the case of cost plus fixed fee contracts, such as the operation of a government owned plant for a fee, "sales" include the entire reimbursed cost, plus the fee.

c. 3. In the case of the sale, assignment, or licensing of intangible property such as patents and copyrights, "sales" includes the gross proceeds from such sales, ~~assignment or licensing, only the net gain from the sale or disposition.~~

d. 4. In the case of the sale of real or personal property, "sales" includes the gross proceeds from such sales.

e. 5. The term "sales" does not include amounts required by federal law to be included in federal

taxable income as recapture of items deducted in prior years.

"State" - "The term "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, and any foreign country. Note that this definition applies only within the allocation and apportionment section of this chapter. When used elsewhere in the chapter the term "state" may or may not include foreign countries and U.S. possessions, depending on the context.

VR 630-3-414. Corporation Income Tax: Sales Factor.

1. § 1. In general.

The sales factor is a fraction, the numerator of which is the total sales in Virginia during the taxable year, and the denominator of which is the total sales of the corporation everywhere during the taxable year.

§ 2. Sales.

2. "Sales is defined in Va. Code § 58.1-302 of the Code of Virginia and means all gross receipts of the corporation except dividends allocated under Va. Code § 58.1-407 of the Code of Virginia, except in the case of the sale or disposition of intangible property (including, but not limited to patents, copyrights, bonds, stocks and other securities) gross receipts shall be disregarded and only the net gain from the transaction shall be included. Sales shall be included in the sales factor if the gross receipts or net gain are included in Virginia taxable income and are connected with the conduct of taxpayer's trade or business within the United States. See Va. Reg. § 630-3-408.

1. Net gain is computed on a per transaction basis. A sale or disposition of intangible property is included in the sales factor only to the extent that it results in a net gain.

2. A disposition of intangible property resulting in a loss is ignored in computing the sales factor. A loss is not used to offset gains from the sale or other disposition of intangible property, and a loss is not used to reduce other gross receipts.

3. The net gain from the transaction must be recognized, i.e., includable in federal taxable income, in order to be included in the Virginia sales factor.

4. "Sale or other disposition" includes the sale, exchange, redemption, maturity or other disposition of intangible property.

§ 3. Example.

In 1990, Corporation C, a calendar year taxpayer, redeems bonds with an adjusted basis of \$46 million for \$50 million, recognizing a net gain of \$4 million. C also sells stock with an adjusted basis of \$98 million for \$95

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million, recognizing a net loss of \$3 million. Only the \$4 million dollar net gain is reflected in C's sales factor; the \$3 million loss from the sale of stock is ignored and is not used to offset the \$4 million net gain in computing C's sales factor. Likewise, the loss is not used to reduce C's other gross receipts in 1990.

* * * * *

Title of Regulation: VR 630-3-323.1. Corporation Income Tax: Excess Cost Recovery.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: November 8, 1990 - 10 a.m.
(See Calendar of Events section for additional information)

Summary:

This regulation implements SB 199 (1990 Acts of Assembly, Chapter 794). The act extends the recovery period and modifies the percentages for recovery for corporate taxpayers with an outstanding balance of Accelerated Cost Recovery System (ACRS) depreciation.

The regulation decreases the recovery percentages for taxable years beginning in 1990 and 1991 from 30% to 10% and extends the recovery period by two years, from 1992 to 1994. For taxable years beginning in 1993 and 1994, corporate taxpayers recover 20% of the outstanding balance of ACRS depreciation.

VR 630-3-323.1. Corporate Income Tax: Excess Cost Recovery.

§ 1. Definitions.

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"ACRS addition" means an excess cost recovery addition actually reported under § 58-151.013(b)(6) (prior to the recodification of Title 58), § 58.1-322 B 6 (for individuals) and § 58.1-402 B 3 (for corporations) of the Code of Virginia, on any return filed for a taxable year beginning between January 1, 1982 and December 31, 1987.

"ACRS subtraction" means an excess cost recovery subtraction allowable under § 58-151.013(c)(10) (prior to the recodification of Title 58), § 58.1-322 C 8 (for individuals) and § 58.1-402 C 9 (for corporations) of the Code of Virginia, for any taxable year beginning after December 31, 1983, but before January 1, 1988, regardless of whether or not a return was filed to claim the allowable subtraction.

"Corporation" means any person or entity subject to tax or required to file a return under Article 10, Chapter 3 (§

58.1-400 et seq.) of Title 58.1 of the Code of Virginia.

"Individual" means any natural person, married or unmarried, who is subject to taxation or required to file a return under Article 2 of Chapter 3 (§ 58.1-300 et seq.) of Title 58.1 of the Code of Virginia.

"Outstanding balance of excess cost recovery" means the amount equal to the difference between:

1. The sum of the ACRS additions actually reported on Virginia returns filed for taxable years beginning on and after January 1, 1982, and before January 1, 1988; and
2. The sum of the ACRS subtractions allowed or allowable on Virginia returns, regardless of whether or not a Virginia return was actually filed, for taxable years beginning on and after January 1, 1984, and before January 1, 1988.

"Post-1987 ACRS subtraction" means the portion of the outstanding balance of excess cost recovery which may be subtracted by individuals on returns for taxable years beginning on or after January 1, 1988, and before January 1, 1990, or by corporations on returns for taxable years beginning on or after January 1, 1988, and before January 1, 1993 1995 .

§ 2. Purpose.

A. Generally.

The Virginia Tax Reform Act of 1987 added § 58.1-323.1 of the Code of Virginia which phases out the excess cost recovery program through the allowance of post-1987 subtractions effective for taxable years beginning on and after January 1, 1988. In 1988 § 58.1-323.1 was amended to permit a refund if a final federal and Virginia return was filed for a taxable year beginning prior to January 1, 1988. This regulation sets forth the rules applicable to both individual and corporate taxpayers. In most cases the outstanding balance of excess cost recovery may be recouped through annual post-1987 subtractions over a two year period for individual taxpayers and a five seven year period for corporate taxpayers (see § 4). Generally, if a taxpayer has insufficient income to benefit from a subtraction in a particular year, all or part of the subtraction may be carried over to the next year (see § 5). A taxpayer who files a final federal and Virginia return may claim an immediate subtraction for the unrecovered outstanding balance of excess cost recovery (see § 6). If at a conclusion of the applicable subtraction period (1989 for individuals and 1992 1994 for corporations), or after filing a final federal and Virginia return, the taxpayer still has not recouped the outstanding balance of excess cost recovery, the taxpayer may qualify to file an application for a refund (see § 7).

B. Exclusive method.

Effective for taxable years beginning on and after January 1, 1988, the post-1987 subtractions and refunds allowable under this regulation shall be the exclusive means of recovering the outstanding balance of excess cost recovery.

§ 3. Computation of the outstanding balance of excess cost recovery.

A. Generally.

A taxpayer's outstanding balance of excess cost recovery is computed only with respect to ACRS additions attributable to federal ACRS deductions on property owned directly by the taxpayer or deemed to be owned by the taxpayer for federal income tax purposes, and ACRS subtractions attributable to such ACRS additions. For the treatment of ACRS additions and ACRS subtractions passed through from a conduit entity see § 4.D.

B. Computation.

1. The outstanding balance of excess cost recovery includes the sum of ACRS additions actually reported on a Virginia return for taxable years beginning on and after January 1, 1982, and before January 1, 1988. If no Virginia return was filed for a taxable year then no ACRS addition with respect to such taxable year may be included in the outstanding balance of excess cost recovery.

2. For most taxpayers the information necessary to compute the "outstanding balance of excess cost recovery" can be found on the Form 302 included with the Virginia returns for taxable years 1986 and 1987.

a. The "ACRS additions" for taxable years 1982, 1983, 1984, and 1985 can be found in Column B of part II of the Form 302 attached to the 1986 and 1987 return.

b. The "ACRS additions" for taxable years 1986 and 1987 can be found in Part I of the Form 302 attached to the 1986 and 1987 return, respectively.

3. The outstanding balance of excess cost recovery is reduced by the sum of ACRS subtractions which would have been allowable with respect to each biennium's ACRS additions, whether or not a return was actually filed claiming an ACRS subtraction in each taxable year beginning on and after January 1, 1984, and before January 1, 1988.

a. The ACRS subtractions which would have been allowable with respect to the first biennium, 1982/1983, are the sum of the ACRS additions actually reported on a Virginia return for all taxable years beginning on and after January 1, 1982, and before January 1, 1984, multiplied by 80% (the percentage allowed or allowable in the four taxable

years following the close of the 1982/1983 biennium, i.e., 20% x 4) or by 100% (see subdivision (2) of this subdivision).

(1) The number of taxable years included in the first biennium may be one, two, or more, depending upon when the taxpayer was required to file a Virginia return and whether returns for short taxable years were filed during the period.

(2) If one or more returns for a short taxable year were filed for a period beginning after the close of the 1982/1983 biennium the percentage allowed or allowable may be 100% for the first biennium (20% x 5).

b. The ACRS subtractions which would have been allowable with respect to the second biennium, 1984/1985, are the sum of the ACRS additions actually reported on a Virginia return for the first two taxable years beginning on and after January 1, 1984, multiplied by 40% (the percentage allowed or allowable in the two taxable years following the close of the 1984/1985 biennium, i.e., 20% x 2).

(1) The number of taxable years included in the second biennium will be two unless the taxpayer did not file a return or only filed one Virginia return during the period beginning after January 1, 1984.

(2) The percentage allowed or allowable may be more or less than 40% if one or more returns for a short taxable year were filed for a period beginning on and after January 1, 1984, or if the taxpayer was not required to file a Virginia return for a period beginning before January 1, 1985.

(3) For example: If a calendar year taxpayer first became subject to Virginia income tax in 1985, there would be no ACRS subtractions with respect to the first biennium because no returns were filed in 1982 and 1983, therefore, no ACRS additions were reported. The ACRS subtractions with respect to the second biennium would be based on ACRS additions reported on the 1985 and 1986 Virginia returns multiplied by 20% (i.e., 20% x 1, the number of taxable years beginning after the close of the second biennium and before January 1, 1988).

c. The ACRS subtractions which would have been allowable with respect to the third biennium, 1986/1987, will be zero unless one or more returns for a short taxable year were filed for a period beginning on and after January 1, 1984.

§ 4. Post-1987 ACRS subtractions.

A. Generally.

1. Except as otherwise provided in § 5, Carryover of unused subtractions; § 6, Final return; § 7, Application

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for refund; and § 8, Special rules, the outstanding balance of excess cost recovery as computed in § 3 shall be claimed as post-1987 ACRS subtractions on returns filed for taxable years beginning on and after January 1, 1988, as set forth in this section.

2. A taxpayer's post-1987 ACRS subtraction for a taxable year is the sum of:

a. The post-1987 ACRS subtraction computed as set forth in this section with respect to the outstanding balance of excess cost recovery attributable to federal ACRS deductions on property owned directly by the taxpayer or deemed to be owned by the taxpayer for federal income tax purposes, and

b. The post-1987 ACRS subtraction computed as set forth in this section with respect to the outstanding balance of excess cost recovery computed in accordance with § 3.B by a conduit entity and passed through to the taxpayer in accordance with § 4.D.

B. Individuals.

1. 1988. For the taxable year beginning in 1988 the post-1987 ACRS subtraction is equal to two-thirds of the outstanding balance of excess cost recovery.

2. 1989. For the taxable year beginning in 1989 the post-1987 ACRS subtraction is equal to one-third of the outstanding balance of excess cost recovery.

3. 1990 and after. If a post-1987 subtraction is included in the Virginia modifications distributed by an S corporation, partnership, estate or trust for its fiscal year ending after December 31, 1989, the individual may elect to include such amounts in the individual's subtractions for the taxable year, or may claim a refund under § 7.

C. Corporations.

1. 1988. For the taxable year beginning in 1988 the post-1987 ACRS subtraction is equal to 10% of the outstanding balance of excess cost recovery.

2. 1989. For the taxable year beginning in 1989 the post-1987 ACRS subtraction is equal to 10% of the outstanding balance of excess cost recovery.

3. 1990. For the taxable year beginning in 1990 the post-1987 ACRS subtraction is equal to ~~30%~~ 10% of the outstanding balance of excess cost recovery.

4. 1991. For the taxable year beginning 1991 the post-1987 ACRS subtraction is equal to ~~30%~~ 10% of the outstanding balance of excess cost recovery.

5. 1992. For the taxable year beginning 1992 the post-1987 ACRS subtraction is equal to 20% of the

outstanding balance of excess cost recovery.

6. 1993. For the taxable year beginning in 1993 the post-1987 ACRS subtraction is equal to 20% of the outstanding balance of excess cost recovery.

7. 1994. For the taxable year beginning in 1994 the post-1987 ACRS subtraction is equal to 20% of the outstanding balance of excess cost recovery.

D. Conduit entities.

1. A conduit entity (estate, trust, partnership and S corporation) shall compute its outstanding balance of excess cost recovery in accordance with § 3.B.

2. In each taxable year beginning on and after January 1, 1988, and before January 1, 1990, a conduit entity shall compute the post-1987 ACRS subtraction in accordance with § 4.B relating to individuals without regard to whether or not the beneficiary, fiduciary, partner or shareholder is an individual, and shall provide each beneficiary, partner or shareholder with sufficient information to report the appropriate post-1987 ACRS subtraction.

3. If a conduit entity files a short year return for the fiscal year ended December 31, 1987, in order to change its taxable year to a calendar year, each beneficiary, partner, or shareholder may, in certain circumstances, elect to spread the income from the conduit entity's short taxable year over four taxable years for federal income tax purposes. If such an election is made:

a. One-quarter of the conduit entity's Virginia modifications for the short taxable year (including the ACRS addition and ACRS subtraction) must be included in the 1987 Virginia taxable income of the beneficiary, partner, or shareholder;

b. One-quarter of the conduit entity's Virginia modifications for the short taxable year (excluding the ACRS addition and ACRS subtraction) must be included in the Virginia taxable income of the beneficiary, partner, or shareholder in each of the three following taxable years; and

c. The beneficiary, partner, or shareholder shall adjust the the post-1987 ACRS subtraction passed through from the conduit entity in each taxable year as follows: (i) For 1988, by subtracting one-half of the conduit entity's 1987 ACRS addition and adding one-half of the conduit entity's 1987 ACRS subtraction; (ii) For 1989, by subtracting one-quarter of the conduit entity's 1987 ACRS addition and adding one-quarter of the conduit entity's 1987 ACRS subtraction.

d. Example. An S corporation was formed in July 1985 and elected a fiscal year ending June 30. It

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reported and passed through ACRS additions of \$200 in each of its F.Y.E. 6/30/86 and 6/30/87. There were no other Virginia additions or subtractions. The S corporation filed a short-year return for F.Y.E. 12/31/87 reporting an ACRS addition of \$100 and an ACRS subtraction of \$80. The sole shareholder of the S corporation elected to spread the short-year income over four years for federal purposes, reporting only \$25 and \$20 of the short-year ACRS additions and subtractions in 1987. In 1988 the S corporation passed through a post-1987 subtraction of \$280 (2/3 of \$500 - \$80). Because of the shareholder's election the \$280 must be reduced by 1/2 of the F.Y.E. 12/31/87 addition (1/2 of 100 = 50) and increased by 1/2 of the F.Y.E. 12/31/87 subtraction (1/2 of 80 = 40) for a net modification of \$270. The net effect of these modifications is represented in the following table:

Description of Modification	Total Passed Through	Reported in Shareholder's Virginia Return For			
		1986	1987	1988	1989
F.Y.E. 6/30/86 ACRS Addition	200	200			
F.Y.E. 6/30/87 ACRS Addition	200		200		
F.Y.E. 12/31/87 ACRS Addition	100		25	50	25
F.Y.E. 12/31/87 ACRS Subtract.	(80)		(20)	(40)	(20)
Post-1987 ACRS Subtraction	(420)			(280)	(140)
Net Modifications	0	200	205	(270)	(135)

E. Short taxable year.

1. If there is more than one taxable year beginning on or after January 1, 1988, because of a taxable year of less than 12 months, the allowable portion of the subtraction shall be prorated between all taxable years which begin in the same calendar year. The proration will be based on the number of months in each taxable year divided by the total number of months in all taxable years beginning during the calendar year.

2. Example. XYZ, Inc. files on a calendar year basis. On December 21, 1987, XYZ, Inc. is acquired by Holding, Inc., which files its returns on the basis of a fiscal year ending on September 30. In order to be included in a consolidated return with Holding, Inc., XYZ, Inc. files two returns for taxable years beginning in 1988 - a short-year return for the period January 1, 1988, through September 30, 1988, (nine months) and a return for the period October 1, 1988, through September 30, 1989, (12 months). Because there are two taxable years beginning in 1988, which cover a total of 21 months, the post-1987 ACRS subtraction for 1988 (10% of the outstanding balance of excess cost recovery) must be prorated between the nine-month

taxable year and the 12-month taxable year as follows:

Taxable year 1/1/88-9/30/88:	10% X 9/21 = 4.29%
Taxable year 10/1/88-9/30/89:	10% X 12/21 = 5.71%
Total subtractions for 1988 = 10.00%	

F. Former S corporation.

1. If an S corporation becomes taxable under subchapter C of the I.R.C., its post-1987 ACRS subtraction for taxable years after termination of the election shall be the amount by which:

a. The total post-1987 ACRS subtractions for the current and all prior taxable years computed under § 4 C relating to corporations, exceeds

b. The total post-1987 ACRS subtractions which were actually passed through to beneficiaries, partners and shareholders by the former S corporation or which were claimed by the corporation after it ceased to qualify as an S corporation.

2. Example. An S corporation is acquired by another corporation as of the first day of 1989, thereby terminating its status as an S corporation for 1989. Two-thirds of the outstanding balance of excess cost recovery was passed through to the former S corporation's shareholders in 1988. The remaining one-third will be subtracted as follows:

Post-1987 ACRS Subtraction	1989	1990	1991	1992	1993	1994
1. Percent allowable for current and prior years	20%	50%	60%	60%	60%	100%
2. Percent previously passed through or allowed	66.7%	66.7%	66.7%	66.7%	66.7%	80%
3. Percent allowable for current year (L. 1 minus L. 2, but not less than 0)	0.0%	0.0%	0.0%	0.0%	13.3%	20%

3. If a corporation makes a valid election to be taxed under subchapter S of the I.R.C. after 1987, any post-1987 ACRS subtraction which has not been used by the corporation shall be passed through to its shareholders in accordance with § 4 D. However, if the election is made for a taxable year beginning on and after January 1, 1990, no amount shall be passed

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through to the shareholder under § 4 D, but the corporation shall be eligible to apply for a refund under § 7.

§ 5. Carryover of unused subtractions.

A. Individuals.

1. Any individual who has insufficient income to offset the full amount of the post-1987 ACRS subtraction shall add the amount not offset to the amount allowable for the following taxable year. No amount may be subtracted under this subdivision in any taxable year beginning on or after January 1, 1990. An individual who has not recovered the full amount of the outstanding balance of excess cost recovery under this section or under § 4 on his income tax returns filed for taxable years 1988 and 1989, may qualify to file an application for a refund under § 7 of this regulation.

2. The portion of any post-1987 ACRS subtraction available for carryover is the lesser of:

a. The amount by which Virginia taxable income is less than zero, or

b. The post-1987 ACRS subtraction for the taxable year including amounts carried over from a prior year under this section.

3. A taxpayer may not elect to claim less than the allowable post-1987 ACRS subtraction in any year in order to take advantage of a credit, or for any other reason.

4. Example.

a. Taxpayer A, an individual filing on a calendar year, has an outstanding balance of excess cost recovery equal to \$9,000 after taxable year 1987. For calendar year 1988 he is single with federal adjusted gross income of \$12,350 and Virginia itemized deductions of \$7,250. For Virginia income tax purposes, he has no federal adjusted gross income and he has no subtractions from federal adjusted gross income other than his post-1987 ACRS subtraction. His carryover from taxable year 1988 to 1989 is \$1,700, which is computed in the following manner:

Federal Adjusted Gross Income	\$12,350
Va. Personal Exemption	- 800
Va. Itemized Deductions	- 7,250
Post-1987 ACRS Subtraction (\$9,000 x 2/3)	- 6,000
Va. Taxable Income	- 1,700

b. Taxpayer A would be allowed to carryover \$1,700 of his post-1987 ACRS subtraction for 1988 to 1989 and add it to the post-1987 ACRS subtraction (\$3,000) otherwise allowable as a subtraction in 1989. Therefore, in 1989 Taxpayer A will have a total post-1987 ACRS subtraction of \$4,700 (\$1,700 carryover from 1988 + \$3,000 for 1989).

c. Taxpayer A may not claim a post-1987 ACRS subtraction of less than \$6,000 in 1988 (increasing the amount carried over to 1989) in order to take advantage of an energy income tax credit carried over from 1987 (which cannot be carried over to 1989).

B. Corporations.

1. Any corporation which has insufficient income to offset the full amount of the post-1987 ACRS subtraction shall add the amount not offset to the amount allowable for the following taxable year. No amount may be subtracted under this subdivision in any taxable year beginning on or after January 1, ~~1993~~ 1995. Any corporation that has not recovered the full amount of the outstanding balance of excess cost recovery under § 4 or under this section on income tax returns filed for taxable years beginning on or after January 1, 1988, but before January 1, ~~1993~~ 1995, may qualify to file an application for a refund under § 7 of this regulation.

2. The amount of the post-1987 ACRS subtraction available for carryover is the lesser of:

a. The amount by which Virginia taxable income is less than zero, or

b. The post-1987 ACRS subtraction for the taxable year including amounts carried over from a prior year under this section.

3. Example. ABC, Inc. has an outstanding balance of excess cost recovery equal to \$120,000 after taxable year 1987. Under § 4 the allowable post-1987 ACRS subtraction is \$12,000 for 1988 and 1989, ~~\$36,000 for 1990 and through 1991~~, and \$24,000 for 1992, 1993 and 1994. ABC has losses or income which are insufficient to absorb the full amount of the post-1987 ACRS subtractions in every year. The Virginia taxable income and carryover would be computed as follows:

Taxable year	1988	1989	1990	1991	1992
Taxable Income					
Before Post					
1987 ACRS					
Subtraction:	10,000	-5,000	28,000	78,000	36,000
Post-1987 ACRS					
Subtractions					
for current					
year:	12,000	12,000	36,000	36,000	24,000
from prior					
year:	N/A	2,000	14,000	22,000	0

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Taxable Income:	-2,000	-19,000	-22,000	20,000	12,000		
Post-1987 ACRS Subtraction available for next year:	2,000	14,000	22,000	0	N/A		
Taxable year:	1988	1989	1990	1991	1992	1993	1994
Taxable Income Before Post-1987 ACRS Subtraction:	10,000	-5,000	8,000	16,000	36,000	32,000	42,000
Post-1987 ACRS Subtractions for current year:	12,000	12,000	12,000	12,000	24,000	24,000	24,000
from prior year:	N/A	2,000	14,000	18,000	14,000	2,000	0
Taxable Income:	-2,000	-19,000	-18,000	-14,000	-2,000	6,000	18,000
Post-1987 ACRS Subtraction available for next year:	2,000	14,000	18,000	14,000	2,000	0	N/A

"N/A" means a carryover is not available to or from the taxable year.

C. Conduit entities.

Estates, trusts, partnerships and S corporations do not carryover post-1987 ACRS subtractions under this section. Amounts distributed under § 4 D may be carried over by the beneficiaries, partners or shareholders.

D. Nonresidents.

If a nonresident has income from Virginia sources or is required to file a Virginia return the nonresident may claim a post-1987 ACRS subtraction and carryover unused amounts under this section.

§ 6. Final return.

1. When any taxpayer has filed a final federal return due to the death of an individual or the dissolution of a partnership, estate, trust, or individual, for a taxable year beginning on and after January 1, 1988, the taxpayer may claim the entire outstanding balance of excess cost recovery (less amounts already claimed as a post-1987 ACRS subtraction) on the final Virginia return.

a. Conduit entities. Amounts claimed on the final Virginia return of an estate, trust, partnership or S corporation shall be distributed in accordance with § 4 D.

b. Other taxpayers. If the taxpayer has insufficient income on the final Virginia return to offset the entire amount allowable under this subdivision, an application for the refund of unrecovered taxes paid on the outstanding balance of excess cost recovery

may be filed under § 7.

2. The fact that a taxpayer files a final Virginia return because an individual has moved from Virginia or a business has discontinued operations in Virginia shall not entitle the taxpayer to the immediate subtraction or refund allowed in § 7 A 1.

§ 7. Application for refund.

A. Generally.

1. Any taxpayer who can demonstrate that the entire outstanding balance of the excess cost recovery as computed in § 3 has not been recovered through post-1987 ACRS subtractions allowable under §§ 4 or 5 by such taxpayer or any other taxpayer may apply for a refund of unrecovered taxes paid on the outstanding balance of excess cost recovery.

2. When any taxpayer has filed a final federal return due to the death of an individual or the dissolution of a partnership, estate, trust, or individual, an application for the refund of unrecovered taxes paid on the outstanding balance of excess cost recovery may be filed by the person authorized to act on behalf of the deceased or dissolved taxpayer.

3. The fact that a taxpayer files a final Virginia return because an individual has moved from Virginia or a business has discontinued its operations in Virginia shall not entitle the taxpayer to apply for a refund under this section.

4. Estates, trusts, partnerships and S corporations shall not apply for a refund under this section except to the extent that the fiduciary of an estate or trust paid tax on undistributed income.

5. No refund shall be allowed under this section unless the taxpayer has income from Virginia sources or is required to file a Virginia return for each taxable year in which a subtraction is allowed under § 4 or, if earlier, for each taxable year until a final federal return is filed.

B. Computation of the refund amount.

1. The refund shall be computed upon the amount of the outstanding balance of excess cost recovery which has not been recovered through post-1987 ACRS subtractions allowable under §§ 4 or 5. This amount shall be multiplied by 5.75% (0.0575) in the case of an individual or by 6.0% (0.06) in the case of a corporation.

2. In no case shall the amount of refund allowed under this section exceed the amount of tax that was actually paid on the outstanding balance of excess cost recovery and not otherwise recovered through post-1987 ACRS subtractions. For the purpose of

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computing the limitation under this subdivision:

a. The refund shall be limited to the amount by which (i) the sum of the difference between the tax actually paid and the tax computed without the ACRS addition and ACRS subtraction for each taxable year beginning on and after January 1, 1982, and before January 1, 1988, exceeds (ii) the sum of the difference between the tax actually paid and the tax computed without the post-1987 ACRS subtraction for each taxable year beginning on and after January 1, 1988.

b. A beneficiary may include tax paid by an estate or trust with respect to a distribution of accumulated income.

c. A shareholder of an S corporation may include the distributive share of tax paid by the corporation in years before it elected S corporation status.

d. In the case of a net operating loss, a taxpayer may include either:

(1) Virginia income tax paid in the year of the loss (if any), or

(2) Virginia income tax paid in a year to which any portion of the loss year ACRS addition and ACRS subtraction may have been carried with a federal net operating loss deduction.

e. In the case of a corporation required to allocate and apportion its income for any taxable year in which an ACRS addition was reported the Virginia income tax paid for such year shall be the tax attributable to the ACRS addition (net of any allowable ACRS subtraction) after apportionment.

3. Examples.

a. Newco, Inc. is incorporated in 1986 and dissolved in 1988. Newco reports ACRS additions of \$1,000 on its 1986 return and \$1,500 on its 1987 return. Newco's outstanding balance of excess cost recovery is \$2,500, all of which is reported on the 1988 final return under § 6. Since Newco only has sufficient income in 1988 to offset \$1,000 of the final post 1987 ACRS subtraction, Newco has \$1,500 of unrecovered outstanding balance of excess cost recovery eligible for a refund under § 7 A. The refund amount would be \$90 (\$1,500 x 6%) under § 7 B 1; however, under § 7 B 2 the refund is limited to \$24 (the tax of \$60 actually paid in 1986 and 1987 attributable to the ACRS additions less the tax of \$36 attributable to the ACRS additions less the tax of \$36 attributable to the post-1987 subtraction in 1988). The calculation of the limitation is shown below:

1986 1987 1988

	With ACRS	W/O ACRS	With ACRS	W/O ACRS	With ACRS	W/O ACRS
Income after other						
Va. modifications	2,000	2,000	500	500	1,000	1,000
ACRS addition	1,000	*	1,500	*		
Post 1987 ACRS sub.					2,500	*
Va. taxable income	3,000	2,000	2,000	500	(1,500)	1,000
Apportionment factor	25%	25%	50%	50%	60%	60%
Income of a multistate	750	500	1,000	250	(900)	600
Tax (6%)	45	30	60	15	0	36
Difference (i.e., tax attributable to ACRS modifications)		15		45		(36)

* ACRS modification excluded to compute the limitation.

Therefore, the limitation on the refund is \$24 (15 + 45 - 36).

b. James Smith moved to Virginia in 1987 and was required to report an ACRS addition in the amount of \$6,000 on his 1987 return. His outstanding balance of excess cost recovery is \$6,000 which will be subtracted in 1988 and 1989. After filing his 1989 return, Mr. Smith still has \$2,000 of the outstanding balance of excess cost recovery which has not offset income and requests a refund in the amount of \$115 (2,000 x 0.0575). However Mr. Smith's refund is limited to \$66, (the tax of \$266 actually paid in 1987 attributable to the ACRS additions less the tax of \$200 attributable to the ACRS additions less the tax of \$200 attributable to the post-1987 subtractions in 1988 and 1989). The calculation of the limitation is shown below:

	1987		1988		1989	
	With ACRS	W/O ACRS	With ACRS	W/O ACRS	With ACRS	W/O ACRS
Federal Adj. Gross Income	6,000	6,000	17,000	17,000	3,800	3,800
Additions (except ACRS)	0	0	0	0		
Subtractions (except ACRS)	0	0	0	0		
Va. Personal Exemption	700	700	800	800	800	800
Va. Standard Deduction	2,000	2,000	2,700	2,700	3,000	3,000
Taxable income before ACRS	3,300	3,300	13,500	13,500	0	0
ACRS Addition	6,000	*				
ACRS Subtraction						

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Post 1987 ACRS subtraction			4,000	*	2,000	*
Virginia taxable income	9,300	3,300	9,500	13,500	(2,000)	0
Tax	335	69	345	545	0	0
Difference (i.e., tax attributable to ACRS mod.)		266		(200)		0

* ACRS modification excluded to compute the limitation.

Therefore, the limitation on the refund is \$66 (266 - 200 - 0).

C. When to file the application for refund.

1. The application for refund may be filed after filing final federal and Virginia income tax returns as provided in § 6 or after filing the income tax return for the last taxable year specified under § 4 for claiming a post-1987 ACRS subtraction.

2. An application for refund must be filed within three years of the applicable date.

a. In the case of a final federal and Virginia return due to the death or dissolution of a taxpayer, the applicable date is the later of July 1, 1988, for a final return for a period beginning before January 1, 1988, or the due date of the final return for a period beginning on or after January 1, 1988.

b. In the case of an application for refund of unrecovered taxes paid on the outstanding balance of excess cost recovery, the applicable date is the due date of the last return on which the taxpayer is entitled to claim a subtraction under §§ 4 or 5. A calendar year individual may file such application after filing the income tax return for 1989. A calendar year corporation may file such application after filing the income tax return for 1992 1994 .

D. Form of application.

Any application for refund of unrecovered taxes paid on the outstanding balance of excess cost recovery shall be filed by a letter to the Tax Commissioner requesting the refund or by amended return. The letter shall provide sufficient documentation to demonstrate that the amount of refund requested does not exceed the amount specified in § 7 B 2 (tax actually paid).

E. Accelerated application for refund.

A corporation which would be entitled to file an application for a refund under this section may apply to the Tax Commissioner for permission to claim the refund in an earlier taxable year. The Tax Commissioner shall have the authority, at his discretion, to allow the refund to be claimed in an earlier taxable year if the taxpayer has

demonstrated to the satisfaction of the Tax Commissioner that:

1. The taxpayer has paid Virginia income tax with respect to its outstanding balance of excess cost recovery,

2. The taxpayer has not recovered any portion of the outstanding balance of excess cost recovery,

3. The taxpayer will be required to file a Virginia income tax return for each year in which a subtraction is allowable under §§ 4 and 5,

4. The taxpayer can reasonably expect never to have any federal taxable income or Virginia taxable income to offset the subtractions allowable under §§ 4 and 5, and

5. No other taxpayer may claim or has claimed a subtraction or a refund with respect to the taxpayer's outstanding balance of excess cost recovery by reason of § 8.A (Successor entities) or § 4.D (Conduit entities).

6. Example. A Real Estate Investment Trust (REIT) is required to distribute its income to shareholders and generally has no federal taxable income subject to tax. Because items of income and deduction do not have the same character in the hands of a REIT's shareholders, the ACRS modifications do not flow through to the shareholders. Therefore, a REIT can reasonably expect never to have any federal taxable income or Virginia taxable income to offset the subtractions allowable under §§ 4 and 5, and would qualify for the immediate refund under this subsection.

F. Interest.

No interest shall be paid on refunds made under this section.

§ 8. Special rules.

A. Successor entities.

In computing the outstanding balance of excess cost recovery a taxpayer may include ACRS additions and ACRS subtractions made by other taxpayers in the following situations:

1. A surviving spouse may include ACRS additions and ACRS subtractions made on a joint or combined Virginia return with the decedent.

2. A corporate taxpayer may include ACRS additions and ACRS subtractions made by another corporation if there has been a merger or other form of reorganization under the following conditions:

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a. The taxpayer would be allowed under federal law to claim a net operating loss deduction based upon a net operating loss incurred by the other corporation, assuming such other corporation incurred a net operating loss.

b. A statement shall be attached to the return setting forth:

(1) The name and taxpayer I.D. No. of such other corporation,

(2) Details of the ACRS additions, ACRS subtractions and post-1987 ACRS subtractions claimed by such other corporation,

(3) An explanation of the relationship between the taxpayer and such other corporation, and

(4) A statement signed by the taxpayer to the effect that the post-1987 ACRS subtraction has not, and will not, be claimed by any other taxpayer on any other return, including the final return of such other corporation.

3. A successor entity which elects to include ACRS additions and ACRS subtractions of another taxpayer in its outstanding balance of excess cost recovery shall not be eligible to apply for a refund under § 7 due to the final federal and Virginia return of such other taxpayer.

B. Multiple recovery prohibited.

A taxpayer may not claim a subtraction under §§ 4 or 5 or a refund under § 7 with respect to any portion of the outstanding balance of excess cost recovery which such taxpayer or any other taxpayer has previously recovered.

C. Net operating losses.

1. In the case of net operating losses occurring in a taxable year beginning before January 1, 1988:

a. A federal net operating loss deduction with respect to such loss which is claimed in a taxable year beginning before January 1, 1988, shall carry with it the ACRS additions and ACRS subtractions as provided in § 1.B.5.(iii) of VR 630-3-402 and § 4 of VR 630-2-311.1.

b. A federal net operating loss deduction with respect to such loss which is claimed in a taxable year beginning on and after January 1, 1988, shall not carry with it any ACRS additions or ACRS subtractions.

c. In computing the outstanding balance of excess cost recovery, the ACRS additions and ACRS subtractions for the loss year shall be included only once, for the year of the loss. Amounts carried to

other years with the federal net operating loss deduction shall be ignored.

2. For net operating losses occurring in a taxable year beginning on and after January 1, 1988, a federal net operating loss deduction with respect to such loss shall not carry with it any portion of the subtraction allowable under §§ 4 and 5.

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a substantial change from the proposed text of the regulations.

DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

NOTE: The Board of Game and Inland Fisheries is exempted from the Administrative Process Act (§ 9-6.14:4 of the Code of Virginia); however, it is required by § 9-6.14:22 to publish all proposed and final regulations.

Title of Regulation:

VR 325-01. Definitions and Miscellaneous.

VR 325-01-1. In General.

VR 325-02. Game.

VR 325-02-20. Skunk.

VR 325-02-24. Waterfowl and Waterfowl Blinds.

VR 325-02-28. Weasel.

VR 325-02-29. Woodchuck.

VR 325-03. Fish.

325-03-5. ~~Minnows, Hellgrammites and Crayfish.~~
Aquatic Invertebrates, Amphibians, Reptiles and Nongame Fish.

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: October 15, 1990.

Summary:

Summaries are not provided since, in most instances the summary would be as long or longer than the full text.

VR 325-01. DEFINITIONS AND MISCELLANEOUS.

VR 325-02-1. IN GENERAL.

§ 16. Nuisance species designated.

A. The board hereby designates the following species as nuisance species pursuant to § 29.1-100 of the Code of Virginia.

1. Mammals:

- a. House mouse (*Mus musculus*).
- b. Norway rat (*Rattus norvegicus*).
- c. Black rat (*Rattus rattus*).
- d. Coyote (*Canis latrans*).

2. Birds:

- a. European starling (*Sturnus vulgaris*).
- b. English (house) sparrow (*Passer domesticus*).
- c. Pigeon (Rock Dove) (*Columba livia*).

B. [*All other wildlife species not classified as game, furbearer or nuisance, or otherwise specifically permitted by law or regulation, are protected from taking, possession, transport or sale. It shall be unlawful to take, possess, transport or sell all other wildlife species not classified as game, furbearer or nuisance, or otherwise specifically permitted by law or regulation.*]

§ 17. Taking and possession of certain rodents for private use.

Except as otherwise provided for in the Code of Virginia and regulations of the board, it shall be lawful to take and possess no more than three individuals of any single species of rodents (order Rodentia) for private use [~~than~~ those listed below:

1. ~~Those species listed as game or furbearers;~~
2. ~~Those species listed as endangered or threatened; and~~
3. ~~The following species listed for personal and public health or ecological reasons: except for those species listed as game or furbearers, endangered or threatened (Code of Virginia, § 29.1-568), or listed as special concern, including the following:]~~

[a. 1.] Allegheny woodrat (*Neotoma floridana*).

[b. 2.] Pungo mouse (*Peromyscus leucopus easti*).

[e. 3.] Rock vole (*Microtus chrotorrhinus carolinensis*).

[~~d.~~ 4.] Cotton mouse (*Peromyscus gossypinus gossypinus*).

§ 18. Taking of invertebrates.

A. Earthworms.

Earthworms may be taken at any time for private or commercial use.

B. Other invertebrates.

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Except as otherwise provided for in §§ 3.1-1020 through 3.1-1030 and 29.1-418 of the Code of Virginia and in VR 325-01-1 § 14, invertebrates, other than those listed as endangered, threatened or of special concern, may be taken for private use.

VR 325-02-20. SKUNK.

§ 1. Continuous open season for taking striped skunks.

It shall be lawful to ~~kill~~ take striped skunks (*Mephitis mephitis*) at any time.

§ 2. Taking of spotted skunks.

A landowner or tenant may take, on his own land or land under his control, spotted skunks (*Spilogale putorius*) committing or about to commit depredation. However, the pelt of the spotted skunk may not be sold.

VR 325-02-24. WATERFOWL AND WATERFOWL BLINDS.

§ 19. Great Hunting Creek and Dyke Marsh—No-hunting area established.

[The waters of the Potomac River contained in the Great Hunting Creek embayment, to the North of Dyke Marsh, in the City of Alexandria, and in Fairfax County to within 1,000 feet of the Commonwealth of Virginia border with the State of Maryland, are hereby declared a no-hunting area. Within this area, it shall be unlawful to take or attempt to take waterfowl, except in the pursuit of wounded birds. The waters of the Great Hunting Creek embayment within the City of Alexandria, and the waters of the Potomac River in Fairfax County north of Dyke Marsh and south of the City of Alexandria and between the shore and a line 1,000 feet from the Maryland state line, are declared a no-hunting area. It shall be unlawful to hunt migratory waterfowl within this no-hunting area (although waterfowl that have been wounded elsewhere may be pursued into this area), and no stationary or floating blind shall be located within this no-hunting area.]

§ 20. Great Hunting Creek and Dyke Marsh—Floating blind area.

No license shall be issued for stationary waterfowl blinds on the Potomac River in Fairfax County adjacent to National Park Service Lands in the Great Hunting Creek and Dyke Marsh areas. Waterfowl hunting in Commonwealth waters adjacent to the above mentioned lands shall be by licensed floating blind only. Such floating blinds must be attached securely to a post or buoy affixed to the river bottom by the department, and are limited to one floating blind per post at any time. Hunters in licensed floating blinds may hunt from designated locations during legal shooting hours on Thanksgiving Day and on Mondays, Wednesdays and Fridays during the open seasons for hunting waterfowl in Virginia. Blind sites shall be occupied on a daily first-come basis, such sites to be occupied no earlier than 4 a.m. or later than one-half

hour after sunset. All such blinds shall be removed each day.

[Note: The board will also consider in this proposal whether there should be some stationary blinds permitted. The board will also consider in this proposal whether there will be some Saturday hunting permitted.]

VR 325-02-28. WEASEL.

§ 1. Open season for long-tailed weasel.

It shall be lawful to take long-tailed weasels (*Mustela frenata*) from December 1 through the last day of February, both dates inclusive.

§ 2. Sale, etc., of pelts of least weasel.

It is unlawful to take or sell the pelt of the least weasel (*Mustela nivalis*).

§ 3. Taking of weasels committing depredation.

A landowner or tenant may take, on his own land or land under his control, weasels committing or about to commit depredation.

VR 325-02-29. WOODCHUCK.

§ 1. Continuous open season.

There shall be a continuous open season for the taking of woodchuck (*Marmota monax*).

VR 325-03. FISH.

VR 325-03-5. AQUATIC INVERTEBRATES, AMPHIBIANS, REPTILES AND NONGAME FISH.

§ 1. Taking aquatic invertebrates, amphibians, reptiles and nongame fish for private use.

A. Generally.

Except as otherwise provided for in § 29.1-418 of the Code of Virginia, VR 325-01-1, § 13, VR 325-01-1, § 14, VR 325-03-1, VR 325-03-2, VR 325-03-3, VR 325-03-4 and the sections of this regulation, it shall be lawful to take and possess no more than three individuals of any single species of amphibian and reptile or 20 individuals of any single species of aquatic invertebrates and nongame fish for private use.

B. "Fish bait."

"Fish bait," as used in this section, shall be defined as minnows and chubs (*Cyprinidae*), alewives, blueback herring, suckers, gizzard shad, salamanders, crayfish, [~~mollusks or mussels,~~] and hellgrammites. Except as provided for in VR 325-01-1, § 13, VR 325-03-1, VR

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325-03-2, VR 325-03-3, VR 325-03-4 and VR 325-03-5, § 1, subsection A, and except in any waters where the use of nets is prohibited, it shall be lawful to take "fish bait" for private use, but not for commercial purposes. Possession limit shall be 50 individuals in aggregate, unless said person has purchased "fish bait" and has a receipt specifying the number of individuals by species purchased. "Fish bait" may only be taken with a seine not exceeding four feet in depth by 10 feet in length, an umbrella type net not exceeding five by five feet in diameter, small minnow traps with throat openings no larger than one inch in diameter, cast nets not to exceed four feet in radius and hand-held bow nets with diameter not to exceed 20 inches and handle length not to exceed eight feet (such cast net and hand-held bow nets, when so used, shall not be deemed dip nets under the provisions of § 29.1-416 of the Code of Virginia.

C. Bullfrogs.

It shall be lawful to take bullfrogs for private use except from the banks or waters of designated trout waters. The daily limit for bullfrogs shall be 15.

D. Mollusks.

Except as provided for in §§ 29.1-418 and 29.1-568 of the Code of Virginia, the taking of mussels and the spinya riversnail (*Io fluvialis*) is prohibited in the Tennessee drainage in Virginia (Clinch, Powell and the North, South and Middle Forks of the Holston Rivers and tributaries) and mussels in the James River and tributaries west of U.S. Route 29.

§ 2. Taking minnows and nongame fish for private use as bait.

Rescind this section in its entirety.

† § 2. Taking minnows and chubs for sale.

A. Minnow "Haul seine" defined.

Minnow "Haul seine," as used in this section, when used in the public inland waters of the Commonwealth above where the tide ebbs and flows, shall mean a haul seine not exceeding four feet in depth by 14 15 feet in length, and when used in the public inland waters below where the tide ebbs and flows, shall mean a haul seine not exceeding four feet in depth by 100 feet in length. Such a term shall be construed also to include umbrella type nets without limit as to size and also small minnow traps with throat openings no larger than one (1) inch in diameter.

B. Permit required.

It shall be unlawful to take minnows and chubs (*Cyprinidae*) for sale from the public inland waters of the Commonwealth without having a permit therefor as provided for in Code of Virginia § 29.1-416.

C. Permit holder to be present when seine operated; persons assisting.

The holder of a permit to seine for minnows and chubs (*Cyprinidae*) must be present at all times when the seine is being operated to catch minnows and chubs (*Cyprinidae*). Persons assisting in the operation of the haul seine need not obtain permits.

D. Records.

The holder of a permit to take minnows and chubs (*Cyprinidae*) for sale shall keep a record of the approximate number of minnows and chubs (*Cyprinidae*) caught taken by location (name and county of water body and sold, together with the amount received therefor.

§ 3. Taking of snapping turtles, crayfish and hellgrammites for sale.

It shall be lawful to take snapping turtles, crayfish and hellgrammites for sale.

§ 3. 4. Taking minnows where nets prohibited; Releasing game fish from nets, traps, etc.

It shall be unlawful to take minnows in any waters where the use of nets is prohibited. It shall be unlawful in the public inland waters of the Commonwealth to take game fish in a minnow seine, net pot or trap, and all game fish caught in such minnow seines, nets, pots or traps shall immediately be returned without injury to the waters from which taken.

§ 4. Exporting from commonwealth prohibited where taken from public inland waters.

It shall be unlawful for any person to ship, transport or carry for sale any minnows, hellgrammites or crayfish taken from the public inland waters of this commonwealth beyond the boundaries of this commonwealth.

MARINE RESOURCES COMMISSION

NOTICE: The Marine Resources Commission is exempted from the Administrative Process Act (§ 9-6.14:1 of the Code of Virginia); however, it is required by § 9-6.14:22 B to publish all final regulations.

Title of Regulation: VR 450-01-0034. Pertaining to the Taking of Striped Bass.

Statutory Authority: §§ 28.1-23 and 28.1-50 of the Code of Virginia.

Effective Date: September 17, 1990.

Preamble:

This regulation establishes a limited commercial and

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recreational fishery for striped bass in Virginia. The purpose of this regulation is to provide for a transitional fishery and to ensure the continued recovery of the Chesapeake Bay stocks of striped bass. These changes comply with the recommendations of the Interstate Fishery Management Plan for Striped Bass.

Section 10 of this regulation authorizes the aquaculture of striped bass and hybrid striped bass and sets forth the terms and conditions required for their culture.

VR 450-01-0034. Pertaining to the Taking of Striped Bass.

§ 1. Authority, prior regulations, effective date.

A. This regulation is promulgated pursuant to the authority contained in §§ 28.1-23 and 28.1-50 of the Code of Virginia.

B. This regulation amends previous regulation VR 450-01-0034, Pertaining to the Taking of Striped Bass, which was promulgated and made effective on June 1, 1989 1990 .

C. The effective date of this regulation is June 1 September 17, 1990.

§ 2. Purpose.

The purpose of this regulation is to provide for the immediate protection of Virginia's striped bass stocks and to prevent the harvest of female striped bass of 1982 year-class and subsequent year classes. The purpose of this regulation is to provide for the continued recovery of Virginia's striped bass stocks.

The provisions pertaining to aquaculture serve to prevent escapement of cultured hybrid striped bass into the natural environment and to minimize the impact of cultured fish in the market place on the enforcement of other provisions in this regulation.

§ 3. Definitions.

A. Striped bass - any fish of the species *Morone saxatilis* including any hybrid striped bass.

B. Spawning rivers - the James, Pamunkey, Mattaponi and Rappahannock Rivers including all their tributaries.

C. Spawning reaches - sections within the spawning rivers as follows:

1. James River: From a line connecting Dancing Point and New Sunken Meadow Creek upstream to a line connecting City Point and Packs Point;

2. Pamunkey River: From the Route 33 bridge at West Point upstream to a line connecting Liberty Hall and the opposite shore;

3. Mattaponi River: From the Route 33 bridge at West Point upstream to the Route 360 bridge at Aylett;

4. Rappahannock River: From the Route 360 bridge at Tappahannock upstream to the Route 3 bridge at Fredericksburg.

§ 4. Closed areas, seasons, and gear limitations. Fishing and possession seasons.

A. During the period June 1, 1990, to November 4, 1990, inclusive, a person may not take, catch, possess, transport, process, sell or offer for sale any striped bass.

B. During the period April 1 to May 31, inclusive, a person may not set or fish any anchored or staked gill net within the spawning reaches. Drift (float) gill nets may be set or fished within the spawning reaches during the closed season, but the fishermen must remain with such net while that net is in the fishing position.

A. Except as provided in § 7 of this regulation, the open fishing season for striped bass in Virginia tidal waters shall be November 5, 1990, to December 5, 1990, both dates inclusive. It shall be unlawful for any person to take or catch any striped bass other than during the open fishing season. The open fishing season may be adjusted as described in § 7 of this regulation.

B. During the period September 17, 1990, to March 31, 1991, both dates inclusive, it shall be lawful for any person to possess striped bass, including striped bass taken from waters other than Virginia tidal waters, under the following conditions:

1. The striped bass shall have been harvested legally in Virginia or another jurisdiction.

2. When the striped bass are in the possession of the harvester, the striped bass shall be accompanied with a copy of the permit or license authorizing their harvest or a receipt indicating the name of the permit holder, the permit number, date of catch, and number or pounds of fish in possession.

3. When striped bass are in the possession of any person other than the original harvester, the striped bass shall be accompanied by a bill of sale which shall include the name of the seller, the permit or license number of the seller if such permit or license is required in the jurisdiction of origin, the date of sale, the pounds of striped bass in possession, the location of catch and the gear type used to harvest the striped bass.

C. During the period April 1, 1991, to September 16, 1991, both dates inclusive, it shall be unlawful for any person to possess, transport, process, sell or offer for sale any striped bass.

§ 5. Minimum and maximum size limits, total length

determination.

A. It shall be unlawful for any person to possess any striped bass measuring less than 18 inches, total length.

B. It shall be unlawful for any person to possess any striped bass taken from the Territorial Sea of any state, including Virginia, or the ocean waters under the jurisdiction of the federal government measuring less than 28 inches, total length.

C. It shall be unlawful for any person to possess any striped bass measuring greater than 36 inches, total length.

D. It shall be unlawful for any person, while aboard any boat or vessel or while fishing from shore or pier, to alter any striped bass or to possess any altered striped bass such that its total length cannot be determined.

E. Total length shall be measured in a straight line from the tip of the nose of the striped bass to the tip of its tail.

§ 6. Gear restrictions.

A. During the period April 1 to May 31, of each year, both dates inclusive, a person may not set or fish any anchored or staked gill net within the spawning reaches. Drift (float) gill nets may be set or fished within the spawning reaches during this time period, but the fishermen must remain with such net while that net is in the fishing position.

B. The minimum mesh size of any gill net used for the harvest of striped bass shall be five inches, stretched measure.

C. Persons utilizing a vessel or boat in the harvest of striped bass by gill net shall be limited to 1800 feet of gill net per vessel.

D. It shall be unlawful for any person utilizing a vessel or boat to harvest fish by gill net to have on board, possess or land striped bass in a vessel equipped with more than 1800 feet of gill net, or net with mesh size of less than 5 inches stretched measure.

§ 7. Commercial harvest quotas.

A. During the open fishing season it shall be unlawful to harvest striped bass for commercial purposes by any method other than by gill net, pound net, haul seine, or fyke net. The harvest of striped bass by any person using a gill net, pound net, haul seine, or fyke net shall be presumed to be for commercial purposes and the amounts of such harvest shall be summed to the total allowable level of commercial harvest.

B. The total allowable sum of commercial harvest of striped bass by all legal harvest methods shall be 211,000 pounds of whole fish. At such time as the total harvest of

striped bass reaches 211,000 pounds it shall be unlawful for any person to take or land any striped bass by any method

C. The total allowable level of commercial striped bass harvest by gill net shall be 147,700 pounds of whole fish. At such time as the harvest of striped bass by gill net totals 147,700 pounds it shall be unlawful for any person to take or land any striped bass by gill net.

D. The total allowable level of commercial striped bass harvest by pound net shall be 52,750 pounds of whole fish. At such time as the harvest of striped bass by pound net totals 52,750 pounds, it shall be unlawful for any person to take or land any striped bass by pound nets.

E. The total allowable level of commercial striped bass harvest by haul seine shall be 6,330 pounds of whole fish. At such time as the harvest of striped bass by haul seine totals 6,330 pounds, it shall be unlawful for any person to take or land any striped bass by haul seine.

F. The total allowable level of commercial striped bass harvest for fyke net shall be 4,220 pounds of whole fish. At such time as the harvest of striped bass by fyke net totals 4,220 pounds, it shall be unlawful for any person to take or land any striped bass by fyke net.

G. In the event that the harvest of striped bass by any single commercial gear exceeds its harvest level provided for in the preceding paragraphs such that the total allowable level of commercial harvest reaches or exceeds 211,000 pounds, then all commercial harvest of striped bass shall cease. Such cessation of fishing shall apply to all gears even in the event other single gear quotas are not reached.

§ 8. Bag limit, sale of recreational catch.

A. It shall be unlawful for any person using hook-and-line, rod-and-reel, spear, or cast net to take or catch from Virginia tidal waters more than two striped bass per day. Any striped bass taken after the bag limit of two fish has been reached shall be returned to the water immediately.

B. When fishing from any boat or vessel, the daily bag limit shall be equal to the number of persons on board the boat or vessel multiplied by 2. Retention of the legal number of striped bass is the responsibility of the vessel captain or owner.

C. It shall be unlawful for any person to sell, offer for sale, trade or barter any striped bass taken by hook-and-line, rod-and-reel, spear, or cast net.

§ 9. Permits and reports.

A. Except as provided in subsection B of this section, it shall be unlawful for any commercial harvester, recreational harvester, or charter boat captain to take or

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attempt to take, striped bass without first having obtained a permit from the Marine Resources Commission.

B. It shall be lawful for a recreational fisherman to fish for striped bass from a charter boat or charter vessel without having a permit provided the captain of the boat is permitted under subsection A of this section and is the holder of a Coast Guard charter license.

C. It shall be unlawful for any person to purchase striped bass from a commercial harvester or to market one's own catch of striped bass without first obtaining a permit from the Marine Resources Commission.

D. Possession of a striped bass permit shall authorize Marine Resources Commission personnel or their designees to inspect, measure, weigh, and take biological samples of the striped bass catch.

E. All commercial harvesters of striped bass shall report to the Marine Resources Commission on forms provided by the Commission all quantities of striped bass harvested, the gear utilized to harvest, the water body fished, and the amount of hours or days fished on a weekly basis.

1. Weekly reports shall cover the period Monday through the following Sunday.

2. All weekly reports shall be forwarded to the Commission immediately and shall be postmarked no later than the Wednesday following the week described in the report.

F. All buyers of striped bass from commercial harvesters and all individuals marketing their own catch shall verbally report to the Marine Resources Commission on a daily basis the quantities of striped bass purchased, the permit number of the harvesters selling the fish and the gear utilized by the harvesters. Written reports of daily purchases and sales shall be forwarded to the Commission weekly and shall be postmarked no later than the Wednesday following the week described in the report.

G. Recreational fishermen and charter boat captains shall report to the Marine Resources Commission on forms provided by the Commission all daily quantities of striped bass harvested and daily fishing hours by themselves or their customers, respectively, at the end of the open fishing season. Written reports shall be forwarded to the Commission immediately at the end of the season and shall be postmarked no later than December 31, 1990.

H. Failure of any person permitted to harvest, buy or sell striped bass, to submit the required written or oral report for any fishing day shall constitute a violation of this regulation.

I. Permits must be in the possession of the permittee while harvesting, selling, or possessing striped bass.

§ 5. 10. Aquaculture of striped bass and hybrid striped

bass.

A. Permit required.

It shall be unlawful for any person, firm, or corporation to operate an aquaculture facility without first obtaining a permit from the Marine Resources Commission. Such permit shall authorize the purchase, possession, sale, and transportation of striped bass or hybrid striped bass in accordance with the other rules contained in this section.

B. Application for and term of permit.

The application for a striped bass aquaculture facility shall state the name and address of the applicant, the type and location of the facility, type of water supply, location of nearest tidal waters or tributaries to tidal water, and an estimate of production capacity. All aquaculture permits shall expire on December 31 of the year of issue and are not transferable. Permits shall be automatically renewed by the Marine Resources Commission provided no structural changes in the facility have been made, the facility has been adequately maintained, and the permittee has complied with all of the provisions of this regulation.

C. Display of permit.

1. The original of each permit shall be maintained and prominently displayed at the aquaculture facility described therein.

2. A copy of such permit may be used as evidence of authorization to transport striped bass or hybrid striped bass to sell the fish away from the permitted facility under the conditions imposed in subsection G in this section.

D. Water supply; outfall; prevention of entry and escapement.

1. A striped bass or hybrid striped bass aquaculture facility may consist of one or more ponds, artificial impoundments, closed recirculating systems or a combination of the above.

2. No pond or impoundment used for striped bass or hybrid striped bass aquaculture may be constructed or situated on a natural water course that originates beyond the boundaries of private land upon which the pond or impoundment is located.

3. There shall be no direct and unscreened discharge from any facility to any natural watercourse. Except as provided in subdivision 4 below, outfall from any pond or impoundment shall be processed according to one of the following systems:

a. The outfall shall pass over a dry ground percolation system in which ground absorption of the water is sufficient to prevent the formation of a watercourse which is capable of reaching any

natural watercourse. The outfall shall pass through a screened filter box prior to entering the percolation area.

b. The outfall shall pass through a chlorination process and retention pond for dechlorination. The outfall shall pass through a filter box prior to entering the chlorination system. Such facilities must also comply with regulations of the State Water Control Board.

4. If the outfall from an aquaculture facility may not conform to the systems described in subdivision 3 a or subdivision 3 b, above, then all of the following conditions shall be required:

a. The aquaculture of striped bass or hybrid striped bass shall be restricted to the use of cage culture. Such cages shall be constructed of a vinyl coated wire or high density polyethylene mesh material sufficient in size to retain the fish and all cages must be securely anchored to prevent capsizing. Covers shall be required on all cages.

b. The outfall from the pond or impoundment shall pass through a screened filter box. Such filter box shall be constructed of a mesh material sufficient in size to retain the fish and shall be maintained free of debris and in workable condition at all times; and

c. The outfall from the screened filter box shall pass into a containment basin lined and filled with quarry rock or other suitable material to prevent the escapement of the fish from the basin.

5. Those facilities utilizing embankment ponds shall maintain sufficient freeboard above the spillway to prevent overflow.

E. Acquisition of fish, fingerlings, fry, and eggs.

Striped bass or hybrid striped bass fingerlings, fry, or eggs, may be obtained only from state permitted fish dealers and must be certified by the seller as striped bass or hybrid striped bass having a disease free status. Each purchase or acquisition of striped bass or hybrid striped bass must be accompanied by a receipt or other written evidence showing the date, source, species, quantity of the acquisition and its destination. Such receipt must be in the possession of the permittee prior to transportation of such fish, fingerlings, fry, or eggs to the permitted facility. All such receipts shall be retained as part of the permittee's records. The harvesting of striped bass from the tidal waters of Virginia for the purpose of artificially spawning in a permitted aquaculture facility shall comply with all of the provisions of this regulation and state law including minimum size limits, maximum size limits, and closed harvesting seasons and areas.

F. Inspection of facilities.

1. Inspection. Agents of the Marine Resources Commission and the Department of Game and Inland Fisheries are authorized to make periodic inspection of the facilities and the stock of each operation permitted under this section. Every person engaged in the business of striped bass aquaculture shall permit such inspection at any reasonable time.

2. Diseased fish. No person permitted under this section shall maintain in the permitted facility any fish which shows evidence of any contagious disease listed in the then current list by the United States Fish and Wildlife Services as "certifiable diseases" except for the period required for application of standard treatment procedures or for approved disposition.

3. Disposition. No person permitted under this section shall sell or otherwise transfer possession of any striped bass or hybrid striped bass which shows evidence of a "certifiable disease" to any person, except that such transfer may be made to a fish pathologist for examination and diagnosis.

G. Sale of fish.

All striped bass or hybrid striped bass except fingerlings, fry, and eggs, which are the product of an aquaculture facility permitted under this section shall be packaged with a printed label bearing the name, address, and permit number of the aquaculture facility. When so packaged and labelled such fish may be transported and sold at retail or at wholesale for commercial distribution through normal channels of trade until reaching the ultimate consumer. Every such sale must be accompanied by a receipt showing the date of sale, the name, address and permit number of the aquaculture facility, the numbers and species of fish sold, and the name of the purchaser. Each subsequent resale must be accompanied by a receipt clearly identifying the seller by name and address, showing the number and species of the fish sold, the date sold, the permit number of the aquaculture facility and, if the sale is to other than the ultimate consumer, the name and address of the purchaser. The purchaser in possession of such fish must exhibit the receipt on demand of any law-enforcement officer. A duplicate copy of each such receipt must be retained for one year by the seller as part of the records of each transaction.

H. Records.

Each permitted aquaculture facility operator shall maintain a chronological file of the receipts or copies thereof showing the dates and sources of acquisitions of striped bass or hybrid striped bass and quantities thereof, and a chronological file of copies of the receipts of his sales required under subsection G of this section. Such records shall be segregated as to each permit year, shall be made available for inspection by any authorized agent of the Marine Resources Commission or Department of

Final Regulations

Game and Inland Fisheries, and shall be retained for at least one year following the close of the permit year to which they pertain.

I. Revocation and nonrenewal of permit.

In addition to the penalties prescribed by law, any violation of § 5 § 7 shall be grounds for revocation or suspension of the permit for the aquaculture facility for the balance of the permit year. No person whose permit has been revoked shall be eligible to apply for an aquaculture facility permit for a period of two years after the date of such revocation.

J. Importation of striped bass for the consumer market.

Striped bass or hybrid striped bass which are the product of an approved and state permitted aquaculture facility in another state may be imported into Virginia for the consumer market. Such fish shall be packaged and labelled in accordance with the provisions contained in subsection G of this section. Any sale of such fish also shall be accompanied by receipts as described in subsection G of this section.

K. Release of live fish.

Under no circumstance shall striped bass or hybrid striped bass which are the product of a ~~commercial~~ an aquaculture facility located within or outside the Commonwealth of Virginia be placed into the waters of the Commonwealth without first having notified the commission and having received written permission from the commissioner.

§ 6. Penalty.

As set forth in § 28.1-23 of the Code of Virginia, any person, firm, or corporation violating any provision of this regulation shall be guilty of a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

Title of Regulation: VR 450-01-0063. Pertaining to Sharks.

Statutory Authority: § 28.1-23 of the Code of Virginia.

Effective Date: September 15, 1990.

Preamble:

This regulation establishes gear restrictions, a bag limit, and catch limitations on the taking and landing of sharks. The provisions contained herein are designed to ensure the conservation of shark resources by preventing overfishing by commercial and recreational fisheries and by controlling the practice of finning.

VR 450-01-0063. Pertaining to Sharks.

§ 1. Authority, prior regulations, effective date.

A. This regulation is promulgated pursuant to the authority contained in § 28.1-23 of the Code of Virginia.

B. No prior regulations pertain to sharks.

C. The effective date of this regulation is September 15, 1990.

§ 2. Definitions.

A. Shark.

Any fish of the following species:

Sevengill shark, *Heptranchias perlo*
Sixgill shark, *Hexanchus griseus*
Bigeye sixgill shark, *Hexanchus vitulus*
Atlantic angel shark, *Squatina dumerili*
Nurse shark, *Ginglymostoma cirratum*
Whale shark, *Rhincodon typus*
Ragged-tooth shark, *Odontaspis ferox*
Sand tiger shark, *Odontaspis taurus*
Bigeye thresher, *Alopias supecilliosus*
Threshr shark, *Alopias vulpinus*
Basking shark, *Cetorhinus maximus*
White shark, *Carchrodon charcharias*
Shortfin mako, *Isurus oxyrinchus*
Longfin mako, *Isurus paucus*
Porbeagle shark, *Lamna nasus*
Tiger shark, *Galeocerdo cuvieri*
Lemon Shark, *Negaprion brevirostris*
Blue shark, *Prionace glauca*
Blacknose shark, *Carcharhinus acronotus*
Bignose shark, *Carcharhinus altimus*
Narrowtooth shark, *Carcharhinus brachyurus*
Spinner shark, *Carcharhinus brevipinna*
Silky shark, *Carcharhinus falciformis*
Galapagos shark, *Carcharhinus galapagensis*
Finetooth shark, *Carcharhinus isodon*
Bull shark, *Carcharhinus leucas*
Blacktip shark, *Carcharhinus limbatus*
Oceanic whitetip shark, *Carcharhinus longimanus*
Dusky shark, *Carcharhinus obscurus*
Caribbean reef shark, *Carcharhinus perezi*
Sandbar shark, *Carcharhinus plumbeus*
Night shark, *Carcharhinus signatus*
Atlantic sharpnose shark, *Rhizoprionodon terraenovae*
Caribbean sharpnose shark, *Rhizoprionodon porosus*
Scalloped hammerhead, *Sphyrna lewini*
Great hammerhead, *Sphyrna mokarran*
Bonnethead, *Sphyrna tiburo*
Smooth hammerhead, *Sphyrna zygaena*

Nothing in this regulation shall pertain to the taking of the spiny dogfish, *Squalus acanthias* and the smooth dogfish, *Mustelus canis*.

B. Longline.

Any fishing gear composed of a line in excess of 1000 feet in length that has multiple hooks and is either anchored, floating, or attached to a vessel.

C. Trotline.

Any fishing gear licensed under § 28.1-48 (f) of the Code of Virginia composed of a line less than 1000 feet in length that has multiple hooks and is either anchored, floating, or attached to a vessel.

§ 3. Gear restrictions.

It shall be unlawful for any person to place, set, or fish any longline in Virginia tidal waters.

§ 4. Catch limitations.

A. It shall be unlawful for any person to take or catch by hook-and-line, rod-and-reel, or spear and regain possession of more than one shark per day.

1. Any shark taken after the daily limit has been reached shall be returned to the water immediately.

2. When fishing from any boat or vessel, the daily limit shall be equal to the number of persons on board the vessel. Retention of the legal number of sharks is the responsibility of the vessel captain or operator.

B. It shall be unlawful to possess aboard any commercial fishing vessel or to land more than 7500 pounds of shark carcasses per day.

C. The practice is "finning," that is, removing only the fins and returning the remainder of the shark to the sea, is prohibited. Fins may be removed at sea but must be landed in proper proportion to the number of carcasses landed.

1. It shall be unlawful for any person to possess aboard any vessel or to land shark fins which constitute more than 10% by weight of any catch of shark.

2. It shall be unlawful to possess shark fins without carcasses aboard any vessel.

3. It shall be unlawful to possess aboard any vessel or to land dried shark fins.

§ 5. Penalty.

As established in § 28.1-23 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 1 misdemeanor.

/s/ William A. Pruitt

Commissioner

Title of Regulation: VR 450-01-0064. Pertaining to Eel Pots.

Statutory Authority: § 28.1-23 of the Code of Virginia.

Effective Date: September 1, 1990.

Preamble:

This regulation establishes a minimum mesh size for eel pots and requires escape panels in eel pots. It is intended to reduce the possibility of growth overfishing of Virginia's American eel stock and to reduce the wastage of small eels.

VR 450-01-064. Pertaining to Eel Pots.

§ 1. Authority, prior regulations, effective date.

A. This regulation is promulgated pursuant to the authority contained in § 28.1-23 of the Code of Virginia.

B. VR 450-01-0024, Pertaining to the taking of eels and elvers, establishes a prohibition on the taking of elvers.

C. The effective date of this regulation is September 1, 1990.

§ 2. Purpose.

A. The purpose of this regulation is to conserve Virginia's American eel stock, to reduce the possibility of growth overfishing, and to prevent the wastage of undersized fish.

§ 3. Minimum mesh size.

A. It shall be unlawful for any person, firm, or corporation to place, set or fish any eel pot in Virginia tidal waters which has a mesh less than 1/2-inch by 1/2-inch.

B. After January 1, 1991, it shall be unlawful for any person, firm, or corporation to place, set or fish any 1/2-inch by 1/2-inch mesh rectangular or square eel pots unless such pots contain at least two unrestricted 4-inch square escape panels of 1/2-inch by 1-inch mesh, one panel located in the lower side and one panel in the upper portion of the pot; in addition, it shall be unlawful for any person, firm, or corporation to place, set or fish any 1/2-inch by 1/2-inch unrestricted 4-inch square escape panel of 1/2-inch by 1-inch mesh located in the rear portion of the pot.

§ 4. Penalty.

Final Regulations

As set forth in § 28.1-23 of the Code of Virginia, any person, firm, or corporation violating any provision of this regulation shall be guilty of a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

Title of Regulation: VR 450-01-0065. Pertaining to Amberjack and Cobia.

Statutory Authority: § 28.1-23 of the Code of Virginia.

Effective Date: September 1, 1990.

Preamble:

This regulation establishes daily bag limits and minimum size limits for cobia and amberjack in Virginia waters. The purpose of the bag and size limits is to protect spawning stocks and prevent recruitment over-fishing of these species. This regulation responds to the concerns of the South Atlantic Council and Virginia recreational fishermen.

VR 450-01-0065. Pertaining to Amberjack and Cobia.

§ 1. Authority, prior regulations, effective date.

A. This regulation is promulgated pursuant to the authority contained in § 28.1-23 of the Code of Virginia.

B. No prior regulations pertain to amberjack.

C. Section 28.1-49.1 of the Code of Virginia established a 20-inch minimum size limit for cobia, but as provided for in the law is hereby superseded by the 37-inch minimum size limit contained in § 4 of this regulation.

D. The effective date of this regulation is September 1, 1990.

§ 2. Purpose.

The purpose of this regulation is to control the harvest, protect the spawning stocks, minimize the possibility of recruitment failure and to increase yield in the amberjack and cobia fisheries.

§ 3. Daily bag limits.

A. It shall be unlawful for any harvester (commercial or recreational) to catch and retain more than two amberjack per day or more than two cobia per day. Any amberjack or cobia caught after the daily bag limit has been reached shall be returned to the water immediately.

B. When fishing from any vessel, the daily bag limit shall be equal to the number of persons on board the

vessel multiplied by two. Retention of the legal number of amberjack or cobia is the responsibility of the vessel captain or operator.

C. Nothing in this section shall effect the possession of amberjack or cobia by licensed seafood buyers or wholesale and retail seafood establishments.

§ 4. Minimum size limits.

A. It shall be unlawful for any person to take, catch or have in possession any amberjack less than 32 inches in length.

B. It shall be unlawful for any person to take, catch or have in possession any cobia less than 37 inches in length.

C. Length is measured in a straight line from tip of nose to tip of tail.

§ 5. Penalty.

As set forth in § 28.1-23 of the Code of Virginia, any person, firm or corporation violating any provision of this regulation shall be guilty of a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
(BOARD OF)**

NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: State Plan for Medical Assistance Relating to Aid to Dependent Children - Unemployed Parent (ADC-UP) Program.

VR 460-01-19.1. Services: General Provisions.

VR 460-01-31.3. Services to Families Receiving Extended Medicaid Benefits.

VR 460-01-31.4. Services to Families Receiving Extended Medicaid Benefits.

VR 460-01-31.5. Services to Families Receiving Extended Medicaid Benefits.

VR 460-01-56.1. Cost Sharing and Similar Charges.

VR 460-02-2.2100. Groups Covered and Agencies Responsible for Eligibility Determination.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Effective Date: November 7, 1990.

Summary:

The Family Support Act of 1988 (P.L. 100-485), also known as "Welfare Reform," was enacted to revise the Aid to Families with Dependent Children (AFDC) cash assistance program for poor families. The revisions were designed to reduce dependence on "welfare" by giving clients training and finding them employment.

The Family Support Act mandated that all states must provide Aid to Families with Dependent Children to families in which the principal wage earner is unemployed and which meet the requirements of Title IV-A of the Social Security Act. P.L. 100-485 § 401(d) further required states to provide Medicaid eligibility to families who qualify for the AFDC-Unemployed Parent Program (AFDC-UP). The family will continue to be eligible for Medicaid as long as it meets the basic requirements outlined in Title IV of the Social Security Act.

Virginia's component of the AFDC program is called the Aid to Dependent Children program (ADC). References to AFDC in this regulatory document mean the national program while references to ADC refer to the Commonwealth's program.

In addition, because Virginia Medicaid covers the medically needy, children of unemployed parents who, except for income and resources, would meet the requirements to receive ADC-UP will also be eligible for Medicaid. The parents or caretaker-relatives will not be eligible for Medicaid because the State Plan for Medical Assistance does not provide Medicaid eligibility for adults in the ADC-related medically needy program.

Another provision of the Family Support Act required that families who lose ADC because the parent returns to the work force or increases earnings will continue to be eligible for Medicaid for up to 12 months under certain conditions. During this 12-month period, the family must continue to have at least one dependent child residing in the home and the family must make the required income reports.

VR 460-01-19.1. Services: General Provisions.

Revision: HCFA-PM-87-9 (BERC) OMB No.: 0938-0193
AUGUST 1987
State/Territory: Virginia

19a VR 460-01-19.1

Citation	3.1 (a)(1) (Continued)
1902(a)(10) clause (VII) of the matter following (E) of the Act, P.L. 99-509 (§9401(c))	(v) Medical assistance furnished to optional categorically needy pregnant women (during pregnancy and during 60 days after the pregnancy ends) under the provisions of section 1902(a)(A)(ii)(IX) of the Act is limited to services related to pregnancy (including prenatal, delivery, and postpartum services) and to other conditions that may complicate pregnancy.
1902(a)(47) and 1920 of the Act, P.L. 99-509 (§9407)	(vi) Ambulatory prenatal care for pregnant women during a presumptive eligibility period is provided to categorically needy individuals as indicated in item 3.6 of this plan.
	(vii) Home health services are provided to categorically needy recipients entitled to skilled nursing facility services as indicated in item 3.1(b) of this plan.
1902(e)(7) of the Act, P.L. 99-509 (§9401(d))	(viii) Inpatient services that are being furnished to infants and children described in section 1902(1)(1)(B) through (F) of the Act on the date the infant or child attains the maximum age for coverage under the approved State plan will continue until the end of the stay for which the inpatient services are furnished.
1902(e)(9) of the Act, P.L. 99-509 (§29408)	(ix) Respiratory care services are provided to ventilator dependent individuals as indicated in item 3.1(h) of this plan.
1903(v) of the Act P.L. 99-509 (§9406)	(x) Emergency services necessary to treat an illegal alien for an emergency medical condition, as defined in §1903(v)(3) of the Act, are provided.
1902(a)(52) and 1925 of the Act P.L. 100-485 (§303(a))	(xi) Services are provided to families under §1925 of the Act as indicated in item 3.7 of this plan.

Attachment 3.1 A identifies the medical and remedial services provided to the categorically needy and specifies all limitations on the amount, duration and scope of those services.

Final Regulations

VR 460-01-31.3. Services to Families Receiving Extended Medicaid Benefits.

VR 460-01-31.4. Services to Families Receiving Extended Medicaid Benefits.

31c VR 460-01-31.3

State/Territory: Virginia

1902(a)(52)
and 1925 of
the Act
P.L. 100-485
§303(a)

3.7 Services to Families Receiving Extended Medicaid Benefits

(a) Services provided to families during the first 6-month period of extended Medicaid benefits under §1925 of the Act are equal in amount, duration, and scope to services provided to categorically needy AFDC recipients as described in ATTACHMENT 3.1 A.

(b) Services provided to families during the second 6-month period of extended Medicaid benefits under §1925 of the Act are --

Equal in amount, duration, and scope to services provided to categorically needy AFDC recipients as described in ATTACHMENT 3.1 A.

Equal in amount, duration, and scope to services provided to categorically needy AFDC recipients, minus any one or more of the following acute services:

Nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Medical or remedial care provided by licensed practitioners.

Home health services.

Private duty nursing services.

Physical therapy and related services.

Other diagnostic, screening, preventive, and rehabilitation services.

Inpatient hospital services and nursing facility services for individuals 65 years of age or over in an institution for mental diseases.

Intermediate care facility services for the mentally retarded.

31d VR 460-01-31.4

State/Territory: Virginia

Inpatient psychiatric services for individuals under age 21.

Hospice services.

Respiratory care services.

Any other medical care and any other type of remedial care recognized under State law and specified by the Secretary.

c. The agency pays the family's premiums, enrollment fees, deductibles, coinsurance, and similar costs for health plans offered by the caretaker's employer as payments for medical assistance.

1st 6 months 2nd 6 months

The agency requires caretakers to enroll in employers' health plans as a condition of eligibility.

Yes.

1st 6 mos. 2nd 6 mos.

No.

d. 1. The agency offers the amount, duration, and scope of services specified under item (b) through the following health care plan(s) to families during the second 6-month period of extended Medicaid benefits under section 1925 of the Act:

Enrollment in the family option of an employer's health plan.

Enrollment in the family option of a State employee health plan.

Enrollment in the State health plan for the uninsured.

VR 460-01-31.5. Services to Families Receiving Extended Medicaid Benefits.

VR 460-01-56.1. Cost Sharing and Similar Charges.

<p>31e VR 460-01-31.5</p> <p>State/Territory: <u>Virginia</u></p> <p><input type="checkbox"/> Enrollment in an eligible health maintenance organization (HMO) that has an enrollment of less than 50 percent of Medicaid recipients who are not recipients of extended Medicaid.</p> <p>Supplement 2 to ATTACHMENT 3.1-A specifies and describes the alternative health care plan(s) offered, including requirements for assuring that recipients have access to services of adequate quality.</p> <p>2. The agency--</p> <p>(i) Pays all premiums and enrollment fees imposed on the family for such plan(s).</p> <p><input type="checkbox"/> (ii) Pays all deductibles and coinsurance imposed on the family for such plan(s).</p>	<p>Revision: HCFA-PM-86-20 (BERC) SEPTEMBER 1986</p> <p>Citation 447.51 - 58</p> <p>1902(a)(52) and 1925(b) of the Act</p>	<p style="text-align: right;">56a VR 460-01-56.1</p> <p style="text-align: right;">OMB No.: 0938-0193</p> <p>State/Territory: <u>VIRGINIA</u></p> <p>4.18 (b)(3) (Continued) (iii) ATTACHMENT 4.18-A specifies the:</p> <ul style="list-style-type: none"> (A) Service(s) for which a charge(s) is applied; (B) Nature of the charge imposed on each service; (C) Amount(s) of and basis for determining the charge(s); (D) Method used to collect the charge(s); (E) Basis for determining whether an individual is unable to pay the charge and the means by which such an individual is identified to providers; (F) Procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53(b); (G) Cumulative maximum that applies to all deductible, coinsurance, or copayment charges imposed on a specified time period. <p><input type="checkbox"/> Not applicable. There is no maximum.</p> <p>4.18(b)(4) For families receiving extended benefits during a second 6-month period under §1925 of the Act, a monthly premium is imposed in accordance with §§1925(b)(4) and (5) of the Act.</p> <p><input type="checkbox"/> Yes.</p> <p><input checked="" type="checkbox"/> No.</p>
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Final Regulations

VR 460-02-2.2100. Groups Covered and Agencies Responsible for Eligibility Determination.

Revision: HCFA-PM-86-20 (BERC) ATTACHMENT 2.2-A VR 460-02-2.2100
 SEPTEMBER 1986 OMB No.: 0938-0193 Page 1
 STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Virginia

Revision: HCFA-PM-87-9 (BERC) Attachment 2.2 A
 August 1987 Page 2 OMB No.: 0938-0193

GROUPS COVERED AND AGENCIES RESPONSIBLE FOR ELIGIBILITY DETERMINATION

Agency*	Citation(s)	Groups Covered	Agency*	Citation(s)	Groups Covered
The following groups are covered under this plan.			IV A	402(a)(22)(A) of the Act, P.L. 97-35	c. Individuals whose AFDC payments are reduced to zero by reason of recovery of overpayment of AFDC funds.
A. <u>Mandatory Coverage - Categorically Needy</u>					
IV A	435.110 1902(a)(10)(A)(i)(V) 1905(m)(1) §407, P.L. 100-485 Medicaid <u>eligibility continues so long as family meets criteria in §407 of the Act for AFDC for unemployed parents.</u>	1. Recipients of AFDC The approved State AFDC plan includes: <u>X</u> Families with unemployed parents. — Pregnant women with no other eligible children. — AFDC children age 18 who are full time students in a secondary school or in the equivalent level of vocational or technical training, and are expected to complete the program prior to age 19. The standards for AFDC payments are listed in Supplement 1 of ATTACHMENT 2.6 A.	IV A	406(h) and 1902(a)(10)(A)(i)(I) of the Act, P.L. 98-378 (520)	d. An assistance unit deemed to be receiving AFDC for a period of four calendar months because the family becomes ineligible for AFDC as a result of collection or increased collection of support from August 16, 1984, through September 30, 1988, and meets the requirements of §406(h) of the Act.
IV A	435.115	2. Deemed Recipients of AFDC a. Individuals denied a title IV-A cash payment solely because the amount would be less than \$10. <u>X</u> b. Participants in a work supplementation program under title IV-A and any child or relative of such individual (or other individual living in the same household as such individuals) who would be eligible for AFDC if there were no work supplementation program.	IV A	402(a)(37) and 1902(a)(10)(A)(i)(I) of the Act, P.L. 98-369 (§§ 2361 & 2624)	e. Families receiving nine months of work transition per §402(a)(37) of the Act. — Families receiving additional months of work transition (not to exceed six months).
IV A		a. Individuals denied a title IV-A cash payment solely because the amount would be less than \$10.	IV A	1902(a) of the Act, P.L. 99-272 (§12305)	f. Individuals deemed to be receiving AFDC who meet the requirements of §473(b)(1) or (2) for whom an adoption assistance agreement is in effect or foster care maintenance payments are being made under title IV-E of the Act.
IV A		<u>X</u> b. Participants in a work supplementation program under title IV-A and any child or relative of such individual (or other individual living in the same household as such individuals) who would be eligible for AFDC if there were no work supplementation program.	IV A	1902(a)(52) & 1925 of the Act P.L. 100-485	3. <u>Of the 12 months of extended benefits to families terminated from AFDC solely because of earnings, hours of employment, or loss of earned income disregards in accordance with §1925 of the Act. This provision expires on September 30, 1996.</u>
IV A			IV A	435.112	4. Families terminated from AFDC solely because of increased earnings or hours of employment, provided the family received AFDC in at least three months during the 6-month period immediately preceding the month in which ineligibility began and provided that one member of the family is employed throughout the period specified in the next sentence. Medicaid is provided for four calendar months beginning with the month AFDC is terminated or if AFDC is terminated retroactively, with the first month in which AFDC was erroneously paid.

*Agency that determines eligibility for coverage.

* Agency that determines eligibility for coverage.

Final Regulations

Revision: HCFA-PM-86-20 (BERG)
SEPTEMBER 1986

ATTACHMENT 2.2-A
Page 18
OMB No.: 0938-0193

Agency*	Citation(s)	Groups Covered
IV A	1902(e) of the Act, P.L.99-272 (\$9501)	2. Women who, while pregnant, were eligible for, have applied for, and have received Medicaid as medically needy under the approved State plan. These women continue to be eligible, as though they were pregnant, for all pregnancy-related and postpartum services under the plan for a 60-day period after the pregnancy ends. The 60-day period begins on the last day of pregnancy.
IV A	1902(a)(10)(C)(ii)(I) of the Act, P.L. 97-248 (\$137) P.L. 100-482	3. Individuals under age 18 who, but for income and resources, would be eligible under §1902(a)(10)(i)(I) of the Act including 1902(a)(10)(i)(V) and 1905(m)(i).
	1902(e)(4) of the Act, P.L.98-369 (\$2362)	4. Newborn children born on or after October 1, 1984 to a woman who is eligible as medically needy and is receiving Medicaid on the date of the child's birth. The child is deemed to have applied and been found eligible for Medicaid on the date of birth and remains eligible for one year so long as the woman remains eligible and the child is a member of the woman's household.
IV A	435.308	<input checked="" type="checkbox"/> 5. Financially eligible individuals who are not described in section C.3. above and who are under the age of — <input checked="" type="checkbox"/> 21 and who meet the covered reasonable classification groups in Attachment 2.2A, Item B 7b excluding individuals in ICF/MR facilities. — 20 <input checked="" type="checkbox"/> 19 under age 19 for AFDC related individuals as described in Item A.1. — 18
IV A	435.310	— 6. Caretaker relatives.
IV A	435.320	<input checked="" type="checkbox"/> 7. Aged individuals.
IV A	435.330	
IV A	435.322	<input checked="" type="checkbox"/> 8. Blind individuals.
IV A	435.330	
IV A	435.324	<input checked="" type="checkbox"/> 9. Disabled individuals.
	435.330	

*Agency that determines eligibility for coverage.

CERTIFIED:

9/17/90

Date

Patricia C. Watt for

Bruce U. Kozlowski, Director
Dept. of Medical Assistance Services



COMMONWEALTH of VIRGINIA

VIRGINIA CODE COMMISSION
General Assembly Building

2025 OFFICE 804 344
REVENUE VIRGINIA 4 2228
531 163587

September 24, 1990

Bruce W. Kozlowski, Director
Department of Medical Assistance Services
Suite 1300
600 East Broad Street
Richmond, Virginia 23219

Re: VR 460-01-19.1, 460-01-31.3, 460.01-31.4,
460-01-31.5, 460-01-56.1, 460-02.2100
Extended Medi-Coverage and ADC-UP Program

Dear Mr. Kozlowski:

This will acknowledge receipt of the above-referenced regulations from the Department of Medical Assistance Services.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

Joan W. Smith

Joan W. Smith
Registrar of Regulations

JWS:jbc

Final Regulations

REPRINT

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

NOTICE: The amendment to the State Plan for Medical Assistance relating to prosthetics services and dental services, VR 460-03-3.1100, Amount, Duration and Scope of Services, was published as a final regulation in 6:17 VA.R. 2680-2686 May 21, 1990. The latest version of this regulation was not published, therefore, the regulation is being republished in its entirety using the most up-to-date version. The amendments relating to prosthetics services and dental services are not affected and are identical to the amendments published in the May 27, 1990, issue of The Virginia Register. The effective date remains July 1, 1990.

Title of Regulation: VR 460-03-3.1100. Amount, Duration and Scope of Services (Prosthetics Services and Dental Services).

Statutory Authority: § 32.1-325 of the Code of Virginia..

Effective Date: July 1, 1990.

Summary:

The 1989 General Assembly directed the department, through the appropriations act, to provide coverage for limited prosthetics services and to expand dental services through the Early and Periodic Screening, Diagnosis and Treatment program. DMAS is currently providing these services under the authority of emergency regulations. This final regulation, which does not vary substantially from the proposed regulation, contains the additional coverage of dental sealants.

This dental sealants coverage was specifically mandated in federal requirements arising from the Congressional mandates in the Omnibus Budget Reconciliation Act of 1989.

VR 460-03-3.1100. Amount, Duration and Scope of Services (Prosthetics Services and Dental Services).

General.

The provision of the following services cannot be reimbursed except when they are ordered or prescribed, and directed or performed within the scope of the license of a practitioner of the healing arts: laboratory and x-ray services, family planning services, and home health services. Physical therapy services will be reimbursed only when prescribed by a physician.

§ 1. Inpatient hospital services other than those provided in an institution for mental diseases.

A. Medicaid inpatient hospital admissions (lengths-of-stay)

are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under 15 days that exceed the 75th percentile, the hospital must attach medical justification records to the billing invoice to be considered for additional coverage when medically justified. For all admissions that exceed 14 days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection F of this section.)

B. Medicaid does not pay the medicare (Title XVIII) coinsurance for hospital care after 21 days regardless of the length-of-stay covered by the other insurance. (See exception to subsection F of this section.)

C. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

D. Reimbursement for covered hospital days is limited to one day prior to surgery, unless medically justified. Hospital claims with an admission date more than one day prior to the first surgical date will pend for review by medical staff to determine appropriate medical justification. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for additional preoperative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

E. Reimbursement will not be provided for weekend (Friday/Saturday) admissions, unless medically justified. Hospital claims with admission dates on Friday or Saturday will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admission will be denied.

F. Coverage of inpatient hospitalization will be limited to a total of 21 days for all admissions within a fixed period, which would begin with the first day inpatient hospital services are furnished to an eligible recipient and end 60 days from the day of the first admission. There may be multiple admissions during this 60-day period; however, when total days exceed 21, all subsequent claims will be reviewed. Claims which exceed 21 days within 60 days with a different diagnosis and medical justification will be paid. Any claim which has the same or similar diagnosis will be denied.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent

with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

G. Reimbursement will not be provided for inpatient hospitalization for any selected elective surgical procedures that require a second surgical opinion unless a properly executed second surgical opinion form has been obtained from the physician and submitted with the hospital invoice for payment, or is a justified emergency or exemption. The requirements for second surgical opinion do not apply to recipients in the retroactive eligibility period.

H. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the mandatory outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions. The requirements for mandatory outpatient surgery do not apply to recipients in the retroactive eligibility period.

I. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

J. The department may waive portions or all of the utilization review documentation requirements of subsections A, D, E, G, or H in writing for specific hospitals from time to time as part of its ongoing hospital utilization review performance evaluation.

§ 2. Outpatient hospital and rural health clinic services.

2a. Outpatient hospital services.

1. Outpatient hospital services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that:

- a. Are furnished to outpatients;

- b. Except in the case of nurse-midwife services, as specified in § 440.165, are furnished by or under the direction of a physician or dentist; and

- c. Are furnished by an institution that:

- (1) Is licensed or formally approved as a hospital by an officially designated authority for state standard-setting; and

- (2) Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare.

2. Reimbursement for induced abortions is provided in only those cases in which there would be substantial endangerment of health or life to the mother if the fetus were carried to term.

3. Reimbursement will not be provided for outpatient hospital services for any selected elective surgical procedures that require a second surgical opinion unless a properly executed second surgical opinion form has been obtained from the physician and submitted with the invoice for payment, or is a justified emergency or exemption.

- 2b. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

No limitations on this service.

§ 3. Other laboratory and x-ray services.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

§ 4. Skilled nursing facility services, EPSDT and family planning.

- 4a. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

- 4b. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and

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treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4c. Family planning services and supplies for individuals of child-bearing age.

Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

§ 5. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to the approval of the Psychiatric Review Board) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period. These limitations also apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus

were carried to term.

G. Physician visits to inpatient hospital patients are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses and is further restricted to medically necessary inpatient hospital days as determined by the Program.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days determined to be medically unjustified will be adjusted.

H. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine are covered.

I. Reimbursement will not be provided for physician services for those selected elective surgical procedures requiring a second surgical opinion unless a properly executed second surgical opinion form has been submitted with the invoice for payment, or is a justified emergency or exemption. The requirements for second surgical opinion do not apply to recipients in a retroactive eligibility period.

J. Reimbursement will not be provided for physician services performed in the inpatient setting for those surgical or diagnostic procedures listed on the mandatory outpatient surgery list unless the service is medically justified or meets one of the exceptions. The requirements of mandatory outpatient surgery do not apply to recipients in a retroactive eligibility period.

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

§ 6. Medical care by other licensed practitioners within the scope of their practice as defined by state law.

A. Podiatrists' services.

1. Covered podiatry services are defined as reasonable and necessary diagnostic, medical, or surgical treatment of disease, injury, or defects of the human foot. These services must be within the scope of the license of the podiatrists' profession and defined by state law.

2. The following services are not covered: preventive health care, including routine foot care; treatment of structural misalignment not requiring surgery; cutting or removal of corns, warts, or calluses; experimental procedures; acupuncture.

3. The Program may place appropriate limits on a service based on medical necessity or for utilization control, or both.

B. Optometric services.

1. Diagnostic examination and optometric treatment procedures and services by ophthalmologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services.

Not provided.

D. Other practitioners' services.

1. Clinical psychologists' services.

a. These limitations apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.

b. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine are covered.

§ 7. Home health services.

A. Service must be ordered or prescribed and directed or performed within the scope of a license of a practitioner of the healing arts.

B. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

C. Home health aide services provided by a home health agency.

Home health aides must function under the supervision of a professional nurse.

D. Medical supplies, equipment, and appliances suitable for use in the home.

1. All medical supplies, equipment, and appliances are available to patients of the home health agency.

2. Medical supplies, equipment, and appliances for all others are limited to home renal dialysis equipment and supplies, and respiratory equipment and oxygen, and ostomy supplies, as preauthorized by the local health department.

E. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.

Service covered only as part of a physician's plan of care.

§ 8. Private duty nursing services.

Not provided.

§ 9. Clinic services.

A. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus was carried to term.

B. Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that:

1. Are provided to outpatients;

2. Are provided by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients; and

3. Except in the case of nurse-midwife services, as specified in 42 CFR § 440.165, are furnished by or under the direction of a physician or dentist.

§ 10. Dental services.

A. Dental services are limited to recipients under 21 years of age in fulfillment of the treatment requirements under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and defined as routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with the State Dental Practice Act.

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B. Initial, periodic, and emergency examinations; required radiography necessary to develop a treatment plan; patient education; dental prophylaxis; fluoride treatments; [*dental sealants*;] routine amalgam and composite restorations; crown recementation; pulpotomies; emergency endodontics for temporary relief of pain; pulp capping; sedative fillings; therapeutic apical closure; topical palliative treatment for dental pain; removal of foreign body; simple extractions; root recovery; incision and drainage of abscess; surgical exposure of the tooth to aid eruption; sequestrectomy for osteomyelitis; and oral antral fistula closure are dental services covered without preauthorization by the state agency.

C. All covered dental services not referenced above require preauthorization by the state agency. *The following services are also covered through preauthorization: medically necessary full banded orthodontics, [for handicapping malocclusions, minor] tooth guidance [or repositioning] appliances, complete and partial dentures, surgical preparation (alveoloplasty) for prosthetics, single permanent crowns, and bridges.* The following services are service is not covered: *full banded orthodontics; permanent crowns and all bridges; removable complete and partial dentures; routine bases under restorations ; and inhalation analgesia .*

D. The state agency may place appropriate limits on a service based on ~~dental~~ *medical* necessity, for utilization control, or both. Examples of service limitations are: examinations, prophylaxis, fluoride treatment (once/six months); space maintenance appliances; bitewing x-ray – two films (once/12 months); routine amalgam and composite restorations (once/three years); *dentures (once per 5 years); and* extractions, *orthodontics, tooth guidance appliances, permanent crowns, and bridges,* endodontics, patient education [*and sealants*] (once).

E. Limited oral surgery procedures, as defined and covered under Title XVIII (Medicare), are covered for all recipients, and also require preauthorization by the state agency.

§ 11. Physical therapy and related services.

11a. Physical therapy.

A. Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective July 1, 1988, the program will not provide direct reimbursement to enrolled providers for physical therapy services rendered to patients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing homes' operating cost.

11b. Occupational therapy.

Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

11c. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist; see General section and subsections 11a and 11b of this section.)

These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

§ 12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

12a. Prescribed drugs.

1. Nonlegend drugs, except insulin, syringes, needles, diabetic test strips for clients under 21 years of age, and family planning supplies are not covered by Medicaid. This limitation does not apply to Medicaid recipients who are in skilled and intermediate care facilities.

2. Legend drugs, with the exception of anorexiants drugs prescribed for weight loss and transdermal drug delivery systems, are covered. Coverage of anorexiants for other than weight loss requires preauthorization.

3. The Program will not provide reimbursement for drugs determined by the Food and Drug Administration (FDA) to lack substantial evidence of effectiveness.

4. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, prescriptions for Medicaid recipients for specific multiple source drugs shall be filled with generic drug products listed in the Virginia Voluntary Formulary unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written.

5. New drugs, except for Treatment Investigational New Drugs (Treatment IND), are not covered until approved by the board, unless a physician obtains prior approval. The new drugs listed in Supplement 1 to the New Drug Review Program regulations (VR 460-05-2000.1000) are not covered.

12b. Dentures.

Provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

12c. Prosthetic devices.

A. Not provided. Prosthetics services shall mean the replacement of missing arms and legs. Nothing in this regulation shall be construed to refer to orthotic services or devices.

B. Prosthetic devices (artificial arms and legs, and their necessary supportive attachments) are provided when prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary, and preauthorized for the minimum applicable component necessary for the activities of daily living.

12d. Eyeglasses.

Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

§ 13. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

13a. Diagnostic services.

13a. Diagnostic services.

Not provided.

13b. Screening services.

Not provided.

13c. Preventive services.

Not provided.

13d. Rehabilitative services.

1. Medicaid covers intensive inpatient rehabilitation services as defined in § 2.1 in facilities certified as rehabilitation hospitals or rehabilitation units in acute care hospitals which have been certified by the Department of Health to meet the requirements to be excluded from the Medicare Prospective Payment System.

2. Medicaid covers intensive outpatient rehabilitation services as defined in § 2.1 in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs), or when the outpatient program is administered by a rehabilitation hospital or an exempted rehabilitation unit of an acute care hospital

certified and participating in Medicaid.

3. These facilities are excluded from the 21-day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in Attachment 4.19-A.

4. An intensive rehabilitation program provides intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, speech therapy, cognitive rehabilitation, prosthetic-orthotic services, psychology, social work, and therapeutic recreation. The nursing staff must support the other disciplines in carrying out the activities of daily living, utilizing correctly the training received in therapy and furnishing other needed nursing services. The day-to-day activities must be carried out under the continuing direct supervision of a physician with special training or experience in the field of rehabilitation.

§ 14. Services for individuals age 65 or older in institutions for mental diseases.

14a. Inpatient hospital services.

Provided, no limitations.

14b. Skilled nursing facility services.

Provided, no limitations.

14c. Intermediate care facility.

Provided, no limitations.

§ 15. Intermediate care services and intermediate care services for institutions for mental disease and mental retardation.

15a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with § 1902 (a)(31)(A) of the Act, to be in need of such care.

Provided, no limitations.

15b. Including such services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions.

Provided, no limitations.

§ 16. Inpatient psychiatric facility services for individuals under 22 years of age.

Not provided.

§ 17. Nurse-midwife services.

Covered services for the nurse midwife are defined as

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those services allowed under the licensure requirements of the state statute and as specified in the Code of Federal Regulations, i.e., maternity cycle.

§ 18. Hospice care (in accordance with § 1905 (o) of the Act).

Not provided.

§ 19. Case management services for high-risk pregnant women and children up to age 1, as defined in Supplement 2 to Attachment 3.1-A, in accordance with § 1915(g)(1) of the Act.

Provided, with limitations. See Supplement 2 for detail.

§ 20. Extended services to pregnant women.

20a. Pregnancy-related and postpartum services for 60 days after the pregnancy ends.

The same limitations on all covered services apply to this group as to all other recipient groups.

20b. Services for any other medical conditions that may complicate pregnancy.

The same limitations on all covered services apply to this group as to all other recipient groups.

§ 21. Any other medical care and any other type of remedial care recognized under state law, specified by the Secretary of Health and Human Services.

21a. Transportation.

Nonemergency transportation is administered by local health department jurisdictions in accordance with reimbursement procedures established by the Program.

21b. Services of Christian Science nurses.

Not provided.

21c. Care and services provided in Christian Science sanatoria.

Provided, no limitations.

21d. Skilled nursing facility services for patients under 21 years of age.

Provided, no limitations.

21e. Emergency hospital services.

Provided, no limitations.

21f. Personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a

registered nurse.

Not provided.

Emergency Services for Aliens (17.e)

No payment shall be made for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law unless such services are necessary for the treatment of an emergency medical condition of the alien.

Emergency services are defined as:

Emergency treatment of accidental injury or medical condition (including emergency labor and delivery) manifested by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical/surgical attention could reasonably be expected to result in:

1. Placing the patient's health in serious jeopardy;
2. Serious impairment of bodily functions; or
3. Serious dysfunction of any bodily organ or part.

Medicaid eligibility and reimbursement is conditional upon review of necessary documentation supporting the need for emergency services. Services and inpatient lengths of stay cannot exceed the limits established for other Medicaid recipients.

Claims for conditions which do not meet emergency criteria for treatment in an emergency room or for acute care hospital admissions for intensity of service or severity of illness will be denied reimbursement by the Department of Medical Assistance Services.

* * * * *

NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 2 of the Code of Virginia, which excludes regulations that establish or prescribe agency organization, internal practice or procedures, including delegations or authority. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 460-03-3.1100. Amount, Duration and Scope of Services (Delegated Hospital Inpatient Utilization Review; Performances Criteria for Review Requirements, Exemptions, Audits).

Statutory Authority: § 32.1-324 of the Code of Virginia.

Effective Date: November 7, 1990.

Summary:

The Plan amending action adds a revision to subsection J and adds a new subsection K to Supplement 1 Attachment 3.1 A and B in the Amount, Duration, and Scope of Services of the State Plan for Medical Assistance.

The Department of Medical Assistance Services (DMAS) will continue to review annually the utilization review performance of all hospitals. This Plan amendment would permit further exemptions of various utilization review (UR) edits and documentation submission requirements permitted by federal or state law based on a hospital's UR performance. Hospitals qualifying for delegated review status will be exempt from all utilization review requirements permitted by federal or state law prior to payment of their claims. Hospitals qualifying for delegated review status are subject to provider post-payment review audits and certain conditions. DMAS may reapply documentation requirements if a hospital's UR performance ceases to meet the criteria for any particular exemption status.

VR 460-03-3.1100. Amount, Duration and Scope of Services (Delegated Hospital Inpatient Utilization Review; Performance Criteria for Review Requirements, Exemptions, Audits).

General.

The provision of the following services cannot be reimbursed except when they are ordered or prescribed, and directed or performed within the scope of the license of a practitioner of the healing arts: laboratory and x-ray services, family planning services, and home health services. Physical therapy services will be reimbursed only when prescribed by a physician.

§ 1. Inpatient hospital services other than those provided in an institution for mental diseases.

A. Medicaid inpatient hospital admissions (lengths-of-stay) are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under 15 days that exceed the 75th percentile, the hospital must attach medical justification records to the billing invoice to be considered for additional coverage when medically justified. For all admissions that exceed 14 days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection F of this section.)

B. Medicaid does not pay the medicare (Title XVIII) coinsurance for hospital care after 21 days regardless of the length-of-stay covered by the other insurance. (See exception to subsection F of this section.)

C. Reimbursement for induced abortions is provided in

only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

D. Reimbursement for covered hospital days is limited to one day prior to surgery, unless medically justified. Hospital claims with an admission date more than one day prior to the first surgical date will pend for review by medical staff to determine appropriate medical justification. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for additional preoperative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

E. Reimbursement will not be provided for weekend (Friday/Saturday) admissions, unless medically justified. Hospital claims with admission dates on Friday or Saturday will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admission admissions will be denied.

F. Coverage of inpatient hospitalization will be limited to a total of 21 days for all admissions within a fixed period, which would begin with the first day inpatient hospital services are furnished to an eligible recipient and end 60 days from the day of the first admission. There may be multiple admissions during this 60-day period; however, when total days exceed 21, all subsequent claims will be reviewed. Claims which exceed 21 days within 60 days with a different diagnosis and medical justification will be paid. Any claim which has the same or similar diagnosis will be denied.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

G. Reimbursement will not be provided for inpatient hospitalization for any selected elective surgical procedures that require a second surgical opinion unless a properly executed second surgical opinion form has been obtained

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from the physician and submitted with the hospital invoice for payment, or is a justified emergency or exemption. The requirements for second surgical opinion do not apply to recipients in the retroactive eligibility period.

H. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the mandatory outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions. The requirements for mandatory outpatient surgery do not apply to recipients in the retroactive eligibility period.

I. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

J. The department may ~~waive~~ exempt portions or all of the utilization review documentation requirements of subsections A, D, E, F as it pertains to recipients under age 21, G, or H in writing for specific hospitals from time to time as part of ~~its~~ their ongoing hospital utilization review performance evaluation. *These exemptions are based on utilization review performance and review edit criteria which determine an individual hospital's review status as specified in the hospital provider manual. In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed, shall be subject to medical documentation requirements.*

K. Hospitals qualifying for an exemption of all documentation requirements except as described in subsection J above shall be granted "delegated review status" and shall, while the exemption remains in effect, not be required to submit medical documentation to support pended claims on a prepayment hospital utilization review basis to the extent allowed by federal or state law or regulation. The following audit conditions apply to delegated review status for hospitals:

1. The department shall conduct periodic on-site post-payment audits of qualifying hospitals using a statistically valid sampling of paid claims for the purpose of reviewing the medical necessity of inpatient stays.

2. The hospital shall make all medical records of which medical reviews will be necessary available

upon request, and shall provide an appropriate place for the department's auditors to conduct such review.

3. The qualifying hospital will immediately refund to the department in accordance with § 32.1-325.1 A and B of the Code of Virginia the full amount of any initial overpayment identified during such audit.

4. The hospital may appeal adverse medical necessity and overpayment decisions pursuant to the current administrative process for appeals of post-payment review decisions.

5. The department may, at its option, depending on the utilization review performance determined by an audit based on criteria set forth in the hospital provider manual, remove a hospital from delegated review status and reapply certain or all prepayment utilization review documentation requirements.

§ 2. Outpatient hospital and rural health clinic services.

2a. Outpatient hospital services.

1. Outpatient hospital services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that:

a. Are furnished to outpatients;

b. Except in the case of nurse-midwife services, as specified in § 440.165, are furnished by or under the direction of a physician or dentist; and

c. Are furnished by an institution that:

(1) Is licensed or formally approved as a hospital by an officially designated authority for state standard-setting; and

(2) Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare.

2. Reimbursement for induced abortions is provided in only those cases in which there would be substantial endangerment of health or life to the mother if the fetus were carried to term.

3. Reimbursement will not be provided for outpatient hospital services for any selected elective surgical procedures that require a second surgical opinion unless a properly executed second surgical opinion form has been obtained from the physician and submitted with the invoice for payment, or is a justified emergency or exemption.

2b. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

No limitations on this service.

§ 3. Other laboratory and x-ray services.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

§ 4. Skilled nursing facility services, EPSDT and family planning.

4a. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

4b. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4c. Family planning services and supplies for individuals of child-bearing age.

Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

§ 5. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to the approval of the Psychiatric Review Board) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period. These limitations also apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus were carried to term.

G. Physician visits to inpatient hospital patients are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses and is further restricted to medically necessary inpatient hospital days as determined by the Program.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days determined to be medically unjustified will be adjusted.

H. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine are covered.

I. Reimbursement will not be provided for physician services for those selected elective surgical procedures requiring a second surgical opinion unless a properly executed second surgical opinion form has been submitted with the invoice for payment, or is a justified emergency or exemption. The requirements for second surgical opinion do not apply to recipients in a retroactive

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eligibility period.

J. Reimbursement will not be provided for physician services performed in the inpatient setting for those surgical or diagnostic procedures listed on the mandatory outpatient surgery list unless the service is medically justified or meets one of the exceptions. The requirements of mandatory outpatient surgery do not apply to recipients in a retroactive eligibility period.

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

§ 6. Medical care by other licensed practitioners within the scope of their practice as defined by state law.

A. Podiatrists' services.

1. Covered podiatry services are defined as reasonable and necessary diagnostic, medical, or surgical treatment of disease, injury, or defects of the human foot. These services must be within the scope of the license of the podiatrists' profession and defined by state law.

2. The following services are not covered: preventive health care, including routine foot care; treatment of structural misalignment not requiring surgery; cutting or removal of corns, warts, or calluses; experimental procedures; acupuncture.

3. The Program may place appropriate limits on a service based on medical necessity or for utilization control, or both.

B. Optometric services.

1. Diagnostic examination and optometric treatment procedures and services by ophthalmologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services.

Not provided.

D. Other practitioners' services.

1. Clinical psychologists' services.

a. These limitations apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.

b. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine are covered.

§ 7. Home health services.

A. Service must be ordered or prescribed and directed or performed within the scope of a license of a practitioner of the healing arts.

B. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

C. Home health aide services provided by a home health agency.

Home health aides must function under the supervision of a professional nurse.

D. Medical supplies, equipment, and appliances suitable for use in the home.

1. All medical supplies, equipment, and appliances are available to patients of the home health agency.

2. Medical supplies, equipment, and appliances for all others are limited to home renal dialysis equipment and supplies, and respiratory equipment and oxygen, and ostomy supplies, as preauthorized by the local health department.

E. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.

Service covered only as part of a physician's plan of care.

§ 8. Private duty nursing services.

Not provided.

§ 9. Clinic services.

A. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus was carried to term.

B. Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that:

1. Are provided to outpatients;
2. Are provided by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients; and
3. Except in the case of nurse-midwife services, as specified in 42 CFR § 440.165, are furnished by or under the direction of a physician or dentist.

§ 10. Dental services.

A. Dental services are limited to recipients under 21 years of age in fulfillment of the treatment requirements under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and defined as routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with the State Dental Practice Act.

B. Initial, periodic, and emergency examinations; required radiography necessary to develop a treatment plan; patient education; dental prophylaxis; fluoride treatments; dental sealants; routine amalgam and composite restorations; crown recementation; pulpotomies; emergency endodontics for temporary relief of pain; pulp capping; sedative fillings; therapeutic apical closure; topical palliative treatment for dental pain; removal of foreign body; simple extractions; root recovery; incision and drainage of abscess; surgical exposure of the tooth to aid eruption; sequestrectomy for osteomyelitis; and oral antral fistula closure are dental services covered without preauthorization by the state agency.

C. All covered dental services not referenced above require preauthorization by the state agency. The following services are also covered through preauthorization: medically necessary full banded orthodontics, for handicapping malocclusions, minor tooth guidance or repositioning appliances, complete and partial dentures, surgical preparation (alveoloplasty) for prosthetics, single permanent crowns, and bridges. The following service is not covered: routine bases under restorations.

D. The state agency may place appropriate limits on a service based on medical necessity, for utilization control, or both. Examples of service limitations are: examinations, prophylaxis, fluoride treatment (once/six months); space maintenance appliances; bitewing x-ray - two films (once/12 months); routine amalgam and composite restorations (once/three years); dentures (once per 5

years); extractions, orthodontics, tooth guidance appliances, permanent crowns, and bridges, endodontics, patient education and sealants (once).

E. Limited oral surgery procedures, as defined and covered under Title XVIII (Medicare), are covered for all recipients, and also require preauthorization by the state agency.

§ 11. Physical therapy and related services.

11a. Physical therapy.

A. Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective July 1, 1988, the Program will not provide direct reimbursement to enrolled providers for physical therapy services rendered to patients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing homes' operating cost.

11b. Occupational therapy.

Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

11c. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist; see General section and subsections 11a and 11b of this section).

These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

§ 12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

12a. Prescribed drugs.

1. Nonlegend drugs, except insulin, syringes, needles, diabetic test strips for clients under 21 years of age, and family planning supplies are not covered by Medicaid. This limitation does not apply to Medicaid recipients who are in skilled and intermediate care facilities.

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2. Legend drugs, with the exception of anorexiants drugs prescribed for weight loss and transdermal drug delivery systems, are covered. Coverage of anorexiants for other than weight loss requires preauthorization.

3. The Program will not provide reimbursement for drugs determined by the Food and Drug Administration (FDA) to lack substantial evidence of effectiveness.

4. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, prescriptions for Medicaid recipients for specific multiple source drugs shall be filled with generic drug products listed in the Virginia Voluntary Formulary unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written.

5. New drugs, except for Treatment Investigational New Drugs (Treatment IND), are not covered until approved by the board, unless a physician obtains prior approval. The new drugs listed in Supplement 1 to the New Drug Review Program regulations (VR 460-05-2000.1000) are not covered.

12b. Dentures.

Provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

12c. Prosthetic devices.

A. Prosthetics services shall mean the replacement of missing arms and legs. Nothing in this regulation shall be construed to refer to orthotic services or devices.

B. Prosthetic devices (artificial arms and legs, and their necessary supportive attachments) are provided when prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary, and preauthorized for the minimum applicable component necessary for the activities of daily living.

12d. Eyeglasses.

Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

§ 13. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

13a. Diagnostic services.

Not provided.

13b. Screening services.

Not provided.

13c. Preventive services.

Not provided.

13d. Rehabilitative services.

1. Medicaid covers intensive inpatient rehabilitation services as defined in § 2.1 in facilities certified as rehabilitation hospitals or rehabilitation units in acute care hospitals which have been certified by the Department of Health to meet the requirements to be excluded from the Medicare Prospective Payment System.

2. Medicaid covers intensive outpatient rehabilitation services as defined in § 2.1 in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs), or when the outpatient program is administered by a rehabilitation hospital or an exempted rehabilitation unit of an acute care hospital certified and participating in Medicaid.

3. These facilities are excluded from the 21-day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in Attachment 4.19-A.

4. An intensive rehabilitation program provides intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, speech therapy, cognitive rehabilitation, prosthetic-orthotic services, psychology, social work, and therapeutic recreation. The nursing staff must support the other disciplines in carrying out the activities of daily living, utilizing correctly the training received in therapy and furnishing other needed nursing services. The day-to-day activities must be carried out under the continuing direct supervision of a physician with special training or experience in the field of rehabilitation.

§ 14. Services for individuals age 65 or older in institutions for mental diseases.

14a. Inpatient hospital services.

Provided, no limitations.

14b. Skilled nursing facility services.

Provided, no limitations.

14c. Intermediate care facility.

Provided, no limitations.

§ 15. Intermediate care services and intermediate care

services for institutions for mental disease and mental retardation.

15a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with § 1902 (a)(31)(A) of the Act, to be in need of such care.

Provided, no limitations.

15b. Including such services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions.

Provided, no limitations.

§ 16. Inpatient psychiatric facility services for individuals under 22 years of age.

Not provided.

§ 17. Nurse-midwife services.

Covered services for the nurse midwife are defined as those services allowed under the licensure requirements of the state statute and as specified in the Code of Federal Regulations, i.e., maternity cycle.

§ 18. Hospice care (in accordance with § 1905 (o) of the Act).

Not provided.

§ 19. Case management services for high-risk pregnant women and children up to age 1, as defined in Supplement 2 to Attachment 3.1-A in accordance with § 1915(g)(1) of the Act.

§ 20. Extended services to pregnant women.

20a. Pregnancy-related and postpartum services for 60 days after the pregnancy ends.

The same limitations on all covered services apply to this group as to all other recipient groups.

20b. Services for any other medical conditions that may complicate pregnancy.

The same limitations on all covered services apply to this group as to all other recipient groups.

§ 21. Any other medical care and any other type of remedial care recognized under state law, specified by the Secretary of Health and Human Services.

21a. Transportation.

Nonemergency transportation is administered by local health department jurisdictions in accordance with reimbursement procedures established by the Program.

21b. Services of Christian Science nurses.

Not provided.

21c. Care and services provided in Christian Science sanatoria.

Provided, no limitations.

21d. Skilled nursing facility services for patients under 21 years of age.

Provided, no limitations.

21e. Emergency hospital services.

Provided, no limitations.

21f. Personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

Not provided.

Emergency Services for Aliens (17.e)

No payment shall be made for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law unless such services are necessary for the treatment of an emergency medical condition of the alien.

Emergency services are defined as:

Emergency treatment of accidental injury or medical condition (including emergency labor and delivery) manifested by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical/surgical attention could reasonably be expected to result in:

1. Placing the patient's health in serious jeopardy;
2. Serious impairment of bodily functions; or
3. Serious dysfunction of any bodily organ or part.

Medicaid eligibility and reimbursement is conditional upon review of necessary documentation supporting the need for emergency services. Services and inpatient lengths of stay cannot exceed the limits established for other Medicaid recipients.

Claims for conditions which do not meet emergency criteria for treatment in an emergency room or for acute care hospital admissions for intensity of service or severity of illness will be denied reimbursement by the Department of Medical Assistance Services.

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NOTICE: The regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors, and § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 460-05-2000.0000. New Drug Review Program Regulations.

Statutory Authority: § 32.1-324 of the Code of Virginia.

Effective Date: November 7, 1990

Summary:

The regulations affected by this action are the New Drug Review Program regulations (VR 460-05-2000.0000) which were promulgated as a result of a 1989 legislative mandate in the Appropriations Act. The promulgation process identified several programmatic requirements which required statutory authority (in SB 496) for implementation.

The 1989 Appropriations Act directed DMAS to implement a program of new drug review for the purpose of controlling Medicaid's coverage of new drug products. In response to this legislative mandate, DMAS promulgated regulations effective February 1, 1990, to establish the New Drug Review Program and structure the New Drug Review Committee's operations.

During the promulgation process, several programmatic requirements were identified as essential for the successful operation of the New Drug Review Program. The committee members needed to be protected from liability associated with their good faith decisions in carrying out the legislative mandate. Additionally, the pharmaceutical manufacturers needed protection of their trade secret information from disclosure under the Virginia Freedom of Information Act. The Attorney General's Office advised that these programmatic requirements could not be enacted solely with regulations but required appropriate statutory authority. Legislation proposed by DMAS, which resulted in SB 496, contained these provisions. As amended and enacted, the bill also required that the Board of Medical Assistance Services, in acting on the committee's recommendations, follow procedures of the Administrative Process Act. These final regulations cover the provisions of SB 496.

VR 460-05-2000.0000. New Drug Review Program

Regulations.

PART I. GENERAL.

Article 1. *Definitions and Purpose.*

§ 1.1. Definitions.

The following words and terms, when used in these regulations, shall have the following meanings unless the context clearly indicates otherwise:

Board means the Board of Medical Assistance Services.

"Department" or *"DMAS"* means the Department of Medical Assistance Services.

"Director" means the Director of the Department of Medical Assistance Services.

"Drug information service" means that professional information service which operates in accordance with the standards of the American Society of Hospital Pharmacists, and which, under specific contract with DMAS, provides unbiased, authoritative, objective, comprehensive, and evaluative packages of information on specific new drug products.

"Food and Drug Administration or FDA" means the United States Food and Drug Administration.

"Investigational New Drug Application or IND" means that application which is the sponsor's submission to the FDA indicating that clinical investigation will take place.

"Medicaid New Drug Review Committee or MNDRC" means that committee responsible for evaluating new drug products for the Department of Medical Assistance Services.

"New drug" means FDA approved NDAs or ANDAs or selected treatment INDs for new chemical entities; new dosage forms of existing covered entities; and selected new strengths of existing products.

"New Drug Application (NDA) and Abbreviated New Drug Application (ANDA)" means application submitted to FDA.

"New strengths" means those strengths of an already approved and reimbursable drug product which are to be prescribed at a different dosing regimen than the strength already reimbursable by DMAS.

"Treatment Investigational New Drug or Treatment IND" means a drug still in the investigation process but made available for use by patients who are not in the clinical trails but have serious or life-threatening diseases for which satisfactory alternative drugs are not available.

§ 1.2. Purpose of Medicaid New Drug Review Program.

The purpose of the Medicaid New Drug Review Program is to limit coverage of new drug products which have less expensive therapeutic alternatives unless, as mandated by the General Assembly, a physician obtains prior approval for their use. (This will not apply to new drugs classified as treatment INDs.)

Article 2. Committee Establishment.

§ 1.3. Establishment of committee to review new drugs.

The Director of DMAS shall establish a committee herein called the Medicaid New Drug Review Committee (MNDRC) for the purpose of reviewing new drug products to recommend coverage decisions to the Board.

Article 3. Members and Duties.

§ 1.4. Committee appointments.

A. The MNDRC shall have 12 voting members, 10 of whom are physicians and 2 of whom are pharmacists, 1 of whom shall be a community pharmacist. The Director of DMAS shall appoint the physician members from candidates submitted by the Medical Society of Virginia, the Old Dominion Medical Society, and each of the medical schools in the Commonwealth. The physician candidates shall be physicians licensed in Virginia and broadly representative of various medical specialties. The Director shall appoint the pharmacist members from candidates submitted by the Department of Pharmacy at the Medical College of Virginia Hospitals, the Medical College of Virginia/Virginia Commonwealth University School of Pharmacy, the Virginia Pharmaceutical Association (VPHA), and the Virginia Society of Hospital Pharmacists (VSHP). The Director of DMAS shall invite submission of candidates from each of these groups.

B. The MNDRC members shall serve at the pleasure of the Director for terms established by him. Vacancies shall be filled in the same manner as the original appointment.

C. DMAS shall provide staff assistance to the MNDRC and its officers in the routine conduct of its business.

§ 1.5. Duties of the committee.

A. The committee shall meet no less than quarterly and, in addition, upon call by the Board, the DMAS Director, or any two voting members. A quorum for action by the MNDRC shall be seven voting members.

B. The MNDRC shall elect from among its members a chairman, a vice-chairman, and a secretary. Officers may be elected to successive terms.

C. The secretary of the MNDRC shall keep a full record

of the proceedings of the committee. The record shall be open to public inspection at all reasonable times.

E. The MNDRC shall evaluate a new drug based on, but not limited to, the following factors:

1. The medical/therapeutic benefit of the new drug product under consideration compared to currently available drug products.

2. The comparison of the cost of the new drug product to therapeutically equivalent drug products already reimbursable under Medicaid.

§ 1.6. Immunity from liability.

The members of the committee and of the board, as well as the staff of DMAS, shall be immune from liability, individually and jointly, pursuant to § 32.1-331.5 of the Code of Virginia.

PART II. NEW DRUG REVIEW PROCESS.

Article 1. Applications for Consideration.

§ 2.1. Applications for drug review.

A. Any licensed physician or MNDRC member, or manufacturer or other supplier of a new drug, may petition the MNDRC through the application process to consider a new drug product. The form of application and information required shall be as specified by the Department. The MNDRC may require that all such information be verified by affidavit or oath.

B. DMAS, upon receipt of MNDRC applications, shall acknowledge the receipt and state whether the application and accompanying information are complete.

C. Applications for MNDRC's consideration shall be submitted to:

New Drug Review Committee
Attention: DMAS Pharmacist
Department of Medical Assistance Services
600 East Broad Street, Suite 1300
Richmond, Virginia 23219

D. Persons submitting applications for review of new drugs shall supply the required number of copies of documents indicated on the application form.

E. Any applicant desiring to protect trade secret information shall present such information to the MNDRC in writing and shall explain in writing the need to keep such information confidential. The applicant shall stamp or print the words CONFIDENTIAL TRADE SECRET INFORMATION in letters at least one-inch high at the top of each page of all such documents.

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F. MNDRC shall return to the applicant all confidential documents if the MNDRC denies the request for trade secret protection.

Article 2. Review Process.

§ 2.2. Review procedure.

A. The MNDRC shall consider information submitted by a contracting drug information service or any other appropriate source in reaching its decision.

B. Pursuant to § 32.1-331.4 D of the Code, the MNDRC and the board shall not disseminate trade secret information provided to it by applicants who comply with the trade secret provisions of these regulations. Except as agreed between the MNDRC and an applicant, only members of the MNDRC, the DMAS Board, and DMAS staff assisting the MNDRC shall have access to trade secret information.

C. The MNDRC shall request the Director or his designee to contract with a drug information service to perform a thorough review and analysis of a new drug for which DMAS has received an application. DMAS shall, upon receipt of the contractor's evaluation, transmit it along with the application for coverage and any other supporting attachments to the committee members.

D. The MNDRC shall review an application which is complete within six months of date of receipt and forward their recommendations to the board.

E. The Board shall determine coverage of a new drug based on the recommendation rendered by the MNDRC. Pursuant to the Code, the board shall conduct further proceedings under the Administrative Process Act (APA).

F. DMAS shall notify applicants and providers within 60 days of the Board's decision regarding coverage of new drugs. Pursuant to the completion of the final review period, DMAS shall notify an applicant within 10 working days of the board's decision on coverage. If the coverage is denied, the applicant will be advised of its right to apply for reconsideration after six months.

G. DMAS shall notify an applicant within 10 working days of the Board's decision on coverage. If the coverage is denied, the applicant will be advised of its right to apply for reconsideration after six months. Following the completion of the APA process, DMAS shall notify applicants and providers within 60 days of the effective date of the regulation of the board's decision regarding coverage of new drugs.

§ 2.3. Exception process.

A. Medicaid reimbursement shall not be available for new drugs which have not been approved for coverage by

the board except through a prior approval process developed by DMAS.

B. Physicians who prescribe noncovered new drugs must obtain prior approval for the new drug before reimbursement can be allowed.

§ 2.4. Reconsideration of denied coverage.

A. Applicants may not request reconsideration of a coverage denial prior to six months from the date of the denial.

B. Reconsideration of a denial decision shall only be based upon new or previously unavailable relevant and objective information not already considered by the committee.

C. Within six months of the date of receipt, the MNDRC shall review an application for reconsideration which is complete and meets the requirements of subsection B of this section.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: VR 615-01-33. Allowance of Telephone Costs in the Food Stamp Program.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Effective Date: January 1, 1991.

Summary:

Applicants for and recipients of food stamp benefits have their shelter costs used in the calculation of their eligibility and benefit levels. Households incurring telephone costs can use those costs in the calculation of their total shelter expenses. The state calculated telephone standard which is based on a weighted average of basic telephone rates across the Commonwealth and which is updated annually, shall be used in this calculation regardless of actual basic telephone costs incurred by the household.

VR 615-01-33. Allowance of Telephone Costs in the Food Stamp Program.

§ 1. Allowance of telephone costs in the Food Stamp Program.

For households [who which] use actual utilities, and who incur a telephone cost, the standard telephone allowance [, as determined by the Department of Social Services,] shall be used in the calculation of eligibility and benefit levels.

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

Title of Regulation: VR 672-30-1. Regulations Governing the Transportation of Hazardous Materials.

Statutory Authority: §§ 10.1-1402 and 10.1-1450 of the Code of Virginia.

Effective Date: November 7, 1990.

EDITOR'S NOTE ON INCORPORATION BY REFERENCE: Pursuant to § 9-6.18 of the Code of Virginia, 49 CFR Parts 171-179 and 390-397, is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Virginia Register of Regulations. Copies of this document are available for inspection at the Department of Waste Management, 11th Floor, James Monroe Building, 101 N. 14th Street, Richmond, Virginia, and in the office of the Registrar of Regulations, Room 262, General Assembly Building, Capitol Square, Richmond, Virginia.

Summary:

Amendment 8 proposes to incorporate by reference changes that were made by U.S. DOT to Title 49, Code of Federal Regulations, Parts 171-179 and 390-397 from July 1, 1988, to June 30, 1989. These changes include: (i) incorporation of a Commercial Driver's License Program; (ii) revision of the blood alcohol concentration level resulting in disqualification of a commercial motor vehicle operator; (iii) clarification and additional requirements for necessary parts and accessories for commercial motor vehicles to improve safe operation; (iv) incorporation of the most recent edition of the International Civil Aviation Organization's (ICAO) Technical Instructions for the safe Transport of Dangerous Goods by Air; (v) revision of driver's hours of service logging requirements to allow the use of certain automatic on-board recording devices *in lieu* of handwritten records; (vi) revision to intracity zone exemptions to maintain consistency with the Truck and Bus Safety and Regulatory Reform Act of 1988 and to provide a one year exemption for certain foreign motor carriers from the parts and accessories requirements noted in number (iii) above; (vii) extension for two years of the exemption for specified quantities of radioactive materials for passenger-carrying aircraft; (viii) extension for 36 months of the deadline for installation of rear bumpers or rear-end tank protection devices on cargo tank trucks "bobtails" operated in combination with cargo tank full trailers; (ix) reorganization of cargo tank specifications and provision for vacuum-loaded cargo tanks; (x) revision of incident reporting forms; and (xi) corrections, editorial changes, clarifications, extension of effective dates of final rules, and other minor revisions.

Substantial changes to the regulations include the following:

1. Section 3.1 is amended to provide that persons subject to the RGTHM must comply with specified

federal regulations or amendments "promulgated and in effect as of" the date specified in the RGTHM. Prior to this change § 3.1 only referred to specified federal regulations "promulgated through" a certain date.

2. Section 3.1 has been changed to remove 49 CFR Part 180 from among those provisions listed as being incorporated by reference into the RGTHM.

3. Section 5.1 is amended to provide that, in addition to the Department of State Police, "all other law-enforcement officers of the Commonwealth" who have completed the hazardous materials training prescribed in § 2.8 are authorized to perform inspections and mark vehicles "out of service." The phrase "and all other law-enforcement officers of the Commonwealth" is taken from § 2.8, which currently directs such officers and the State Police to enforce the provisions of the RGTHM.

VR 672-30-1. Regulations Governing the Transportation of Hazardous Materials.

PART I. DEFINITIONS.

§ 1.1. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise.

"Explosive" means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, i.e., with substantially instantaneous release of gas and heat, unless such compound, mixture, or device is otherwise specifically classified in 49 Code of Federal Regulations (CFR) Parts 170 through 177.

"Hazardous material" means a substance or material in a form or quantity which may pose an unreasonable risk to health, safety or property when transported, and which the Secretary of Transportation of the United States has so determined by regulation or order.

"Transport" or "Transportation" means any movement of property by any mode, and any packing, loading, unloading, identification, marking, placarding, or storage incidental thereto.

PART II. GENERAL INFORMATION AND LEGISLATIVE AUTHORITY.

§ 2.1. Authority for regulation.

A. These regulations are issued under authority of Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, Transportation of Hazardous Materials.

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B. Section 10.1-1450 of the Code of Virginia assigns the Virginia Waste Management Board the responsibility for promulgating regulations governing the transportation of hazardous materials.

C. The board is authorized to promulgate rules and regulations designating the manner and method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored and transported, such rules to be no more restrictive than applicable federal regulations.

§ 2.2. Purpose of regulations.

The purpose of these regulations is to regulate the transportation of hazardous materials in Virginia.

§ 2.3. Administration of regulations.

A. The [Executive] Director of the Department of Waste Management is designated by the Virginia Waste Management Board with the responsibility to carry out these regulations.

B. The Department of Waste Management is responsible for the planning, development and implementation of programs to meet the requirements of Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia.

§ 2.4. Application of regulations.

Notwithstanding the limitations contained in [Title] 49 [CFR § 171.1(3) , Code of Federal Regulations, § 171.1(a)(3)], and subject to the exceptions set forth in § 2.5 below, these regulations apply to any person who transports hazardous materials, or offers such materials for shipment.

§ 2.5. Exceptions.

Nothing contained in these regulations shall apply to regular military or naval forces of the United States, nor to the duly authorized militia of any state or territory thereof, nor to the police or fire departments of this Commonwealth, providing the same are acting within their official capacity and in the performance of their duties; nor to the transportation of hazardous radioactive materials in accordance with § 44-146.30 of the Code of Virginia.

§ 2.6. Regulations not to preclude exercise of certain regulatory powers.

Pursuant to § 10.1-1452 of the Code of Virginia, the provisions of these regulations shall not be construed so as to preclude the exercise of the statutory and regulatory powers of any agency, department or political subdivision of the Commonwealth having statutory authority to regulate hazardous materials on specified highways or portions thereof.

§ 2.7. Transportation under United States Regulations.

Pursuant to § 10.1-1454 of the Code of Virginia, any person transporting or offering for shipment hazardous materials in accordance with regulations promulgated under the laws of the United States, shall be deemed to have complied with the provisions of these regulations, except when such transportation is excluded from regulation under the laws or regulations of the United States.

§ 2.8. Enforcement.

A. Law-enforcement officers.

The Department of State Police and all other law-enforcement officers of the Commonwealth who have satisfactorily completed the course in Hazardous Materials Compliance and Enforcement as prescribed by the U.S. Department of Transportation, Research and Special Programs Administration, Office of Hazardous Materials Transportation, in federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials, shall enforce the provisions of this article, and any rule or regulation promulgated herein. Those law-enforcement officers certified to enforce the provisions of this article, and any regulation promulgated hereunder, shall annually receive in-service training in current federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials. Pursuant to § 10.1-1455 of the Code of Virginia, violation of these regulations is a Class 1 misdemeanor.

B. Civil judicial enforcement of these regulations shall be governed by § 10.1-1455 of the Code of Virginia.

§ 2.9. Application of Administrative Process Act.

The provisions of the Virginia Administrative Process Act, codified as § 9-6.14:1 of the Code of Virginia, govern the adoption, amendment, modification, and revision of these regulations, and the conduct of all proceedings hereunder.

PART III. COMPLIANCE WITH FEDERAL REGULATIONS.

§ 3.1. Compliance.

Every person who transports or offers for transportation hazardous materials within or through the Commonwealth of Virginia shall comply with the federal regulations governing the transportation of hazardous materials promulgated by the United States Secretary of Transportation with amendments promulgated [through and in effect as of] June 30, ~~1988~~ 1989 , pursuant to the Hazardous Materials Transportation Act, and located at Title 49 of the Code of Federal Regulations (CFR) as set forth below and which are incorporated in these regulations by reference:

1. Exemptions. Hazardous Materials Program Procedures in 49 CFR, Part 107, Subpart B.

2. Hazardous Materials Regulations in 49 CFR, Parts 171 through 177.

3. Shipping Container Specifications in 49 CFR, Part 178.

4. Specifications for Tank Cars in 49 CFR , Part 179.

[~~5.~~] ~~Driving and Parking Rules in 49 CFR Part 397 [Qualifications and Maintenance of Cargo Tanks in 49 CFR, Part 180.]~~

[~~6.~~ 5.] ~~Commercial Licensing Requirements in 49 CFR, Part 383.~~

[~~7.~~ 6.] ~~Motor Carrier Safety Regulations in 49 CFR , Parts 390 through 396 397 .~~

PART IV. HAULING EXPLOSIVES IN PASSENGER-TYPE VEHICLES.

§ 4.1. Hauling explosives in passenger-type vehicles.

Explosives shall not be transported in or on any motor vehicle licensed as a passenger vehicle or a vehicle which is customarily and ordinarily used in the transportation of passengers except upon written permission of the State Police and under their direct supervision and only in the amount and between points authorized. If the movement is intracity, the permission of the properly designated authority of such city shall be secured. Dangerous articles, including small arms ammunition, but not including other types of explosives, may be transported in passenger-type vehicles provided the maximum quantity transported does not exceed 100 pounds in weight. Such transportation shall not be subject to these rules.

PART V. OUT OF SERVICE.

§ 5.1. Out of service.

The Department of State Police [*and all other law-enforcement officers of the Commonwealth who have met the qualifications set forth in § 2.8, above,*] shall be the agents authorized to perform inspections of motor vehicles in operation and to declare and mark vehicles "out of service" as set forth in 49 CFR , [~~Part §~~] 396.9.

EMERGENCY REGULATIONS

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: VR 460-04-8.4. Home and Community Based Services for Elderly and Disabled Individuals.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Effective Dates: September 10, 1990, through September 9, 1991.

SUMMARY

1. **REQUEST:** The Governor's approval is hereby requested to adopt the emergency regulation entitled Home and Community Based Services for Elderly and Disabled Individuals to modify the monitoring of current programs by Departmental staff.
2. **RECOMMENDATION:** Recommend approval of the Department's request to take an emergency adoption action regarding Home and Community Based Services for Elderly and Disabled Individuals. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Joseph Teefey
for Bruce U. Kozlowski, Director
Date: July 25, 1990

3. CONCURRENCES:

Concur

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: July 27, 1990

4. GOVERNOR'S ACTION

Approve

/s/ Lawrence W. Wilder
Governor
Date: September 7, 1990

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: September 10, 1990

DISCUSSION

6. **BACKGROUND:** The Department of Medical Assistance Services (DMAS) initially implemented Home and Community Based Care waiver services for elderly and disabled individuals in 1982 with the approval of the Health Care Financing Administration. Personal Care services were initially covered through this

waiver, which was later amended to also include Adult Day Health Care and Respite Care services.

All three services required individual cost-effectiveness and reassessment by DMAS staff of each individual every six months. DMAS has submitted an amendment to HCFA requesting elimination of the individual cost-effectiveness requirement and decreased monitoring of Personal Care services. These changes have been designed to free DMAS staff to administer and monitor newly mandated programs, i.e. home and community-based services to individuals with AIDS and individuals with mental retardation, and hospice services.

Virginia's approved waiver requires that the cost of home and community-based services for every individual be equal to or less than the cost of the individual's institutional care. This calculation of individual cost-effectiveness has required intensive monitoring and is neither federally required nor any longer necessary due to the highly cost-effective home care. Therefore, the Department intends to discontinue the requirement for individual cost-effectiveness for Personal Care, Adult Day Health Care, and Respite Care. DMAS will continue to assure HCFA that the annual aggregate costs to Medicaid for these services are equal to or less than the aggregate costs for institutional care.

Home and Community Based Care policies have required that providers obtain prior approval from DMAS for every increase made to a recipient's plan of care. This approval process has been time-consuming for both providers and DMAS. DMAS will develop levels of service limits and parameters to serve as standards for providers in developing individual plans of care. These individual plans of care can then be implemented without the current prior approval process.

Prior approval will be required if a plan of care is developed which exceeds the DMAS' parameters. The providers' ability to develop plans of care within service limits is expected to eliminate 90% of the requests for prior approval currently being reviewed by DMAS.

Since the inception of these services, DMAS has conducted utilization review on every Personal Care recipient at least once every six months, based on the recipient's date of admission. Review activity results have indicated that the majority of providers comply with DMAS policies 80% or more of the time. This every-six-months review schedule has required quarterly site visits. DMAS proposes to decrease site review activity for those Personal Care agencies which comply with policies. This reduction will be accomplished by staff desk reviews of provider documentation submitted annually for every recipient. Annual desk reviews of submitted documentation will

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decrease disruption to providers caused by on-site audits, and decrease Medicaid monitoring costs.

These revisions contain clarification of the definition of adverse action and the DMAS role in assuring compliance with provider participation standards and program policies and procedures.

DMAS has also included in these revisions technical corrections to the recipient eligibility requirements.

HCFA approved Virginia's request to amend the waiver for elderly and disabled individuals on May 18, 1990. Emergency regulations are necessary for immediate implementation to meet the agency's need to divert existing staff resources from administration of existing services to administration of new programs.

7. **AUTHORITY TO ACT:** The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's adoption of emergency regulations subject to the Governor's approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, the Code requires this agency to initiate the public notice and comment process as contained in Article 2 of the APA.

Without an emergency regulation, this amendment to the Home and Community Based Care Services for Elderly and Disabled Individuals program cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. The emergency regulation will permit a decrease in DMAS staff activity in the administration and monitoring of the Home and Community Based Services for Elderly and Disabled Individuals. Reassignment of staff will enable the administration of newly mandated programs within existing resources.

8. **FISCAL/BUDGETARY IMPACT:** These regulations complete a process that has been under way since early 1990. DMAS has already implemented waiver modifications that are being established in regulations with these changes. Program expenditure estimates for Personal Care services have not been modified because of these waiver modifications.
9. **RECOMMENDATION:** Recommend approval of this request to take an emergency adoption action to become effective upon its adoption and filing with the Registrar of Regulations. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA. Without an effective emergency regulation, the Department lacks the authority to

implement the necessary changes to the Home and Community Based Services for Elderly and Disabled Individuals resulting in insufficient staff to administer newly mandated services.

10. Approval Sought for VR 460-04-8.4.

Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the following regulation:

VR 460-04-8.2. Home and Community Based Services for Elderly and Disabled Individuals.

§ 1. Definitions.

The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise:

"Activities of daily living" means assistance with personal care tasks (i.e., bathing, dressing, toileting, etc.).

"Adult day health care center" means a participating provider which offers a community-based day program providing a variety of health, therapeutic and social services designed to meet the specialized needs of those elderly and physically disabled individuals at risk of placement in an intermediate or skilled care nursing home.

"Adult day health care services" means services designed to prevent institutionalization by providing participants with health, maintenance, and rehabilitation services in a congregate daytime setting.

"Current functional status" means the individual's degree of dependency in performing activities of daily living.

"DMAS" means the Department of Medical Assistance Services.

"DSS" means the Department of Social Services.

"Episodic respite care" means relief of the caregiver for a nonroutine, short-term period of time for a specified reason (i.e., respite care offered for seven days, 24 hours a day while the caregiver takes a vacation).

"Home and community-based care" means a variety of in-home services reimbursed by DMAS (personal care, adult day health care and respite care) designed to offer individuals an alternative to institutionalization. Individuals may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service(s) service or services to avoid nursing home placement. An individual may only receive home and community-based long-term care services up to the amount for which the costs to Medicaid are equal to or less than nursing home care. The Nursing

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Home Preadmission Screening Team or Department of Medical Assistance Services shall give prior authorization for any Medicaid-reimbursed home and community-based care.

“Nursing home preadmission screening” means the process to: (i) evaluate the medical, nursing, and social needs of individuals referred for preadmission screening, (ii) analyze what specific services the individuals need, (iii) evaluate whether a service or a combination of existing community services is available to meet the individuals’ needs, and (iv) authorize Medicaid funded nursing home or community-based care for those individuals who meet nursing facility level of care and require that level of care.

“Nursing Home Preadmission Screening Committee/Team” means the entity contracted with the DMAS which is responsible for performing nursing home preadmission screening. For individuals in the community, this entity is a committee comprised of staff from the local health department and local DSS. For individuals in an acute care facility who require screening, the entity is a team of nursing and social work staff. A physician must be a member of both the local committee or acute care team.

“Participating provider” means an institution, facility, agency, partnership, corporation, or association that meets the standards and requirements set forth by DMAS, and has a current, signed contract with DMAS.

“Personal care agency” means a participating provider which renders services designed to prevent or reduce inappropriate institutional care by providing eligible individuals with personal care aides who provide personal care services.

“Personal care services” means long-term maintenance or support services necessary to enable the individual to remain at or return home rather than enter an intermediate or skilled nursing care facility. Personal care services include assistance with personal hygiene, nutritional support, and the environmental maintenance necessary for recipients to remain in their homes.

“Plan of Care” means the written plan of services certified by the screening team physician as needed by the individual to ensure optimal health and safety for the delivery of home and community-based care.

“Professional staff” means the director, activities director, registered nurse, or therapist of an adult day health care center.

“Respite care” means services specifically designed to provide a temporary but periodic or routine relief to the primary caregiver of an individual who is incapacitated or dependent due to frailty or physical disability. Respite care services include assistance with personal hygiene, nutritional support and environmental maintenance

authorized as either episodic, temporary relief or as a routine periodic relief of the caregiver.

“Respite Care Agency” means a participating provider which renders services designed to prevent or reduce inappropriate institutional care by providing eligible individuals with respite care aides who provide respite care services.

“Routine respite care” means relief of the caregiver on a periodic basis over an extended period of time to allow the caregiver a routine break from continuous care (i.e., respite care offered one day a week for six hours).

“Staff” means professional and aide staff of an adult day health care center.

“State Plan for Medical Assistance” or “the Plan” means the document containing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

§ 2. General coverage and requirements for all home and community-based care services.

A. Coverage statement.

1. Coverage shall be provided under the administration of the Department of Medical Assistance Services for elderly and disabled individuals who would otherwise require the ~~intermediate or skilled~~ level of nursing care ~~provided in a nursing facility~~.

2. These services shall be medically appropriate ; ~~cost~~ ~~effective~~ and necessary to maintain these individuals in the community.

B. Patient qualification and eligibility requirements.

1. Virginia will apply the financial eligibility criteria contained in the State Plan for the categorically needy and the medically needy. Virginia has elected to cover the optional categorically needy group under 42 CFR 435.211, 435.231 and 435.217. The income level used for 435.211, 435.231 and 435.217 is 300% of the current Supplemental Security Income payment standard for one person.

a. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. The medically needy individuals participating in the waiver will also be considered as if they were institutionalized for the purpose of applying the institutional deeming rules.

b. Virginia will treat the income of an eligible individual who receives home and community-based care services under 42 CFR 435.217 using the

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methodology in 42 CFR 435.735 to reduce the agency's payment for home and community-based services. The following amounts from the individual's total income, including amounts disregarded in determining eligibility, will be deducted:

(1) For the individual's maintenance needs, the current Supplemental Security Income (SSI) payment standard for one individual, the categorically needy income standard for one.*

* Although Virginia has elected to apply more restrictive eligibility requirements than SSI, Virginia does not apply a more restrictive income standard.

(2) For an individual with a spouse living in the home, an additional amount for the maintenance needs of the spouse based upon a reasonable assessment of need ~~but not to exceed the current Supplemental Security Income payment for one individual (the categorically needy income standard for one)~~ in accordance with § 1924 of the Social Security Act .

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family based upon a reasonable assessment of need ~~but not to exceed the medically needy income standard for a family of the same size in~~ accordance with § 1924 of the Social Security Act .

(4) Amounts for incurred expenses for Medicare and other health insurance premiums, deductibles, or coinsurance charges.

(5) Amounts for incurred expenses for necessary medical or remedial care not subject to payment by a third party recognized under state law but not covered under the state's Medicaid Plan within the same reasonable limits established under the State Plan for institutionalized individuals.

C. Assessment and authorization of home and community-based care services.

1. To ensure that Virginia's home and community-based care waiver programs serve only individuals who would otherwise be placed in a nursing home, home and community-based care services shall be considered only for individuals who are seeking nursing home admission or for individuals who are at imminent risk of nursing home admission. Home and community-based care services shall be the critical service that enables the individual to remain at home rather than being placed in a nursing home.

2. The individual's status as an individual in need of home and community-based care services shall be determined by the Nursing Home Preadmission Screening Team after completion of a thorough

assessment of the individual's needs and available support. Screening and preauthorization of home and community-based care services by the Nursing Home Preadmission Screening Committee/Team or DMAS staff is mandatory before Medicaid will assume payment responsibility of home and community-based care services.

3. An essential part of the Nursing Home Preadmission Screening Team's assessment process is determining the level of care required by applying existing criteria for skilled and intermediate nursing facility care according to established Nursing Home Preadmission Screening process.

4. The team shall explore alternative settings and services to provide the care needed by the individual. If nursing home placement or a combination of other services is determined to be appropriate, the screening team shall initiate referrals for service. If Medicaid-funded home and community-based care services are determined to be the critical service to delay or avoid nursing home placement, the screening team shall develop an appropriate plan of care ; ~~compute cost effectiveness~~ and initiate referrals for service.

5. ~~To ensure that Virginia's home and community-based care services continue to be a cost-effective alternative to institutionalization, home and community-based care services shall be considered only for individuals for whom the cost of Medicaid-reimbursed home and community-based care would not exceed the Medicaid cost of institutional care. Reserved.~~

6. Home and community-based care services shall not be offered to any individual who resides in an ~~intermediate or skilled~~ a nursing facility, an intermediate facility for the mentally retarded, a hospital, or an adult home licensed by the DSS.

7. Medicaid will not pay for any home and community-based care services delivered prior to the authorization date approved by the Nursing Home Preadmission Screening Committee/Team.

8. Any authorization and Plan of Care for home and community-based care services will be subject to the approval of the DMAS prior to Medicaid reimbursement for waiver services.

§ 3. General conditions and requirements for all home and community-based care participating providers.

A. General requirements.

Providers approved for participation shall, at a minimum, perform the following activities:

1. Immediately notify DMAS, in writing, of any change

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in the information which the provider previously submitted to DMAS.

2. Assure freedom of choice to recipients in seeking medical care from any institution, pharmacy, practitioner, or other provider qualified to perform the service(s) required and participating in the Medicaid Program at the time the service was performed.

3. Assure the recipient's freedom to reject medical care and treatment.

4. Accept referrals for services only when staff is available to initiate services.

5. Provide services and supplies to recipients in full compliance with Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the grounds of race, color, religion, or national origin and of Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of a handicap.

6. Provide services and supplies to recipients in the same quality and mode of delivery as provided to the general public.

7. Charge DMAS for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges to the general public.

8. Accept Medicaid payment from the first day of eligibility.

9. Accept as payment in full the amount established by the DMAS.

10. Use Program-designated billing forms for submission of charges.

11. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope and details of the health care provided.

a. Such records shall be retained for at least five years from the last date of service or as provided by applicable state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the agency discontinues operation. DMAS shall be notified in writing of storage, location, and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.

12. Furnish to authorized state and federal personnel,

in the form and manner requested, access to records and facilities.

13. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid.

14. Hold confidential and use for authorized DMAS purposes only all medical assistance information regarding recipients.

15. Change of ownership. When ownership of the provider agency changes, DMAS shall be notified within 15 calendar days.

B. Requests for participation.

Requests will be screened to determine whether the provider applicant meets the basic requirements for participation.

C. Provider participation standards.

For DMAS to approve contracts with home and community-based care providers the following standards shall be met:

1. Staffing requirements,
2. Financial solvency,
3. Disclosure of ownership, and
4. Assurance of comparability of services.

D. Adherence to provider contract and special participation conditions.

In addition to compliance with the general conditions and requirements, all providers enrolled by the Department of Medical Assistance Services shall adhere to the conditions of participation outlined in their individual provider contracts.

E. Recipient choice of provider agencies.

If there is more than one approved provider agency in the community, the individual will have the option of selecting the provider agency of his choice.

F. Termination of provider participation.

DMAS may administratively terminate a provider from participation upon 60 days' written notification. DMAS may also cancel a contract immediately or may give notification in the event of a breach of the contract by the provider as specified in the DMAS contract. Such

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action precludes further payment by DMAS for services provided recipients subsequent to the date specified in the termination notice.

G. Reconsideration of adverse actions.

Adverse actions may include, but are not limited to: disallowed payment of claims for services rendered which are not in accordance with DMAS policies and procedures, caseload restrictions, and contract limitations or termination. The following procedures will be available to all providers when DMAS takes adverse action which includes termination or suspension of the provider agreement. :

1. The reconsideration process shall consist of three phases:

- a. A written response and reconsideration to the preliminary findings,
- b. The informal conference, and
- c. The formal evidentiary hearing.

2. The provider shall have 30 days to submit information for written reconsideration, 15 days from the date of the notice to request the informal conference, and 15 days to request the formal evidentiary hearing.

3. An appeal of adverse actions shall be heard in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and that the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia. Court review of the final agency determination shall be made in accordance with the Administrative Process Act.

H. Participating provider agency's responsibility for the recipient information form (DMAS-122).

It is the responsibility of the provider agency to notify DMAS and the DSS, in writing, when any of the following circumstances occur:

1. Home and community-based care services are implemented,
2. A recipient dies,
3. A recipient is discharged or terminated from services, or
4. Any other circumstances (including hospitalization) which cause home and community-based care services to cease or be interrupted for more than 30 days.

I. Changes or termination of care.

1. Decreases in amount of authorized care by the

provider agency.

a. The provider agency may decrease the amount of authorized care only if the recipient and the participating provider both agree that a decrease in care is needed and that the amount of care in the revised plan of care is appropriate.

b. The participating provider is responsible for devising the new Plan of Care and calculating the new hours of service delivery.

c. The individual responsible for supervising the recipient's care shall discuss the decrease in care with the recipient or family, or both, document the conversation in the recipient's record, and shall notify the recipient or family of the change by letter.

d. If the recipient disagrees with the decrease proposed, the DMAS shall be notified to conduct a special review of the recipient's service needs.

2. Increases in amount of authorized care. If a change in the recipient's condition (physical, mental, or social) necessitates an increase in care, the participating provider shall contact the DMAS utilization review analyst assigned to the provider who will assess the need for increase and, if appropriate, develop a plan of care for services to meet the changed needs. The provider may implement the increase in hours without approval from DMAS as long as the amount of service does not exceed the amount established by DMAS as the maximum for the level of care designated for that recipient. Any increase to a recipient's plan of care which exceeds the number of hours allowed for that recipient's level of care or any change in the recipient's level of care must be pre-approved by the DMAS utilization review analyst assigned to the provider. ~~authorize the increase.~~ If the increase is needed immediately for an emergency situation, a begin and an end date will be provided by DMAS for the temporary emergency increase.

3. Nonemergency termination of home and community-based care services by the participating provider. The participating provider shall give the recipient or family, or both, five days' written notification of the intent to terminate services. The letter shall provide the reasons for and effective date of the termination. The effective date of services termination shall be at least five days from the date of the termination notification letter.

4. Emergency termination of home and community-based care services by the participating provider. In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered the DMAS must be notified prior to termination. The five-day written notification

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period shall not be required.

5. DMAS termination of home and community-based care services. The effective date of termination shall be at least 10 days from the date of the termination notification letter. DMAS has the responsibility and the authority to terminate home and community-based care services to the recipient for any of these reasons:

- a. The home and community-based care service is not the critical alternative to prevent or delay institutional placement.
- b. The recipient no longer meets the level-of-care criteria.
- c. The recipient's environment does not provide for his health, safety, and welfare.
- d. An appropriate and cost-effective plan of care cannot be developed.

J. Suspected abuse or neglect.

Pursuant to § 63.1-55.3 of the Code of Virginia, if a participating provider agency knows or suspects that a home and community-based care recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse/neglect/exploitation shall report this to the local DSS.

K. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and annually recertify each provider for contract renewal with DMAS to provide home and community-based services. A provider's non-compliance with DMAS policies and procedures, as required in the provider's contract, may result in a written request from DMAS for a corrective action plan which details the steps the provider will take and the length of time required to achieve full compliance with deficiencies which have been cited.

§ 4. Adult day health care services.

The following are specific requirements governing the provision of adult day health care:

A. General.

Adult day health care services may be offered to individuals in a congregate daytime setting as an alternative to more costly institutional care. Adult day health care may be offered either as the sole home and community-based care service that avoids institutionalization or in conjunction with personal care or respite care, or both. When the individual referred for adult day health care is already receiving another home and community-based care service, the DMAS utilization review staff shall assess the need for the additional home

and community-based care service and authorize the service if it is deemed necessary to avoid institutionalization.

B. Special provider participation conditions.

In order to be a participating provider, the adult day health care center shall:

1. Be an adult day care center licensed by DSS. A copy of the current license shall be available to the DMAS for verification purposes prior to the applicant's enrollment as a Medicaid provider and shall be available for DMAS review prior to yearly contract renewal.
2. Adhere to the DSS adult day care center standards. The DMAS special participation conditions included here are standards imposed in addition to DSS standards which shall be met in order to provide Medicaid adult day health care services.
3. Be open and provide services for a minimum of 10 hours a day Monday through Friday. The participant may attend the center all or a portion of that day according to the Plan of Care developed for that individual. The center shall be able to provide a separate room or area equipped with one bed or cot for every six Medicaid adult day health care participants.
4. Employ sufficient interdisciplinary staff to adequately meet the health, maintenance, and safety needs of each participant. The following staff are required by DMAS:
 - a. The adult day health care center shall maintain a minimum staff-participant ratio of one staff member to every six participants (Medicaid and other participants).
 - b. There shall be at least two staff persons at the center at all times when there are Medicaid participants in attendance.
 - c. In the absence of the director, a professional staff member shall be designated to supervise the program.
 - d. Volunteers shall be included in the staff ratio only when they conform to the same standards and requirements as paid staff and meet the job description standards of the organization.
 - e. Any center that is collocated with another facility shall count only its own separate identifiable staff in the center's staff/participant ratio.
 - f. The adult day health care center shall employ the following:

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(1) A director who shall be responsible for overall management of the center's programs. This individual shall be the provider contact person for DMAS staff and shall be responsible for contracting, and receipt and response to communication from DMAS. The director shall be responsible for assuring the initial development of the Plan of Care for adult day health care participants. The director has ultimate responsibility for directing the center program and supervision of its employees. The director can serve as activities director also if those qualifications are met.

(2) An activities director who shall be responsible for directing recreational and social activities for the adult day health care participants.

(3) Program aides who shall be responsible for overall assistance with care and maintenance of the participant (assistance with activities of daily living, recreational activities and other health and therapeutic related activities).

g. The adult day health care center shall employ or subcontract with a registered nurse who shall be responsible for administering and monitoring the health needs of the adult day health care participants. The nurse shall be responsible for the planning, organization, and management of a treatment plan involving multiple services where specialized health care knowledge must be applied. The nurse shall be present a minimum of two hours each day at the adult day health care center to render direct services to Medicaid adult day health care participants. The DMAS may require the nurse's presence at the adult day health care center for more than two hours each day depending on the number of participants in attendance and according to the medical and nursing needs of the participants. Although the DMAS does not require that the nurse be a full-time staff position, there shall be a nurse available, either in person or by telephone at a minimum, to the center's participants during all times the center is in operation.

h. The director shall assign a professional staff member to act as adult day health care coordinator for each participant and shall document in the participant's file the identity of the care coordinator. The adult day health care coordinator shall be responsible for management of the participant's plan of care and for its review with the program aides.

C. Minimum qualifications of adult day health care staff.

Documentation of all staffs' credentials shall be maintained in the provider agency's personnel file for review by DMAS staff.

1. Program aide. Each program aide hired by the provider agency shall be screened to ensure

compliance with minimum qualifications as required by DMAS. The aide shall, at a minimum, have the following qualifications:

- a. Be able to read and write.
- b. Be physically able to do the work.
- c. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of possible abuse neglect or exploitation of incapacitated or older adults and children.
- d. Have satisfactorily completed an educational curriculum related to the needs of the elderly and disabled. Acceptable curriculum are offered by educational institutions, nursing homes, and hospitals. Curriculum titles include: Nurses Aide, Geriatric Nursing Assistant, and Home Health Aide. Documentation of successful completion shall be maintained in the aide's personnel file and be available for review by the DMAS staff. Training consistent with DMAS training guidelines may also be given by the center's professional staff. The content of the training shall be approved by DMAS prior to assignment of the aide to a Medicaid participant.

2. Registered nurse. The registered nurse shall:

- a. Be registered and licensed to practice nursing in the Commonwealth of Virginia.
- b. Have two years of related clinical experience (which may include work in an acute care hospital, rehabilitation hospital, or nursing home).
- c. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of possible abuse or neglect of incompetent or incapacitated individuals.

3. Activities director. The activities director shall:

- a. Have a minimum of a Bachelors degree from an accredited college or university with a major in recreational therapy, occupational therapy, or a related field such as art, music, or physical education.
- b. Have one year of related clinical experience which may include work in an acute care hospital, rehabilitation hospital, nursing home, or have completed a course of study including any prescribed internship in occupational, physical, and recreational therapy or music, dance, art therapy, or physical education.
- c. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of possible abuse, neglect or exploitation of

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incapacitated or older adults and children.

4. Director. The director shall meet the qualifications specified in the DSS standards for adult day care for directors.

D. Service responsibilities of the adult day health care center and staff duties are:

1. Aide responsibilities. The aide shall be responsible for assisting with activities of daily living, supervising the participant, and assisting with the management of the participant's Plan of Care.

2. Nursing responsibilities. These services shall include:

a. Periodic evaluation of the nursing needs of each participant,

b. Provision of the indicated nursing care and treatment, and

c. Monitoring, recording, and administering of prescribed medications or supervising the individual in self-administered medication.

3. Rehabilitation services coordination responsibilities. These services are designed to ensure the participant receives all rehabilitative services deemed necessary to improve or maintain independent functioning, to include the coordination and implementation of physical therapy, occupational therapy, and speech-language therapy. Rendering of the specific Rehabilitative Therapy is not included in the ADHC center's fee for service but must be rendered as a separate service by a DMAS approved rehabilitative provider.

4. Transportation responsibilities. Every DMAS approved adult day health care center shall provide transportation when needed in emergency situations (i.e., primary caregiver has an accident and cannot transport the participant home) for all Medicaid participants to and from their homes. Any adult day health care center which is able to provide participants with transportation routinely to and from the center can be reimbursed by DMAS based on a per trip (to and from the participant's residence) fee. This reimbursement for transportation shall be preauthorized by either the Nursing Home Preadmission Screening Team or DMAS utilization review staff.

5. Nutrition responsibilities. The adult day health care center shall provide one meal per day which supplies one-third of the daily nutritional requirements. Special diets and counseling shall be provided to Medicaid participants as necessary.

6. Adult day health care coordination. The designated adult day health care coordinator shall coordinate the

delivery of the activities as prescribed in the participants' Plans of Care and keep it updated, record 30-day progress notes, and review the participants' daily logs each week.

7. Recreation and social activities responsibilities. The adult day health care center shall provide planned recreational and social activities suited to the participants' needs and designed to encourage physical exercise, prevent deterioration, and stimulate social interaction.

E. Documentation required.

The adult day health care center shall maintain all records of each Medicaid participant. These records shall be reviewed periodically by DMAS staff. At a minimum, these records shall contain:

1. Long-term care Information Assessment Instrument, the Nursing Home Preadmission Screening Authorization, and the Screening Team Plan of Care.

2. Interdisciplinary Plan of Care developed by adult day health care center professional staff and the participant and relevant support persons.

3. Documentation of interdisciplinary staff meetings which shall be held at least every three months to reassess each participant and evaluate the adequacy of the adult day health care Plan of Care and make any necessary revisions.

4. At a minimum, 30-day goal oriented progress notes recorded by the individual designated as the adult day health care coordinator. If a participant's condition and treatment plan changes more often, progress notes shall be written more frequently than every 30 days.

5. The adult day health care center shall obtain a rehabilitative progress report and updated treatment plan from all professional disciplines involved in the participant's care every 30 days (physical therapy, speech therapy, occupational therapy, home health and others).

6. Daily log of service services provided. The daily log shall contain the specific services delivered by adult day health care center staff. The log shall also contain the arrival and departure time of the participant and be signed weekly by the participant and an adult day health care center professional staff member. The daily log shall be completed on a daily basis, neither before nor after the date of service delivery. At least once a week, a staff member shall chart significant comments regarding care given to the participant. If the staff member writing comments is different from the staff signing the weekly log, that staff member shall sign the weekly comments.

7. All correspondence to the participant and to DMAS.

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8. All DMAS utilization review forms and plans of care.

§ 5. Personal care services. The following requirements govern the provision of personal care services :

A. General.

Personal care services may be offered to individuals in their homes as an alternative to more costly institutional care. Personal care may be offered either as the sole home and community-based care service that avoids institutionalization or in conjunction with adult day health care or respite care, or both. When the individual referred for personal care is already receiving another home and community-based care service, the DMAS utilization review staff shall assess the need for the additional home and community-based care service and authorize the service if it is deemed necessary to avoid institutionalization.

B. Special provider participation conditions.

The personal care provider shall:

1. Demonstrate a prior successful health care delivery.
2. Operate from a business office.
3. Employ (or subcontract with) and directly supervise a registered nurse (RN) who will provide ongoing supervision of all personal care aides.
 - a. The RN shall be currently licensed to practice in the Commonwealth of Virginia and have at least two years of related clinical nursing experience (which may include work in an acute care hospital, public health clinic, home health agency, or nursing home).
 - b. The RN supervisor shall make an initial assessment home visit prior to the start of care for all new recipients admitted to personal care.
 - c. The RN shall make supervisory visits as often as needed to ensure both quality and appropriateness of services. A minimum frequency of these visits is every 30 days.
 - d. During visits to the recipient's home, the RN shall observe, evaluate, and document the adequacy and appropriateness of personal care services with regard to the recipient's current functioning status, medical, and social needs. The personal care aide's record shall be reviewed and the recipient's (or family's) satisfaction with the type and amount of service discussed. The RN summary shall note:
 - (1) Whether personal care services continue to be appropriate,
 - (2) Whether the plan is adequate to meet the need or changes are indicated in the plan,

(3) Any special tasks performed by the aide and the aide's qualifications to perform these tasks,

(4) Recipient's satisfaction with the service,

(5) Hospitalization or change in medical condition or functioning status,

(6) Other services received and their amount, and

(7) The presence or absence of the aide in the home during the RN's visit.

e. The registered nurse shall be available to the personal care aide for conference pertaining to individuals being served by the aide and shall be available to aides by telephone at all times that the aide is providing services to personal care recipients. Any change in the identity of the RN providing coverage shall be reported immediately to DMAS.

f. The RN supervisor shall evaluate the aides' performance and the recipient's individual needs to identify any gaps in the aides' abilities to function competently and shall provide training as indicated.

4. Employ and directly supervise personal care aides who will provide direct care to personal care recipients. Each aide hired by the provider agency shall be evaluated by the provider agency to ensure compliance with minimum qualifications as required by DMAS. Each aide:

a. Shall be able to read and write.

b. Shall complete 40 hours of training consistent with DMAS standards. Prior to assigning an aide to a recipient, the provider agency shall ensure that the aide has satisfactorily completed a training program consistent with DMAS standards.

c. Shall be physically able to do the work.

d. Shall have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of possible abuse, neglect or exploitation of incapacitated or older adults and children.

e. Shall not be a member of the recipient's family (e.g., family is defined as parents, spouses, children, siblings, grandparents, and grandchildren).

C. Provider inability to render services and substitution of aides.

1. When a personal care aide is absent and the agency has no other aide available to provide services, the provider agency is responsible for ensuring that services continue to recipients. The agency may either

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obtain a substitute aide from another agency, if the lapse in coverage is to be less than two weeks in duration, or may transfer the recipient to another agency. If no other provider agency is available, the provider agency shall notify the recipient or family so they may contact the local health department to request a Nursing Home Preadmission Screening if nursing home placement is desired.

2. During temporary, short-term lapses in coverage (not to exceed two weeks in duration), the following procedure shall apply:

a. The personal care agency having recipient responsibility shall provide the registered nurse supervision for the substitute aide.

b. The agency providing the substitute aide shall send to the personal care agency having recipient care responsibility a copy of the aide's signed daily records signed by the recipient.

c. The provider agency having recipient responsibility shall bill DMAS for services rendered by the substitute aide.

3. If a provider agency secures a substitute aide, the provider agency shall be responsible for ensuring that all DMAS requirements continue to be met, including documentation of services rendered by the substitute aide and documentation that the substitute aide's qualifications meet DMAS requirements.

D. Required documentation in recipients' records.

The provider agency shall maintain all records of each personal care recipient. At a minimum these records shall contain:

1. *The most recently updated* Long-Term Care Assessment Instrument, the Preadmission Screening Authorization, the Screening Team Plan of Care, all provider agency plans of care, and all DMAS-122's.

2. All DMAS utilization review forms and plans of care.

3. Initial assessment by the RN supervisory nurse completed prior to or on the date services are initiated.

4. Nurses' notes recorded and dated during any contacts with the personal care aide and during supervisory visits to the recipient's home.

5. All correspondence to the recipient and to DMAS.

6. Reassessments made during the provision of services.

7. Contacts made with family, physicians, DMAS,

formal, informal service providers and all professionals concerning the recipient.

8. All personal care aide records. The personal care aide record shall contain:

a. The specific services delivered to the recipient by the aide and the recipient's responses,

b. The aide's arrival and departure times,

c. The aide's weekly comments or observations about the recipient to include observations of the recipient's physical and emotional condition, daily activities, and responses to services rendered,

d. The aide's and recipient's weekly signatures to verify that personal care services during that week have been rendered, and

e. Signatures, times and dates shall not be placed on the aide record prior to the last date of the week that the services are delivered.

9. All Recipient Progress Reports.

E. Recipient Progress Report.

The provider is required to submit to DMAS annually for every recipient a Recipient Progress Report, an updated Long Term Care Assessment and four aide log sheets. This information is used to assess the recipients' ongoing need for Medicaid funded long term care and appropriateness and adequacy of services rendered.

§ 6. Respite care services.

These requirements govern the provision of respite care services.

A. General.

Respite care services may be offered to individuals in their homes as an alternative to more costly institutional care. Respite care is distinguished from other services in the continuum of long-term care because it is specifically designed to focus on the need of the caregiver for temporary relief. Respite care may only be offered to individuals who have a primary caregiver living in the home who requires a temporary relief to avoid institutionalization of the individual. The authorization of respite care is limited to 30 24-hour days over a 12-month period. Reimbursement shall be made on an hourly basis for any amount authorized up to eight hours. Any amount over an eight-hour day will be reimbursed on a per diem basis. The option of respite care may be offered either as a secondary home and community-based care service to those individuals who receive either personal care or adult day health care or as the sole home and community-based care service received in lieu of nursing home placement.

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B. Special provider participation conditions.

To be approved for respite care contracts with DMAS, the respite care provider shall:

1. Demonstrate a prior successful health care delivery.
2. Operate from a business office.
3. Employ (or subcontract with) and directly supervise a registered nurse (RN) who will provide ongoing supervision of all respite care aides.

a. The RN shall be currently licensed to practice in the Commonwealth and have at least two years of related clinical nursing experience (which may include work in an acute care hospital, public health clinic, home health agency, or nursing home).

b. Based on continuing evaluations of the aides' performance and the recipients' individual needs, the RN supervisor shall identify any gaps in the aides' abilities to function competently and shall provide training as indicated.

c. The RN supervisor shall make an initial assessment visit prior to the start of care for any recipient admitted to respite care.

d. The RN shall make supervisory visits as often as needed to ensure both quality and appropriateness of services.

(1) When respite care services are received on a routine basis, the minimum acceptable frequency of these visits shall be every 30 days.

(2) When respite care services are not received on a routine basis, but are episodic in nature, the RN shall not be required to conduct a supervisory visit every 30 days. Instead, the nurse supervisor shall conduct the initial home visit with the respite care aide immediately preceding the start of care and make a second home visit within the respite care period.

(3) When respite care services are routine in nature and offered in conjunction with personal care, the 30-day supervisory visit conducted for personal care may serve as the RN visit for respite care. However, the RN supervisor shall document supervision of respite care separately. For this purpose, the same recipient record can be used with a separate section for respite care documentation.

e. During visits to the recipient's home, the RN shall observe, evaluate, and document the adequacy and appropriateness of respite care services with regard to the recipient's current functioning status, medical, and social needs. The respite care aide's record shall be reviewed and the recipient's (or

family's) satisfaction with the type and amount of service discussed. The RN shall document in a summary note:

(1) Whether respite care services continue to be appropriate,

(2) Whether the plan of care is adequate to meet the recipient's needs or if changes need to be made in it,

(3) The recipient's satisfaction with the service,

(4) Any hospitalization or change in medical condition or functioning status,

(5) Other services received and their amount, and

(6) The presence or absence of the aide in the home during the visit.

f. In all cases, the RN shall be available to the respite care aide to discuss the recipients being served by the aide.

g. The RN providing supervision to respite care aides shall be available to them by telephone at all times that services are being provided to respite care recipients. Any lapse in RN coverage shall be reported immediately to DMAS.

4. Employ and directly supervise respite care aides who provide direct care to respite care recipients. Each aide hired by the provider agency shall be evaluated by the provider agency to ensure compliance with minimum qualifications. Each aide:

a. Shall be able to read and write.

b. Shall have completed 40 hours of training consistent with DMAS standards. Prior to assigning an aide to a recipient, the provider agency shall ensure that the aide has satisfactorily completed a training program consistent with DMAS standards.

c. Shall be evaluated in his job performance by the RN supervisor.

d. Shall have the physical ability to do the work.

e. Shall have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of possible abuse or neglect of incompetent or incapacitated individuals.

f. Shall not be a member of a recipient's family (e.g., family is defined as parents, spouses, siblings, grandparents, and grandchildren).

5. The Respite Care Agency may employ a licensed practice nurse to deliver respite care services which

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shall be reimbursed by DMAS under the following circumstances:

a. The individual receiving care has a need for routine skilled care which cannot be provided by unlicensed personnel. These individuals would typically require a skilled level of care if in a nursing home (i.e., recipients on a ventilator, recipients requiring nasogastric, or gastrostomy feedings, etc.).

b. No other individual in the recipient's support system is able to supply the skilled component of the recipient's care during the caregiver's absence.

c. The recipient is unable to receive skilled nursing visits from any other source which could provide the skilled care usually given by the caregiver.

d. The agency can document the circumstances which require the provision of services by an LPN.

C. Inability to provide services and substitution of aides.

When a respite care aide is absent and the respite care provider agency has no other aide available to provide services, the provider agency is responsible for ensuring that services continue to recipients.

1. If a provider agency cannot supply a respite care aide to render authorized services, the agency may either obtain a substitute aide from another agency, if the lapse in coverage is to be less than two weeks in duration, or may transfer the recipient's care to another agency.

2. If no other provider agency is available who can supply an aide, the provider agency shall notify the recipient or family so that they may contact the local health department to request a Nursing Home Preadmission Screening if nursing home placement is desired.

3. During temporary, short-term lapses in coverage, which shall not exceed two weeks in duration, a substitute aide may be secured from another respite care provider agency or other home care agency. Under these circumstances, the following procedures apply:

a. The respite care agency having recipient responsibility shall be responsible for providing the RN supervision for the substitute aide;

b. The agency providing the substitute aide shall send to the respite care agency having recipient care responsibility a copy of the aide's daily records signed by the recipient and the substitute aide. All documentation of services rendered by the substitute aide shall be in the recipient's record. The documentation of the substitute aide's qualifications

shall also be obtained and recorded in the personnel files of the agency having recipient care responsibility.

c. The provider agency having recipient responsibility shall bill DMAS for services rendered by the substitute aide. The two agencies involved shall negotiate the financial arrangements of paying the substitute aide.

4. Substitute aides obtained from other agencies may be used only in cases where no other arrangements can be made for recipient respite care services coverage and may be used only on a temporary basis. If a substitute aide is needed for more than two weeks, the case shall be transferred to another respite care provider agency that has the aide capability to serve the recipient(s).

5. If a provider agency secures a substitute aide it is the responsibility of the provider agency having recipient care responsibility to ensure that all DMAS requirements continue to be met, including documentation of services rendered by the substitute aide and documentation that the substitute aide's qualifications meet DMAS requirements.

D. Required documentation for recipients records.

The provider agency shall maintain all records of each respite care recipient. These records shall be separated from those of other non-home and community-based care services, such as companion services or home health. These records shall be reviewed periodically by the DMAS staff. At a minimum these records shall contain:

1. Long-Term Care Assessment Instrument, the Nursing Home Preadmission Screening Authorization, all Respite Care Assessment and Plans of Care, and all DMAS-122's.

2. All DMAS utilization review forms and plans of care.

3. Initial assessment by the RN supervisory nurse completed prior to or on the date services are initiated.

4. Registered nurse's notes recorded and dated during significant contacts with the respite care aide and during supervisory visits to the recipient's home.

5. All correspondence to the recipient and to DMAS.

6. Reassessments made during the provision of services.

7. Significant contacts made with family, physicians, DMAS, and all professionals concerning the recipient.

8. Respite care aide record of services rendered and

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recipient's responses. The aide record shall contain:

- a. The specific services delivered to the recipient by the respite care aide or LPN, and the recipient's response,
- b. The arrival and departure time of the aide for respite care services only,
- c. Comments or observations recorded weekly about the recipient. Aide comments shall include but not be limited to observation of the recipient's physical and emotional condition, daily activities, and the recipient's response to services rendered,
- d. The signature by the aide or LPN, and the recipient once each week to verify that respite care services have been rendered.

e. Signature, times, and dates shall not be placed on the aide record prior to the last date of the week that the services are delivered

9. Copies of all aide records shall be subject to review by state and federal Medicaid representatives.

10. If a respite care recipient is also receiving any other service (meals on wheels, companion, home health services, etc.) the respite care record shall indicate that these services are also being received by the recipient.

E. Authorization of combined services.

Respite care, when offered in conjunction with another home and community-based care service, is considered by DMAS a secondary home and community-based care service necessary for the recipients' continued maintenance in the community. Respite care is only available to caregivers as an adjunct to another primary home and community-based care service under the following conditions:

- 1. The individual has been authorized to receive a primary home and community-based care service by the Nursing Home Preadmission Screening Team and such care has been initiated.
- 2. The primary home and community-based care services offered to the individual are determined to be insufficient to prevent the breakdown of the caregiver due to the physical burden and emotional stress of providing continuous support and care to the dependent individual.
- 3. The amount of respite care needed, when added to the cost of other home and community-based care services, still maintains overall individual cost effectiveness on an annual basis.

F. Provider responsibility.

The provider of the primary home and community-based care service shall contact the DMAS utilization review staff when the need for respite care as a secondary home and community-based care service has been identified according to the criteria above. DMAS shall conduct an assessment of the individual caregiver's need for respite care and, if appropriate, authorize respite care.

RESPIRE CARE SERVICES RECORD

PROVIDER NAME _____ RECIPIENT NAME _____

SOCIAL SUPPORT

1. NOTE THE ADEQUACY, RELIABILITY AND ANY PROBLEMS ASSOCIATED WITH SOCIAL SUPPORT _____
2. 24 HOUR SUPERVISION REQUIRED? NO ___ YES ___ REASON _____
3. DESCRIBE HOW 24 HOUR COVERAGE IS PROVIDED: _____
4. IS RECIPIENT LEFT ALONE? YES ___ NO ___ LENGTH OF TIME _____
5. WHO, IF ANYONE, ASSISTS W/RECIPIENT'S CARE OR HOME MANAGEMENT WHEN PCA IS NOT IN THE HOME? _____

HOME ENVIRONMENT

1. DESCRIBE RECIPIENT'S LIVING ENVIRONMENT _____
2. DOES HOME ENVIRONMENT PRESENT ANY CONCERNS REGARDING SAFETY OF THE RECIPIENT OR ABILITY TO PROVIDE SERVICES AS NEEDED? YES ___ NO ___ EXPLAIN: _____

OTHER SERVICES AND NEEDS

1. IDENTIFY OTHER NON-MEDICAL COMMUNITY SERVICES CURRENTLY BEING PROVIDED. GIVE NAME OF PROVIDER, SERVICE PROVIDED AND AMOUNT: _____
2. IDENTIFY ANY NEEDS OF THE RECIPIENT WHICH ARE NOT BEING MET. DESCRIBE EFFORTS TO ACCESS SERVICES TO MEET THESE NEEDS. _____
3. MEDICAL MAINTENANCE NEEDS: SPECIFY PROVIDER & FREQUENCY
 WOUND CARE _____
 BOWEL/BLADDER PROGRAM _____
 RANGE OF MOTION _____
 HOME HEALTH _____
 DIALYSIS _____
 MEDICATION ADMINISTRATION (INCLUDING INSULIN) _____
 OTHER: _____
4. NOTE DATES OF ANY LAPSE IN SERVICES IN PAST 6 MONTHS & REASONS (INCLUDE DATES OF HOSPITALIZATIONS): _____
5. EVALUATION OF RECIPIENT'S OVERALL STATUS & APPROPRIATENESS OF PERSONAL CARE SERVICES _____
6. CURRENT # HOURS PER WEEK SERVICE PROVIDED _____ CHANGE FROM PREVIOUS POC? ___↓___↑___

STAFFING DURING PAST 6 MONTHS

1. # OF PERMANENTLY ASSIGNED AIDES _____
2. # OF DAYS SCHEDULED SERVICES MISSED DUE TO STAFFING PROBLEMS, NOT FAMILY'S REQUEST _____
3. DATES OF RN SUPERVISORY VISITS: _____

SUBMITTED BY (RN SUPERVISOR): _____ DATE: _____
 ATTACH THE MOST CURRENT 4 WEEKS OF AIDES LOGS AND AN UPDATE OF THE IHAS 95
 IHAS-99 Rev. 7/90

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BOARD OF PHARMACY

NOTICE: The Virginia Board of Pharmacy Regulations for Practitioners of the Healing Arts to Sell Controlled Substances became effective on May 10, 1990. The following emergency regulation signed by the Governor providing for a license fee became effective September 19, 1990.

A 60-day period will be allowed for the receipt and processing of applications and for performing the required inspection to provide licensure for those practitioners presently engaged in selling controlled substances.

After December 1, 1990, any practitioner of the healing arts must hold a license from the Board of Pharmacy to legally sell controlled substances (Schedule II through VI drugs).

Jack B. Carson
Executive Director
Date: September 27, 1990

Title of Regulation: VR 530-01-02. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances.

Statutory Authority: §§ 54.1-2400 and 54.1-3302 of the Code of Virginia.

Effective Dates: September 19, 1990 through September 18, 1991.

Summary:

On January 17, 1990 the Board of Pharmacy adopted regulations governing the licensure of practitioners to sell controlled substances. The regulations included a fee of \$300 to cover the cost of an examination and the processing of the application for licensure.

On July 5, 1990 the Virginia Beach Circuit Court found that the Board lacked the statutory authority to impose an examination for practitioners of the healing arts.

There is a need to establish a fee for initial licensure for practitioners to sell controlled substances to replace the loss of the revenue which would have been produced by the examination application fee in the regulations which became effective May 10, 1990. The revenue will cover administrative and inspection cost associated with licensure. The fee will replace the fee for the examination requirement which is being deleted from the regulations.

REQUEST FOR APPROVAL OF EMERGENCY REGULATION OF THE BOARD OF PHARMACY:

Regulation VR 530-01-2, § 2.1. Providing of a Fee for Licensure for a Practitioner to Sell Controlled Substances

I recommend approval of the proposed emergency regulation as cited above. The regulation is necessary to set a fee for the licensure of a doctor of medicine, osteopathy or podiatry to sell controlled substances.

The emergency regulation will expire one year from the effective date, or upon the promulgation of revised regulations under the normal procedures of the Administrative Process Act, whichever date is sooner.

/s/ Bernard L. Henderson, Jr., Director
Department of Health Professions
Date: August 9, 1990

I recommend approval of the above regulation.

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: August 23, 1990

I approve the proposed regulation.

/s/ L. Douglas Wilder
Governor
Date: September 18, 1990

I acknowledge receipt of the attached emergency regulation to be effective on this date.

/s/ Ann M. Brown
Deputy Registrar of Regulations
Date: September 19, 1990

VR 530-01-02. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances.

PART I. GENERAL PROVISIONS.

§ 1.1. Definitions.

The following words and terms when used in these regulations shall have the following meaning unless the context clearly indicates otherwise.

"Licensee" as used in these regulations shall mean a practitioner who is licensed by the Board of Pharmacy to sell controlled substances.

"Personal supervision" means the licensee must be physically present and render direct, personal control over the entire service being rendered or act(s) being performed. Neither prior nor future instructions shall be sufficient nor shall supervision be rendered by telephone, written instructions, or by any mechanical or electronic methods.

"Practitioner" as used in these regulations shall mean a doctor of medicine, osteopathy or podiatry who possesses a current unrestricted license issued by the Board of Medicine.

"Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the controlled substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

"U.S.P.-N.F." means the United States Pharmacopeia-National Formulary.

PART II. LICENSURE REQUIREMENTS.

§ 2.1. Examination requirement Application for licensure .

A. In order to sell controlled substances as provided for in § 54.1-2914(B) of the Code of Virginia, a practitioner who possesses a current unrestricted license issued by the Board of Medicine shall make application to the Board of Pharmacy on a form provided by the board. A fee of \$275 shall be remitted with the application for licensure.

B. The application shall be submitted to the board 45 days prior to the examination date with a fee of \$300.

C. In order to establish his qualifications for licensure, the practitioner shall pass an examination to assure that the applicant possesses the knowledge to safely sell controlled substances. The passing grade on the examinations shall be not less than 75.

§ 2.2. Renewal of license.

A license so issued shall be valid until December 31 of the year of issue. A renewal of the license shall be made on or before December 31. The fee shall be the same fee as that set for a pharmacist license.

§ 2.3. Acts to be performed by the licensee.

A. The selection of the controlled substance from the stock, any, preparation or packaging of a controlled substance or the preparation of a label for a controlled substance to be transferred to a patient shall be the personal responsibility of the licensee.

Any compounding of a controlled substance shall be personally performed by the licensee.

B. Prior to the dispensing, the licensee shall inspect the prescription product to verify its accuracy in all respects, and place his initials on the record of sale as provided in § 4.3 B as certification of the accuracy of, and the responsibility for, the entire transaction.

C. If the record of sale is maintained in an automated data processing system as provided in § 4.5, the licensee shall personally place his initials with each entry of a sale as provided in § 4.3 B as a certification of the accuracy

of, and the responsibility for, the entire transaction.

§ 2.4. Licensees ceasing to sell controlled substances.

Licensees ceasing to sell controlled substances; inventory required prior to disposal.

A. Any licensee who desires to cease selling controlled substances shall notify the board 10 days prior to cessation and his license will be placed on an inactive status.

B. Any Schedule II through V controlled substances shall be inventoried and may be disposed of by transferring the controlled substance stock to another licensee or other practitioner or by destruction as set forth in these regulations.

C. The licensee or other responsible person shall inform the board of the name and address of the licensee to whom the controlled substances are transferred.

§ 2.5. Inactive status.

Any licensee in an inactive status shall apply to the board to reactivate his license and shall pay the fee charged for license renewal.

PART III. INSPECTION REQUIREMENTS, STANDARDS AND SECURITY FOR STORAGE AREA.

§ 3.1. Maintenance of a common stock of controlled substances.

Any two or more licensees who elect to maintain a common stock of controlled substances for dispensing shall:

1. Designate a licensee who shall be the primary person responsible for the stock, the required inventory, the records of receipt and destruction, safeguards against diversion and compliance with these regulations.

2. Report to the board the name of the licensee and the location of the controlled substance stock on a form provided by the board.

3. Upon a change in the licensee so designated, an inventory of all Schedule II through V controlled substances shall be conducted in the manner set forth in § 54.1-3404 of the Drug Control Act and such change shall immediately be reported to the board.

4. Nothing shall relieve the other individual licensees who sell controlled substances at the location of the responsibility for the requirements set forth in these regulations.

§ 3.2. Inspection and notice required.

A. The area designated for the storage and selling of

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controlled substances shall be inspected by an agent of the board prior to the issuance of a license.

B. Applications for licenses which indicate a requested inspection date, or requests which are received after the application is filed, shall be honored provided a 14-day notice to the board is allowed prior to the requested inspection date.

C. Requested inspection dates which do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

D. At the time of the inspection, the controlled substance selling and storage area shall comply with §§ 3.3, 3.4, 3.5, 3.6 and 3.7 of these regulations.

E. No license shall be issued to sell controlled substances until adequate safeguards against diversion have been provided for the controlled substance storage and selling area and approved by the board or its authorized agent.

§ 3.3. Physical standards.

Physical standards for the controlled substance selling and storage area:

1. The building in which the controlled substances selling and storage area is located shall be constructed of permanent and secure materials. Trailers and other movable facilities shall not be permitted;
2. There shall be an area that is designated as the controlled substances selling and storage area;
3. Controlled substances maintained for ultimate sale shall be maintained separately from any other controlled substances maintained for other purposes;
4. The selling and storage area, work counter space and equipment in the area shall be maintained in a clean and orderly manner;
5. The counter work space shall be used only for the preparation and selling of controlled substances and necessary record keeping;
6. The selling and storage area shall not be operated or maintained in conjunction with any activity that would compromise the quality of the controlled substances;
7. A sink with hot and cold running water shall be available within the immediate vicinity of the selling and storage area; and
8. The entire area described in this regulation shall be well lighted and ventilated; the proper storage temperature shall be maintained to meet official specifications for controlled substance storage.

§ 3.4. Access to selling area.

Access to stock rooms, rest rooms, and other areas other than an office that is exclusively used by the licensee shall not be through the selling and storage area.

§ 3.5. Minimum equipment.

The licensee shall be responsible for maintaining the following equipment in the designated area:

1. A current copy of the United States Pharmacopeia Dispensing Information Reference Book;
2. A refrigerator with a monitoring thermometer, located in the selling area, if any controlled substances requiring refrigeration are maintained;
3. A copy of the current Virginia Drug Control Act and board regulations;
4. A current copy of the Virginia Voluntary Formulary;
5. A laminar flow hood if sterile product(s) are to be prepared; and
6. Prescription balances and weights, if the licensee is engaged in extemporaneous compounding.

§ 3.6. Safeguards against diversion of controlled substances.

A device for the detection of breaking shall be installed in the controlled substances selling and storage area. The installation and the device shall be based on accepted burglar alarm industry standards, and shall be subject to the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device;
2. The device shall be maintained in operating order;
3. The device shall fully protect the immediate controlled substance selling and storage areas and shall be capable of detecting breaking by any means whatsoever in the area when the area is closed;
4. The alarm system must have an auxiliary source of power;
5. The alarm system shall be capable of being activated and operated separately from any other alarm system in the area or the business in which the controlled substance selling and storage area is located;
6. The alarm system is controlled only by the licensee; and

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7. An emergency key or access code to the system shall be maintained as set forth in § 3.7 B of these regulations.

§ 3.7. Selling area enclosures.

A. The controlled substance selling and storage area of the licensee shall be provided with enclosures subject to the following conditions:

1. The enclosure shall be construed in such a manner that it protects the controlled substance stock from unauthorized entry and from pilferage at all times whether or not the licensee is on duty;
2. The enclosure shall be of sufficient height as to prevent anyone from reaching over to gain access to the controlled substances;
3. Entrances to the enclosed area must have a door which extends from the floor and which is at least as high as the adjacent counters or adjoining partitions; and
4. Doors to the area must have locking devices which will prevent entry in the absence of the licensee.

B. The door keys to the selling and storage area shall be subject to the following requirements:

1. Only the licensee shall be in possession of any keys to the locking device on the door to such enclosure;
2. The licensee or the licensee so designated pursuant to subdivision 1 of § 3.1 may place a key in an envelope or other container which contains a seal and a signature placed by the licensee on the container in a safe or vault within the office or other secured place; and
3. The key may be used to allow emergency entrance to the selling area by other licensees licensed under these regulations.

C. Restricted access to the selling and storage area.

The controlled substance selling and storage area is restricted to the licensee and a person designated by the licensee. Such other persons may be present in the selling and storage area only during the hours when the licensee is on duty to render personal supervision.

§ 3.8. Controlled substances outside of the selling area.

Any Schedule II through VI controlled substances not stored within the selling area and kept for stock replenishing shall be secured and access to it shall be restricted to the licensee.

§ 3.9. Prescriptions awaiting delivery.

Prescriptions prepared for delivery to the patient may be placed in a secure place outside of the controlled substance selling area and access to the prescriptions restricted by the licensee to designated assistants. The prepared prescriptions may be transferred to the patient whether or not the licensee is on duty.

§ 3.10. Expired controlled substances; security.

Any controlled substance which has exceeded the expiration date shall be separated from the stock used for selling and may be maintained in a designated area with the unexpired stock prior to the disposal of the expired controlled substances.

§ 3.11. Destruction of Schedule II through V controlled substances.

If a licensee wishes to destroy unwanted Schedule II through V controlled substances maintained for selling, he shall use the following procedures for the destruction:

1. At least 14 days prior to the destruction date, the licensee shall provide a written notice to the board office; the notice shall state the following:
 - a. Date, time and manner or place of destruction;
 - b. The name(s) of the licensee who will witness the destruction process;
2. If the destruction date is to be changed or the destruction does not occur, a new notice must be provided to the board office as set forth above in this subsection.
3. The DEA Drug Destruction Form No. 41 must be used to make a record of all controlled substances to be destroyed.
4. The controlled substances must be destroyed by burning in an incinerator; an alternate method of flushing may be used if incineration is not possible and if permitted by the municipality.
5. The actual destruction shall be witnessed by the licensee and another licensee of the board not employed by the practitioner.
6. Each form shall show the following information:
 - a. Legible signatures of the licensee and the witnessing person.
 - b. The license number of the licensee and other licensed person destroying the controlled substances.
 - c. The date of destruction.
7. At the conclusion of the destruction of the controlled substance stock:

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a. Two copies of the completed destruction form shall be sent to: Drug Enforcement Administration, Washington Field Division, Room 2558, 400 6th Street, SW, Washington, DC 20024, Attn: Diversion Control Group.

b. A copy of the completed destruction form shall be sent to the office of the board.

c. A copy of the completed destruction form shall be retained with the inventory records.

PART IV.

WRITTEN PRESCRIPTION AND RECORD KEEPING STANDARDS.

§ 4.1. Sign and written prescription requirement.

Requirements are:

1. The licensee shall provide the patient with a written prescription whether or not he intends to sell the controlled substance to the patient;

2. The licensee shall provide a sign in the public area of the office. The sign must be legible to the public with normal vision and must advise the public that the controlled substances may be obtained from him or from a pharmacy;

3. The licensee after delivery of the written prescription to the patient shall, in each case, advise the patient of their right to obtain the controlled substance from him or from a pharmacy; and

4. If the patient chooses to purchase the controlled substance from the licensee, the written prescription shall be returned to the licensee, be signed by the patient, marked void by the licensee and filed chronologically.

§ 4.2. Manner of maintaining inventory records for licensees selling controlled substances.

A. Each licensee shall maintain the inventories and records of controlled substances as follows:

1. Inventories and records of all controlled substances listed in Schedule II shall be maintained separately from all other records of the licensee;

2. Inventories and records of controlled substances listed in Schedules III, IV and V may be maintained separately or with records of Schedule VI controlled substances but shall not be maintained with other records of the licensee;

3. Location of records. All records of Schedule II through V controlled substances shall be maintained at the same location as the stock of controlled substances to which the records pertain;

4. Inventory after controlled substance theft. In the event that an inventory is taken as the result of a theft of controlled substances pursuant to § 54.1-3404 of the Drug Control Act, the inventory shall be used as the opening inventory within the current biennial period. Such an inventory does not preclude the taking of the required inventory on the required biennial inventory date.

§ 4.3. Form of records of Schedule II through VI drugs sold.

A. The record of selling of controlled substances shall be in a book form or may be maintained in an automated data system as provided in § 4.5.

B. The licensee shall personally inspect the prescription product prior to dispensing to the patient and verify its accuracy in all respects by initialing the record of each sale at the time of inspection.

§ 4.4. Records for Schedule II through VI drugs sold.

A. The records of selling for Schedule II controlled substances shall be as follows:

1. The record of the selling of Schedule II controlled substances shall be separate from other records.

2. The record shall be maintained in chronological order and shall show the selling date, a number which identifies the sale, the name and address of the patient, the name and strength of the controlled substance and the quantity sold.

B. The records of selling for Schedule III through V controlled substances shall be as follows:

1. The record shall be in the manner set forth in subdivision B 1 b of this section.

2. The selling records for Schedule III through V controlled substances may be maintained separate from other selling records or may be maintained with selling records for Schedule VI controlled substances provided the Schedule III through V controlled substance records are readily retrievable from the selling records for Schedule VI controlled substances. The records shall be deemed readily retrievable if a red "C" is placed uniformly on the record entry line for each Schedule III through V controlled substance sold.

§ 4.5. Automated data processing records of sale.

A. An automated data processing system may be used for the storage and retrieval of the sale of controlled substances instead of manual record keeping requirements, subject to the following conditions:

1. Any computerized system shall also provide

retrieval via CRT display or printout of the sale of all controlled substances during the past two years, the listing to be in chronological order and shall include all information required by the manual method; and

2. If the system provides a printout of each day's selling activity, the printout shall be verified, dated and signed by the licensee. The licensee shall verify that the data indicated is correct and then sign the document in the same manner as he would sign a check or legal document (e.g., J.H. Smith or John H. Smith). In place of such printout, the licensee shall maintain a bound log book, or separate file, in which the licensee shall sign a statement each day, in the manner previously described, attesting to the fact that the selling information entered into the computer that day has been reviewed by him and is correct as shown.

B. Printout of dispensing data requirement.

Any computerized system shall have the capability of producing a printout of any selling data which the practitioner is responsible for maintaining under the Drug Control Act.

PART V. PACKAGING, REPACKAGING AND LABEL STANDARDS.

§ 5.1. Repackaging of controlled substances; records required.

A. Record required.

A licensee repackaging controlled substances shall maintain adequate control records for a period of one year or until the expiration, whichever is greater. The records shall show the name of the controlled substance(s) repackaged, strength, if any, quantity prepared, initials of the licensee supervising the process, manufacturer's or distributor's name and control number, or the assigned number, and an expiration date.

B. Expiration date.

The controlled substance name, strength, if any, the manufacturer's or distributor's name and control number, or assigned control number, and an appropriate expiration date shall appear on any subsequently repackaged units:

1. If U.S.P.-N.F. Class B or better packaging material is used for oral unit dose packages, an expiration date not to exceed six months or the expiration date shown on the original manufacturing bulk containers, whichever is less, shall appear on the repackaged units;
2. If it can be documented that the repackaged unit has a stability greater than six months, an appropriate expiration date may be assigned; and

3. If U.S.P.-N.F. Class C or less packaging material is used for oral, solid medication, an expiration date not to exceed 30 days shall appear on the repackaged units.

§ 5.2. Labeling of prescription as to content and quantity.

A. Any controlled substances sold by a licensee shall bear on the label of the container, in addition to other requirements, the following information:

1. The name and address of the practitioner and the name of the patient;
2. The date of the dispensing; and
3. The controlled substance name and strength, when applicable.

a. If a trade name controlled substance is sold, the trade name of the controlled substance or the generic name of the controlled substance.

b. If a generic controlled substance is sold in place of a trade name controlled substance, in addition to the requirements of § 32.1-87 A of the Code of Virginia, one of the following methods shall be used:

- (1) The generic name; or
- (2) A name for the product sold which appears on the generic manufacturer's label; or
- (3) The generic name followed by the word "generic for" followed by the trade name of the controlled substance for which the generic controlled substance is substituted.
4. The number of dosage units, or if liquid, the number of millimeters dispensed.

§ 5.3. Packaging standards for controlled substance sold.

A controlled substance shall be sold only in packaging approved by the current U.S.P.-N.F. for the controlled substance. In the absence of such packaging standard for the controlled substance, it shall be dispensed in a well-closed container.

§ 5.4. Special packaging.

A. Each controlled substance sold to a person in a household shall be sold in special packaging, except when otherwise requested by the purchaser, or when such controlled substance is exempted from such requirements promulgated pursuant to the Poison Prevention Packaging Act of 1970.

B. Each licensee may have a sign posted near the compounding and selling area advising the patients that nonspecial packaging may be requested.

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PART VI. PATIENT'S CHOICE OF SUPPLIER AND RETURN OF CONTROLLED SUBSTANCES.

§ 6.1. Choice of controlled substance supplier.

A licensee shall not interfere with the patient's right to choose his supplier of medication or cooperate with any person or persons in denying a patient the opportunity to select his supplier of prescribed medications.

§ 6.2. Returning of controlled substances.

Controlled substances shall not be accepted for return or exchange by any licensee for resale after such controlled substances have been taken from the premises where sold, unless such controlled substances are in the manufacturer's original sealed container or in a unit-dose container which meets the U.S.P.-N.F. Class A or Class B container requirement and have not be stored under conditions whereby it may have become contaminated.

PART VII. GROUNDS FOR REVOCATION OR SUSPENSION.

§ 7.1. Grounds for revocation or suspension.

The Board of Pharmacy may revoke, suspend, refuse to issue or renew a license to sell controlled substances or may deny any application if it finds that the applicant:

1. Has been negligent in the sale of controlled substances;
2. Has become incompetent to sell controlled substances because of his mental or physical condition;
3. Uses drugs or alcohol to the extent that he is rendered unsafe to sell controlled substances;
4. Has engaged in or attempted any fraud or deceit upon the patient or the board in connection with the sale of controlled substances;
5. Has assisted or allowed unlicensed persons to engage in the sale of controlled substances;
6. Has violated or cooperated with others in violating any state or federal law or any regulation of the board relating to the sale, distribution, dispensing or administration of controlled substances;
7. Has had his federal registration to dispense controlled substances revoked or suspended; or
8. Has been convicted of violating any federal drug law or any drug law of Virginia or of another state or has had his license to practice medicine, osteopathy or podiatry suspended or revoked in Virginia or in any other state.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: VR 615-01-34. Aid to Dependent Children - Unemployed Parent (ADC-UP) Program - Limitation of Assistance.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Effective Date: October 1, 1990, through September 30, 1991.

Preamble:

The Aid to Dependent Children - Unemployed Parent (ADC-UP) Program is currently an optional component of the Aid to Dependent Children (ADC) Program which provides financial assistance to needy children who reside with both biological or adoptive parents and who are deprived of support and care due to the unemployment of the principal wage earner parent. The program which is authorized under Title IV of the Social Security Act and Title 45 of the Code of Federal Regulations is funded through a combination of state and federal monies. Virginia has never elected to offer the federal ADC-UP Program although a number of localities have participated in a state-funded demonstration project.

On October 13, 1988, former President Ronald Reagan signed the Family Support Act of 1988, Public Law 100-485. Title IV of the Family Support Act includes changes in the ADC Program, the most significant of which is the establishment of a statewide ADC-UP Program to be implemented October 1, 1990. The Act further provides states with the option to limit cash benefits and thus reduce program expenditures.

The 1990-1992 Biennium Budget Bill passed by the 1990 General Assembly includes funding limiting ADC-UP cash benefits to six months in a 12-month period. In response to the limited funding, Virginia must implement the ADC-UP Program effective October 1, 1990, including the provision to limit cash benefits for an ADC-UP eligible family to six months in a 12-consecutive-month period.

Emergency approval of the Governor is needed to allow the Virginia Department of Social Services to elect the option to limit assistance to two-parent unemployed families for six months in a 12-consecutive-month period. Due to the fact that the ADC-UP Program must be implemented on October 1, 1990, sufficient time is not available to promulgate this regulation in accordance with the public participation requirements of the Administrative Process Act. Immediately following approval and publication of the emergency regulation in the Virginia Register of Regulations, the Department of Social Services will initiate action to develop final regulations as required by the Administrative Process Act, § 9-6.14:4.1 of the Code of Virginia.

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If adopted, all 124 local social services agencies will be required to implement the ADC-UP Program including the provision to limit cash benefits to six months in a 12-consecutive-month period.

The 1990 General Assembly appropriated \$3,957,310 total funds, for which 50% or \$1,978,665 will be General Fund monies for fiscal year 1991, and \$4,430,230 total funds, of which 50% or \$2,215,115 will be General Fund monies, for fiscal year 1992 with a projected monthly caseload of 1,447.

Summary:

This regulation will allow the Virginia Department of Social Services to limit assistance for cash benefits in the federally mandated Aid to Dependent Children - Unemployed Parent (ADC-UP) Program to eligible families for six months in a 12-consecutive-month period.

Pursuant to § 63.1-25 of the Code of Virginia (1950), as amended, the State Board of Social Services has been delegated authority to promulgate rules and regulations necessary for operation of public assistance program in Virginia. This proposed regulation was approved by the State Board of Social Services in conjunction with the 1990 General Assembly appropriation of funds for the 1990-1992 biennium.

VR 615-01-34. Aid to Dependent Children - Unemployed Parent (ADC-UP) Program - Limitation of Assistance.

PART I. Definitions.

§ 1.1 The following words and terms, when used in these guidelines, shall have the following meaning unless the context clearly indicates otherwise:

"Aid to Dependent Children - Unemployed Parent (ADC-UP) Program" means the program which will be administered by the Virginia Department of Social Services effective October 1, 1990, which will provide financial assistance to needy two-parent unemployed families.

"Assistance unit" means those persons whose needs and income shall be considered in the determination of eligibility for assistance.

PART VII. Limitation of Assistance.

§ 7.1. In the ADC-UP Program, assistance for cash benefits is limited to six months in a 12-consecutive-month period. The 12-consecutive-month period begins in the first month of eligibility for cash benefits for the assistance unit.

Submitted by:
/s/ Larry D. Jackson
Commissioner

Date: May 8, 1990

Approved by:
/s/ L. Douglas Wilder
Governor
Date: September 17, 1990

Filed by:
/s/ Joan W. Smith
Registrar
Date: September 18, 1990

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

Title of Regulation: VR 672-20-31. Yard Waste Composting Regulation.

Statutory Authority: §§ 9-6.14:4.1 C 5, 10.1-1402, and 10.1-1408.1 K of the Code of Virginia.

Effective Dates: September 10, 1990, through September 9, 1991.

Summary:

This regulation provides for extensive exemptions from the permitting requirements contained in Part VII of the Board's Solid Waste Management Regulations (VR 672-20-10) (VSWMR) and standards contained therein to encourage the development of yard waste composting facilities. The regulation will allow for more prompt development of yard waste composting facilities by establishing technical standards and permitting procedures more consistent with environmental risk posed by such facilities.

This regulation defines yard waste, establishes self-executing siting, design, construction, operation, and closure standards, and provides for permits by rule to those owners or operators of yard waste composting facilities which meet the standards. The regulation requires certain minimum notification and certification procedures.

The regulation also provides for enforcement.

Basis of Emergency:

In 1990, in response to a study commissioned by the Department of Waste Management and performed by Virginia Tech, the General Assembly enacted § 10.1-1408.1.K which provides:

The Board shall provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of yard waste composting facilities. To accomplish this, the Board is authorized to exempt such facilities from regulations governing the

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treatment of waste and to establish an expedited approval process.

At this time, the Virginia Solid Waste Management Regulations do not provide for abbreviated permitting. The regulations require all applicants to undergo extensive permitting and public participation procedures. The Board's regulatory procedures generally take approximately twelve months. Therefore, if the emergency regulation is not adopted, the Board will be unable to satisfy the legislature's mandate until mid- to late 1991.

Under the Board's Regulations for the Development of Solid Waste Management Plans, local governments are required to identify how they will meet mandatory recycling rates of 10% by 1991, 15% by 1993, and 25% by 1995. The initial plan is due by July 1, 1991. If the regulation is adopted in the normal course, it will not be completed until after the date the first plans are due. Thus, localities will be without a significant tool to implement state mandates.

If permits are evaluated in the normal course of business, because of permit backlogs, permits cannot be issued in time to meet the July 1, 1991, plan submission deadline. Moreover, permits cannot be issued in time to accommodate the fall leaf composting seasons.

Yard waste comprises approximately 18% of the solid waste generated in Virginia. If these materials can be composted and used, it will reduce the amount of material that must be landfilled or incinerated. Thus, it will extend the life of existing landfills in the Commonwealth.

Therefore, the Virginia Waste Management Board, pursuant to § 10.1-1402, by its Director, pursuant to § 10.1-1405.B, with the concurrence of the Governor of the Commonwealth, pursuant to § 9-6.14:4.1.C.5 of the Code of Virginia, adopts this emergency regulation, effective upon filing with the Registrar of Regulations.

It is so ordered:

/s/ Cynthia V. Bailey
Director
Date: August 27, 1990

/s/ Elizabeth H. Haskell
Secretary of Natural Resources
Date: August 31, 1990

/s/ Lawrence Douglas Wilder
Governor
Date: September 7, 1990

/s/ Joan W. Smith
Registrar of Regulations
Date: September 10, 1990 - 10:16 a.m.

VR 672-20-31. Yard Waste Composting Regulation.

PREFACE

This regulation provides for certain exemptions from the permitting requirements contained in Part VII of the Virginia Solid Waste Management Regulations (VR 672-20-10) and certain substantive facility standards contained in § 6.1, VR 672-20-10, in order to encourage the development of yard waste composting facilities as required by § 10.1-1408.1.K. of the Code of Virginia (1950), as amended.

PART I DEFINITIONS

§ 1.1. The definitions set out in Part I of the Virginia Solid Waste Management Regulations (VR 672-20-10) are incorporated by reference.

§ 1.2. In addition to the definitions incorporated by reference, the following terms have, for the purpose of this regulation, the following meaning:

"Disclosure statement" means a sworn statement or affirmation, in such form as may be required by the Director, which includes:

1. The full name, business address, and social security number of all key personnel;
2. The full name and business address of any entity, other than natural person, that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity interest of five percent or more;
3. A description of the business experience of all key personnel listed in the disclosure statement;
4. A listing of all permits or licenses required for the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste issued to or held by any key personnel within the past ten years;
5. A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations, or enforcement actions of any sort by any state, federal or local authority, within the past ten years, which are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within ten years of key personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping;

gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 of Title 54.1 of the Code of Virginia; racketeering; or violation of antitrust laws;

6. A listing of all agencies outside the Commonwealth which have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past ten years, in connection with the applicant's collection, transportation, treatment, storage or disposal of solid waste or hazardous waste;

7. Any other information about the applicant and the key personnel that the Director may require that reasonably relates to the qualifications and ability of the key personnel or the applicant to lawfully and competently operate a solid waste management facility in Virginia; and

8. The full name and business address of any member of the local governing body or planning commission in which the solid waste management facility is located or proposed to be located, who holds an equity interest in the facility.

"Equity" includes both legal and equitable interests.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the Director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of five percent or more of the equity or debt of the applicant. If any holder of five percent or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Security and Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment, or storage of nonhazardous solid waste under contract with or for one of those governmental

entities.

"Permit by rule" means provisions of the regulation stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

"Runon" means any rainwater, wastewater, leachate, or other liquid that drains over land onto any part of the compost facility.

"Yard waste" means that fraction of household waste that consists of grass clippings, leaves, brush and tree prunings arising from general household yard maintenance. For the purpose of this regulation "yard waste" includes similar materials collected from streets, parks and recreational areas.

PART II AUTHORITY, PURPOSE AND APPLICABILITY

§ 2.1. Authority. With the concurrence of the Governor of the Commonwealth this emergency regulation is promulgated by the Virginia Waste Management Board pursuant to Title 9, Section 9-6.14:4.1.C.5., and Title 10.1, Sections 10.1-1402 and 10.1-1408.1, of the Code of Virginia (1950), as amended.

§ 2.2. Purpose. The purpose of this regulation is to establish appropriate standards for siting, design, construction, operation and closure and expedited permitting procedures pertaining to certain yard waste compost facilities.

§ 2.3. Applicability.

A. This regulation applies to all persons who manage yard waste to produce compost provided that:

1. The composting process employed is that with prior operational performance in the United States;
2. The yard wastes are not combined with other refuse, sludges or animal manures; and
3. The yard waste is not managed atop a partially or fully closed solid waste disposal unit at a permitted solid waste disposal facility.

B. Persons who do not meet the conditions of § 2.3A shall manage their waste in accordance with all provisions of the Virginia Solid Waste Management Regulations.

§ 2.4. Relationship to Other Regulations.

A. These regulations do not affect the Virginia Solid Waste Management Regulations (VR 672-20-10), except that persons subject to and in compliance with these regulations are exempt from the Solid Waste Management Regulations only for those activities covered by these regulations.

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B. The requirements of the Financial Assurance Regulations for Solid Waste Management Facilities (VR 672-20-1) apply to the owners and operators of yard waste composting facilities.

PART III FACILITY STANDARDS

§ 3.1. Siting.

A. Yard waste composting facilities shall not be sited or constructed in areas subject to base floods. No facility shall be closer than fifty (50) feet to any regularly flowing stream.

B. Yard waste composting facilities shall not be located in areas which are geologically unstable or where the site topography is heavily dissected.

C. Acceptable sites must have sufficient area and terrain to allow for proper management of runoff, runoff and leachate.

D. A yard waste composting facility shall not be located within 200 feet of any residential area, a health care facility, school, or similar type of public institution. The Director may reduce this set-back distance if the owner or operator successfully shows that a nuisance will not be created owing to the operation of such facility.

E. A yard waste composting facility shall not be located atop a closed waste disposal unit located on property whose deed or some other instrument which is normally examined during title searches contains a notation required under § 5.1.E.8., 5.2.E.6., or 5.3.E.7. of the Virginia Solid Waste Management Regulations.

§ 3.2. Design and Construction.

A. A handling area and equipment shall be provided to segregate waste other than yard waste and non-compostable components in the yard waste and to store such components in properly constructed containers prior to their disposal at a permitted solid waste disposal facility.

B. If the yard waste compost facility is located in any area where the seasonal high water table lies within five feet of the ground surface, the composting and handling areas shall be hard-surfaced and diked or bermed to prevent entry of runoff or escape of runoff and other liquids, and a sump with adequately sized pump located at the low point of the hard-surfaced area shall be provided to convey liquids to a wastewater treatment, disposal or holding facility.

C. Sound engineering controls shall be incorporated into design of facilities located on sites with:

1. springs, seeps, and other groundwater intrusions;

2. gas, water, or sewage lines under the active areas; or

3. electrical transmission lines above or below the active areas.

D. Areas used for mixing, curing, and storing of compost shall be graded to prevent runoff, collect runoff, and provided with a drainage system to route the collected runoff to a wastewater storage, treatment, or disposal facility.

E. A buffer zone with the minimum size of 100 feet shall be incorporated in the facility design between facility boundaries and process operations.

F. Roads serving the unloading, handling, composting, and storage areas shall be of all-weather construction.

§ 3.3. Operations.

A. The addition of any other solid waste including but not limited to hazardous, infectious, construction, debris, demolition, industrial or other municipal solid waste to the yard waste received at the facility is prohibited.

B. Waste other than yard waste and non-compostable yard waste components shall be segregated from the compostable yard waste and promptly removed from the site for proper management at a facility permitted by the Department. Segregated solid waste shall not remain at the compost site at the end of the working day unless it is stored in containers specifically designed for storage of solid waste.

C. Access to a yard waste compost facility shall be permitted only when an attendant is on duty.

D. Dust, odors, and vectors shall be controlled so they do not constitute nuisances or hazards.

E. The operator shall prepare, implement, and enforce a safety program designed to minimize hazards.

F. Open burning shall be prohibited.

G. Fugitive dust and mud deposits on main off-site roads and access roads shall be minimized at all times to limit nuisances.

H. Leachate or other runoff from a compost facility shall not be permitted to drain or discharge into surface waters except when authorized under a Virginia-NPDES Permit issued pursuant to the State Water Control Board Regulation No. VR 680-14-01, NPDES Program or otherwise approved by that agency.

I. Designed buffer zones shall be maintained.

§ 3.4. Closure. The owner or operator shall close his facility in a manner that minimizes the need for further

Emergency Regulations

maintenance. All waste, compost, and residues shall be removed and disposed in a permitted facility.

A. Closure plan and amendment of plan.

1. The owner or operator of a compost facility shall have a written closure plan. This plan shall identify the steps necessary to completely close the facility at the time when its operation is most extensive. The closure plan shall include, at least a schedule for final closure including, as a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates which will allow tracking of the progress of closure.

2. The closure plan shall be submitted to the Department prior to the construction and operation of the compost facility. If found to be deficient, the closure plan shall be amended by the owner or operator within 90 days of the Director's finding. If the amended closure plan continues to be deficient, the Department will amend the plan to meet the closure performance requirements.

3. The owner or operator may amend his closure plan at any time during the active life of the facility. The owner or operator shall so amend his plan any time changes in operating plans or facility design affects the closure plan. Amended plans shall be submitted to the Department within 15 days of such changes. The Director may require that amended plans be modified to meet the closure requirements.

4. At any time during the operating life of the facility, the closure plan shall be made available to the Department upon request of the Director.

5. The owner or operator shall submit an updated closure plan to the Director at least 180 days before the date he expects to begin final closure. The Director will modify, approve, or disapprove the plan within 90 days of receipt. If the closure plan is disapproved, the owner or operator shall modify the plan to meet the closure requirements. If an owner or operator plans to begin closure within 180 days after the effective date on these regulations, he shall submit the necessary plans on the effective date of these regulations.

B. Time allowed for closure. The owner or operator shall complete closure activities in accordance with the approved closure plan and within six months after receiving the final volume of wastes. The Director may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activities will, of necessity, take longer than six months to complete; and that he has taken all necessary steps to eliminate any significant threat to human health and the environment from the unclosed but inactive facility.

C. At the beginning of the closure activities, the owner or operator shall post one sign notifying all persons of the closing, and providing a notice prohibiting further receipt of waste materials. Further, suitable barriers shall be installed at former accesses to prevent new waste from being deposited.

D. Evidence of proper closure. A compost facility shall be deemed properly closed when the above actions have been taken by the owner or operator and a representative of the department verifies same by an on-site inspection and provides a written confirmation that closure has been completed properly.

PART IV FACILITY PERMIT BY RULE

§ 4.1. Notwithstanding any provisions of Part VII of the Virginia Solid Waste Management Regulations (VR 672-20-10), the owner or operator of a compost facility which accepts only yard wastes as defined in Part I of this regulation shall be deemed to have a solid waste management facility permit if the owner or operator:

A. Demonstrates to the Director the legal control over the site for the useful life of the facility. A documentation of an option to purchase will be considered as a temporary substitute for a deed; however, the true copy of a deed shall be provided to the Department before construction begins.

B. Notifies the Director of his intent to operate such a facility and provides the Department:

1. The certification from the governing body of the county, city, or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances; and

2. A disclosure statement as defined in Part I of this regulation as required under § 10.1-1408.1.B. of the Code.

C. Provides the Director with a certification that the facility meets the siting standards of § 3.1 of this regulation.

D. Furnishes to the Director a certificate signed by a professional engineer licensed to practice by the Commonwealth that the facility has been designed and constructed in accordance with the standards of § 3.2 of this regulation. Such certificate shall contain no qualifications or exceptions from the requirements and plans.

E. Submits to the Executive Director an operational plan describing how the standards of § 3.3 will be met.

F. Submits to the Director an approved closure plan describing how the standards of § 3.4 will be met.

Emergency Regulations

G. Submits to the Director the proof of financial responsibility if required by the Financial Assurance Regulations for Solid Waste Facilities (VR 672-20-1).

§ 4.2. Change of Ownership. A permit by rule may not be transferred by the permittee to a new owner or operator. However, when the property transfer takes place without proper closure, the new owner shall notify the Department of the sale and fulfill all the requirements contained in § 4.1 with the exception of § 4.1 G. Upon presentation of the financial assurance proof required by § 4.1 G by the new owner, the Department will release the old owner from his closure and financial responsibilities and acknowledge existence of the new permit by rule in the name of the new owner.

§ 4.3. Facility Modifications. The owner or operator of a yard waste compost facility may modify the design and operation of the facility by furnishing the Department a new certificate required by § 4.1 D and a new operational plan required by § 4.1 E. Whenever modifications in the design or operation of the facility affect the provisions of the approved closure plan, the owner or operator shall submit an amended closure plan in accordance with the requirements of § 3.4. Should there be an increase in the closure costs, the owner or operator shall submit a new proof of financial responsibility as required by the Financial Assurance Regulations for Solid Waste Facilities (VR 672-20-1).

PART V ENFORCEMENT

§ 5.1. Loss of Permit by Rule Status. In the event that a yard waste compost facility operating under a permit by rule violates any provisions of this regulation, the owner or operator of the facility will be considered to be operating an unpermitted facility as provided for in § 2.6. of the Virginia Solid Waste Management Regulations (VR 672-20-10) and shall be required to either obtain a new permit as required by Part VII or close under Part V or VI of those regulations, as applicable.

§ 5.2. Termination. The Director shall terminate permit by rule and shall require closure of the facility whenever he finds that:

A. As a result of changes in key personnel, the requirements necessary for a permit by rule are no longer satisfied;

B. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in his disclosure statement, or any other report or certification required under this regulation, or has knowingly or willfully failed to notify the Director of any material change to the information in the disclosure statement; or

C. Any key personnel have been convicted of any of the crimes listed in § 10.1-1409 of the Code of Virginia, punishable as felonies under the laws of the

Commonwealth or the equivalent thereof under the laws of any other jurisdiction; or has been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth or any other state and the Director determines that such conviction or adjudication is sufficiently probative of the permittee's inability or unwillingness to operate the facility in a lawful manner.

STATE CORPORATION COMMISSION

BUREAU OF INSURANCE

September 11, 1990

Administrative Letter 1990-12

TO: All Health Services Plans and Insurers Licensed to Write Accident and Sickness Insurance in Virginia

RE: Senate Bill 131 - Coverage for Child Health Supervision Services

Senate Bill No. 131, passed by the 1990 Session of the General Assembly became effective July 1, 1990. This bill amends the Code of Virginia by adding a section numbered § 38.2-3411.1 (copy attached). This bill requires insurers, and health services plans to offer and make available coverage for "child health supervision services".

The purpose of this Administrative Letter is to notify all companies subject to the requirements of § 38.2-3411.1 of the Bureau's expectations with regard to compliance with this new benefit requirement.

1. We expect all companies to be in compliance by no later than November 1, 1990. This means that all form and rate filings are completed and that the company has designed and implemented procedures by which to "offer and make available" the child health supervision services benefit.

2. Please note that § 38.2-3411.1.A requires that the insurer or health services plan "shall offer and make available" (emphasis added) coverage for child health supervision services. This means that an affirmative offer must be made. Merely having the benefit "available as an option" is not sufficient.

3. Those companies who wish to claim an exemption from compliance pursuant to § 38.2-3411.1.F must communicate such intention in writing. The following certification, or similar wording, signed by an officer of the company, will be acceptable:

I certify that . . . [Name of Company] . . . has fewer than 1,000 individuals insured or covered in Virginia or less than \$500,000 in premiums in Virginia as of the company's last filed annual statement.

Because § 38.2-3411.1.F is silent on the question of what type of premium income is to be considered, companies must take into account ALL premium income from their Virginia business in determining whether the \$500,000 threshold has been reached. The above certification must be submitted annually in order for a company to maintain its exemption.

4. Also, the benefit to be offered under § 38.2-3411.1 does not apply to specified disease, hospital indemnity, or other limited benefit policies issued to provide

supplemental benefits to a policy providing primary care benefits.

It is our intention to carefully monitor compliance with this new law. Any company that has failed to comply with this new law or file for an exemption by November 1, 1990 will be subject to initiation of disciplinary proceedings including, but not limited to, imposition of a monetary penalty and/or revocation or suspension of its certificate of authority.

If your company has already complied with the requirements of § 38.2-3411.1, please complete the attached form and return it to us.

All verification forms, and any questions or concerns with the foregoing should be addressed, in writing, to:

Robert L. Wright, CLU, CIE
Supervisor, Forms and Rates Section
Life and Health Division
Bureau of Insurance
P. O. Box 1157
Richmond, Virginia 23209

/s/ Steven T. Foster
Commissioner of Insurance

1990 RECONVENED SESSION
VIRGINIA ACTS OF ASSEMBLY - CHAPTER 901 REENROLLED

An Act to amend the Code of Virginia by adding a section numbered 38.2-3411.1, relating to insurance coverage for child health supervision services.

[S 131]

Approved APR 18 1990

Be it enacted by the General Assembly of Virginia:
1. That the Code of Virginia is amended by adding a section numbered 38.2-3411.1 as follows:

§ 38.2-3411.1. Coverage for child health supervision services.—A. Every individual or group accident and sickness insurance policy, subscription contract providing coverage under a health services plan, or evidence of coverage of a health care plan delivered or issued for delivery in the Commonwealth or renewed, reissued, or extended if already issued, shall offer and make available coverage under such policy or plan for child health supervision services to provide for the periodic examination of children covered under such policy or plan.

B. As used in this section, the term "child health supervision services" means the periodic review of a child's physical and emotional status by a licensed and qualified physician or pursuant to a physician's supervision. A review shall include but not be limited to a history, complete physical examination, developmental assessment, anticipatory guidance, appropriate immunizations, and laboratory tests in keeping with prevailing medical standards.

C. Each such policy or plan, offering and making available such coverage, shall, at a minimum, provide benefits for child health supervision services at approximately the following age intervals: birth, two months, four months, six months, nine months, twelve months, fifteen months, eighteen months, two years, three years, four years, five years, and six years. A policy or plan may provide that child health supervision services which are rendered during a periodic review shall only be covered to the extent that such services are provided by or under the supervision of a single physician during the course of one visit.

D. Benefits for coverage for child health supervision services shall be exempt from any copayment, coinsurance, deductible, or other dollar limit provision in the policy or plan. Such exemption shall be expressly stated on the policy, plan, rider, endorsement, or other attachment providing such coverage.

E. The premiums for such coverage shall take into consideration (i) the cost of providing such coverage, (ii) cost savings realized or likely to be realized as a consequence of such coverage, (iii) a reasonable profit for the insurer, and (iv) any other relevant information or data the Commission deems appropriate.

F. This section shall not apply to any insurer or health services plan having fewer than 1,000 covered individuals insured or covered in Virginia or less than \$500,000 in premiums in Virginia as of its last annual statement nor to specified disease, hospital indemnity or other limited benefit policies issued to provide supplemental benefits to a policy providing primary care benefits.

State Corporation Commission

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BUREAU OF INSURANCE

September 10, 1990

Administrative Letter 1990-18

Administrative Letter 1990-12 Survey
Verification of Compliance

Name of Company _____
Form Number(s) _____
Date(s) of Approval _____
Signature, Title _____
Date _____

TO: ALL INSURERS AUTHORIZED TO WRITE LIFE
INSURANCE IN VIRGINIA

RE: UNDERWRITING MILITARY PERSONNEL

Mail To:

Robert L. Wright, CLU, CIE
Supervisor, Forms and Rates Section
Life and Health Division
Virginia Bureau of Insurance
P. O. Box 1157
Richmond, Virginia 23209

It has come to my attention that a number of insurers have advised their underwriters and/or agents to decline applications for life insurance, or to refuse to submit applications for life insurance on the lives of members of the United States armed forces, including reserve units, who have orders or knowledge of pending orders for duty in the Persian Gulf or the Middle East. In some cases, such corporate policy extends even to those on active duty elsewhere in the world with the potential for assignment to the Persian Gulf or the Middle East. Many of these insurers have instructed their field personnel to conduct oral pre-screenings of potential applicants and to refuse even to take an application from military personnel such as those described above.

The purpose of this Administrative Letter is to inform all insurers authorized to write life insurance in Virginia that the Bureau of Insurance condemns the above practices and requests that insurers engaging in such practices immediately discontinue them. It is our intention to rigorously pursue all possible legal remedies available to us to put an end to such practices, and to initiate disciplinary proceedings against any insurers found to be in violation of any of the insurance laws of Virginia, including laws governing discrimination, and the Adverse Underwriting Decision requirements imposed upon both insurers and their appointed agents under the Insurance Information and Privacy Protection Act.

If your company is presently engaged in the practices described above, I request that you give the strongest consideration to changing your policy. If you have not adopted such a policy, I urge you to refrain from doing so.

Attached hereto you will find a questionnaire to be completed and certified by the chief executive officer or other responsible company officer of each company to which this Administrative Letter is being sent. In it, you are asked to affirm or deny that your company is engaged in the practices described in this letter; and if so engaged (or planning to become so engaged) whether your company will, as a result of this letter, discontinue such practices or its consideration of adopting such practices.

Your responses should be returned to this office by no later than September 14, 1990.

Your immediate attention to this matter will be appreciated.

/s/ Steven T. Foster
Commissioner of Insurance

State Corporation Commission

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Questionnaire for Administrative Letter 1990-18
Underwriting Military Personnel

Due Date: September 14, 1990

Address responses to the attention of the: Life and Health Research Section
Bureau of Insurance
P. O. Box 1157
Richmond, Virginia 23209

OR

You may FAX your response to: Life and Health Research Section at
(804) 371-7873

Name of Company: _____

NAIC Number: _____

Address: _____

Name and Title of Person Responding: _____

Telephone Number of Person Responding: _____

I. Has the above-named company instituted a policy of:

a. Refusing life insurance coverage to military personnel or reservists with orders for duty or who have already been deployed to the Persian Gulf or the Middle East? Yes No

1) If "Yes", will the company agree to discontinue this practice? Yes No

b. Refusing life insurance coverage to military personnel or reservists with knowledge of pending orders for duty in the Persian Gulf or the Middle East? Yes No

1) If "Yes", will the company agree to discontinue this practice? Yes No

c. Refusing life insurance coverage to military personnel or reservists other than those with orders or pending orders for duty in the Persian Gulf or the Middle East? Yes No

If "Yes", please explain, and indicate whether the company will agree to discontinue this practice.

_____ Yes No

II. Has the above-captioned company instituted a policy of advising its appointed agents in Virginia to decline to write life insurance applications from military personnel or reservists who:

a. Have received orders or have been deployed to the Persian Gulf or the Middle East? Yes No

1) If "Yes", will the company agree to discontinue this practice? Yes No

b. Have knowledge of pending orders for duty in the Persian Gulf or the Middle East? Yes No

1) If "Yes", will the company agree to discontinue this practice? Yes No

c. Have the potential to receive orders for duty in the Persian Gulf or the Middle East? Yes No

1) If "Yes", will the company agree to discontinue this practice? Yes No

III. Does the above named company utilize a "war exclusion" provision (whether included in the policy or added by endorsement) in its life insurance policies? Yes No

a. If "Yes", is such provision included or added

1. to all policies? Yes No

2. to all policies issued to active military personnel? Yes No

3. to all policies issued to members of the military reserve? Yes No

4. to policies issued to military or reserve personnel deployed to the Persian Gulf or the Middle East? Yes No

5. to policies issued to military or reserve personnel with orders for duty in the Persian Gulf or the Middle East? Yes No

6. to policies issued to military or reserve personnel with knowledge of pending orders for duty in the Persian Gulf or the Middle East? Yes No

7. to policies issued to military or reserve personnel in units with the potential to be deployed to the Persian Gulf or the Middle East? Yes No

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDER NUMBER TWENTY-FOUR (90)

VIRGINIA LOTTERY RETAILER INCENTIVE PROGRAM AND DRAWING RULES

In accordance with the authority granted by § 58.1-4006A of the Code of Virginia, I hereby promulgate the Virginia Lottery Retailer Incentive Program and Drawing Rules for the retailer incentive program which will be conducted during the period August 14, 1990 through October 2, 1990. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until October 31, 1990, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson, Director
Date: August 13, 1990

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DIRECTOR'S ORDER NUMBER TWENTY-FIVE (90)

VIRGINIA STATE FAIR DAILY DRAWING RULES

In accordance with the authority granted by § 58.1-4006A of the Code of Virginia, I hereby promulgate the Virginia State Fair Daily Drawing Rules for the lottery promotional events which will be conducted during the 1990 Virginia State Fair. The events will take place at the fairgrounds in Richmond from September 20 - 30, 1990. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until October 1, 1990, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson, Director
Date: September 5, 1990

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DIRECTOR'S ORDER NUMBER TWENTY-SIX (90)

"THE BIG DEAL"; PROMOTIONAL GAME AND DRAWING RULES

In accordance with the authority granted by § 58.1-4006A of the Code of Virginia, I hereby promulgate the "The Big Deal" promotional contest and drawing rules for the Game 14 kickoff events which will be conducted at various lottery retailer locations throughout the Commonwealth on September 27, 1990. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until September 28, 1990, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson, Director
Date: September 5, 1990

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DIRECTOR'S ORDER NUMBER TWENTY-SEVEN (90)

VIRGINIA'S FOURTEENTH INSTANT GAME LOTTERY; "THE BIG DEAL," FINAL RULES FOR GAME OPERATION

In accordance with the authority granted by § 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's fourteenth instant game lottery, "The Big Deal." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson, Director
Date: September 14, 1990

EMERGENCY REGULATION

Title of Regulation: VR 447-02-2. On-Line Game Regulations.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Effective Dates: September 18, 1990 through September 17, 1991.

Preamble:

The State Lottery Department recommends approval of its request to adopt an emergency regulation to amend § 3.7 of State Lottery Department On-Line Game Regulations VR 447-02-2 to reduce incrementally the prize redemption period from 180 days to 60 days for free on-line game tickets only. The prize redemption period for all cash prizes remains at 180 days. The Governor's approval of this emergency regulation will permit the State Lottery Department to reduce the amount of information required to be maintained in its computer validation file by about two-thirds. The regulation will ease the further degradation of computer capacity and processing time.

VR 447-02-2. On-Line Game Regulations.

PART I. ON-LINE GAMES.

§ 1.1. Development of on-line games.

The director shall select, operate, and contract for the operation of on-line games which meet the general criteria set forth in these regulations. The board shall determine the specific details of each on-line lottery game after consultation with the director. These details include, but are not limited to:

1. The type or types of on-line lottery games;
2. Individual prize amounts and overall prize structure;
3. Types of noncash prizes, if any;
4. The amount and type of any jackpot or grand prize which may be awarded and how awarded; and
5. Chances of winning.

§ 1.2. General definitions for on-line games.

"Auto-picks" means computer generated numbers or items. The director may select a different name to identify this feature for marketing purposes.

"Breakage" means the fraction of a dollar not paid out due to rounding down and shall be used exclusively to fund prizes.

"Cancelled ticket" means a ticket that has been placed into the terminal, whereupon the terminal must read the information from the ticket, cancel the transaction and brand the ticket with a mark or words indicating that the ticket is cancelled and void.

"Certified drawing" means a drawing in which a lottery official and an independent certified public accountant attest that the drawing equipment functioned properly and that a random selection of a winning combination has occurred.

"Drawing" means a procedure by which the lottery randomly selects numbers or items in accordance with the specific game rules for those games requiring random selection of number(s) or item(s).

"Duplicate ticket" means a ticket produced by any means other than by an on-line terminal with intent to imitate the original ticket.

"On-line game" means a lottery game, the play of which is dependent upon the use of an on-line terminal in direct communication with an on-line game main frame operated by or at the direction of the department.

"On-line lottery retailer" means a licensed lottery retailer who has entered an agreement with the department to sell on-line tickets.

"On-line system" means the department's on-line computer system consisting of on-line terminals, central processing equipment, and a communication network.

"On-line terminal" means computer hardware through which a combination of numbers or items is selected or generated and through which on-line tickets are generated and claims may be validated.

"On-line ticket" means a computer-generated ticket issued by an on-line lottery retailer to a player as a receipt for the number, numbers, or items or combination of number or items the player has selected.

"Play" means a wager on a single set of selected numbers.

"Player-selected item" means a number or item or group of numbers or items selected by a player in connection with an on-line game. Player-selected items include selections of items randomly generated by the computer on-line system. Such computer-generated numbers or items are also known as "auto-picks" or "quick picks."

"Quick pick" means the same as "auto pick."

"Retailer", as used in these on-line game regulations, means a licensed on-line lottery retailer, unless the context clearly requires otherwise.

State Lottery Department

"Roll stock" means the paper roll placed into the lottery retailer terminals from which a unique lottery ticket is generated by the computer, displaying the player selected item(s) or number(s).

"Share" means a percentage of ownership in a winning ticket.

"Validation" means the process of determining whether an on-line ticket presented for payment is a winning ticket.

"Validation number" means a unique number assigned by the on-line central computer and printed on the front of each on-line ticket which is used for validation.

"Winning combination" means two or more items or numbers selected by a drawing.

§ 1.3. Prize structure.

The prize structure for any on-line game shall be designed to return to winners approximately 50% of gross sales.

A. The specific prize structure for each type of on-line game shall be determined in advance by the board.

B. From time to time, the board may determine temporary adjustments to the prize structure to account for breakage or other fluctuations in the anticipated redemption of prizes.

§ 1.4. Drawing and selling times.

A. Drawings shall be conducted at times and places designated by the director and publicly announced by the department.

B. On-line tickets may be purchased up to a time prior to the drawing as specified in the on-line drawing rules. That time will be designated by the director.

§ 1.5. Ticket price.

A. The sale price of a lottery ticket for each game will be determined by the board and will be between \$.50 and \$15. These limits shall not operate to prevent the sale of more than one lottery play on a single ticket. Lottery retailers may not discount the sale price of on-line game tickets or provide free lottery tickets as a promotion with the sale of on-line tickets. This section shall not prevent a licensed retailer from providing free on-line tickets with the purchase of other goods or services customarily offered for sale at the retailer's place of business; provided, however, that such promotion shall not be for the primary purpose of inducing persons to participate in the lottery. (see § 1.9)

§ 1.6. Ticket cancellation.

A ticket may be cancelled and a refund of the purchase price obtained at the request of the bearer of the ticket under the following conditions:

1. To be accepted for cancellation, the ticket must be presented to the lottery retailer location at which the ticket was sold, prior to the time of the drawing and within the same business day it was purchased.

2. Cancellation may only be effected by the following two procedures:

a. Inserting the ticket into the lottery terminal, whereupon the terminal must read the information from the ticket and cancel the transaction.

b. After first determining that the preceding procedure cannot be utilized successfully to cancel the ticket, the terminal operator may cancel the ticket by manually entering the ticket validation number into the terminal via the keyboard.

Any ticket which cannot be cancelled by either of these procedures remains valid for the drawing for which purchased. Any ticket which is mutilated, damaged or has been rendered unreadable, and cannot be inserted into or read by the lottery terminal or whose validation number cannot be read and keyed into the terminal, cannot be cancelled by any other means.

3. The cancelled ticket must be surrendered by the bearer to the retailer.

4. On a case-by-case basis, credit may be provided to retailers for tickets which could not be cancelled by either of the two methods described in § 1.6 2. Such credit may be given provided unusual, verifiable circumstances are present which show that the department's computer system could not accept the cancellation within the same day the ticket was purchased or that the ticket was produced by an unusual retailer error. The retailer must notify the department's Hotline prior to the time of the drawing and within the same business day the ticket was purchased.

5. The director may approve credit for other cancellation requests not described in this section.

6. The lottery's internal auditor will audit cancelled tickets on a sample basis.

§ 1.7. Chances of winning.

The director shall publicize the overall chances of winning a prize in each on-line game. The chances may be printed in informational materials.

§ 1.8. Licensed retailers' compensation.

State Lottery Department

A. Licensed retailers shall receive 5.0% compensation on all net sales from on-line games. "Net sales" are gross sales less cancels.

B. The board shall approve any bonus or incentive system for payment to retailers. The director will publicize any such system in the rules of the game(s) to which it applies. The director may then award such cash bonuses or other incentives to retailers.

§ 1.9. Retailers' conduct.

A. Retailers shall sell on-line tickets at the price fixed by the board, unless the board allows reduced prices or ticket give-aways.

B. All ticket sales shall be for cash, check, cashier's check, traveler's check or money order at the discretion of and in accordance with the licensed retailer's policy for accepting payment by such means. A ticket shall not be purchased with credit cards, food stamps or food coupons.

C. All ticket sales shall be final. Retailers shall not accept ticket returns except as allowed by department regulations or policies, or with the department's specific approval.

D. Tickets shall be sold during all normal business hours of the lottery retailer when the on-line terminal is available unless the director approves otherwise.

E. Tickets shall be sold only at the location listed on each retailer's license from the department.

F. On-line retailers must offer for sale all lottery products offered by the department.

G. An on-line game ticket shall not be sold to, purchased by, or given as a gift to any individual under 18 years of age.

H. On-line retailers shall furnish players with proper claim forms provided by the department.

I. On-line retailers shall post winning numbers prominently.

J. On-line retailers and employees who will operate on-line equipment shall attend training provided by the department and allow only trained personnel to operate terminals.

K. Unsupervised retailer employees who sell or otherwise vend lottery tickets must be at least 18 years of age. Employees not yet 18 but at least 16 years of age may sell or vend lottery tickets so long as they are supervised by a person 18 years of age or older.

§ 1.10. End of game; suspension.

The director may suspend or terminate an on-line game

without advance notice if he finds that this action will serve and protect the public interest.

PART II. LICENSING OF RETAILERS FOR ON-LINE GAMES.

§ 2.1. Licensing.

A. Generally.

The director may license persons as lottery retailers for on-line games who will best serve the public convenience and promote the sale of tickets and who meet the eligibility criteria and standards for licensing.

B. For purposes of this part on licensing, "person" means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" also means all departments, commissions, agencies and instrumentalities of the Commonwealth, including its counties, cities, and towns.

§ 2.2. Eligibility.

A. Eighteen years of age and bondable.

Any person who is 18 years of age or older and who is bondable may be considered for licensure, except no person may be considered for licensure:

1. Who will be engaged solely in the business of selling lottery tickets; or
2. Who is a board member, officer or employee of the State Lottery Department or who resides in the same household as board member, officer or employee of the department; or
3. Who is a vendor to the department of instant or on-line lottery tickets or goods or data processing services, whose tickets, goods or services are provided directly to the lottery department, or whose business is owned by, controlled by, or affiliated with a vendor of instant or on-line lottery tickets or goods or data processing services whose tickets, goods or services are provided directly to the lottery department.

B. Form submission.

The submission of forms or data for licensure does not in any way entitle any person to receive a license to act as an on-line lottery retailer.

§ 2.3. General standards for licensing.

A. Selection factors for licensing.

The director may license those persons who, in his

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opinion, will best serve the public interest and public trust in the lottery and promote the sale of lottery tickets. The director will consider the following factors before issuing or renewing a license:

1. The financial responsibility and integrity of the retailer, to include:

- a. A credit and criminal record history search or when deemed necessary a full investigation of the retailer;
- b. A check for outstanding delinquent state tax liability;
- c. A check for required business licenses, tax and business permits; and
- d. An evaluation of physical security at the place of business, including insurance coverage.

2. The accessibility of his place of business to public, to include:

- a. The hours of operation compared to the on-line system selling hours;
- b. The availability of parking including ease of ingress and egress to parking;
- c. Public transportation stops and passenger traffic volume;
- d. The vehicle traffic density, including levels of congestion in the market area;
- e. Customer transaction count within the place of business;
- f. Other factors indicating high public accessibility and public convenience when compared with other retailers; and
- g. Adequate space and physical layout to sell a high volume of lottery tickets efficiently.

3. The sufficiency of existing lottery retailers to serve the public convenience, to include:

- a. The number of and proximity to other lottery retailers in the market area;
- b. The expected impact on sales volume of potentially competing lottery retailers;
- c. The adequacy of coverage of all regions of the Commonwealth with lottery retailers; and
- d. The population to terminal ratio, compared to other geographical market areas.

4. The volume of expected lottery ticket sales, to include:

- a. Type and volume of the products and services sold by the retailer;
- b. Dollar sales volume of the business;
- c. Sales history of the market area;
- d. Sales history for instant tickets, if already licensed as an instant retailer;
- e. Volume of customer traffic in place of business; and
- f. Market area potential, compared to other market areas.

5. The ability to offer high levels of customer service to on-line lottery players, including:

- a. A history demonstrating successful use of lottery product related promotions;
- b. Volume and quality of point of sale display;
- c. A history of compliance with lottery directives;
- d. Ability to display jackpot prize amounts to pedestrians and vehicles passing by;
- e. A favorable image consistent with lottery standards;
- f. Ability to pay prizes less than \$600 during maximum selling hours, compared to other area retailers;
- g. Commitment to authorize employee participation in all required on-line lottery training; and
- h. Commitment and opportunity to post jackpot levels near the point of sale.

B. Additional factors for selection.

The director may develop and, by director's order, publish additional criteria which, in the director's judgment, are necessary to serve the public interest and public trust in the lottery.

C. Filing of forms with the department.

After notification of selection as an on-line lottery retailer, the retailer shall file required forms with the department. The retailer must submit all information required to be considered for licensing. Failure to submit required forms and information within the times specified in these regulations may result in the loss of the opportunity to become or remain a licensed on-line

retailer. The forms to be submitted shall include:

1. Signed retailer agreement;
2. Signed EFT Authorization form with a voided check or deposit slip from the specified account; and
3. Executed bond requirement.

§ 2.4. Bonding of lottery retailers.

A. Approved retailer to secure bond.

A lottery retailer approved for licensing shall obtain a surety bond in the amount of \$10,000 from a surety company entitled to do business in Virginia. If the retailer is already bonded for instant games, a second bond will not be required. However, the amount of the original bond must be increased to \$10,000. The purpose of the surety bond is to protect the Commonwealth from a potential loss in the event the retailer fails to perform his responsibilities.

1. Unless otherwise provided under subsection C of this section, the surety bond shall be in the amount and penalty of \$10,000 and shall be payable to the State Lottery Department and conditioned upon the faithful performance of the lottery retailer's duties.

2. Within 15 calendar days of receipt of the "On-Line License Approval Notice," the lottery retailer shall return the properly executed "Bonding Requirement" portion of the "On-Line License Approval Notice" to the State Lottery Department to be filed with his record.

B. Continuation of surety bond on renewal of license.

A lottery retailer applying for renewal of a license shall:

1. Obtain a letter or certificate from the surety company to verify that the surety bond is being continued for the license renewal period; and

2. Submit the surety company's letter or certificate with the required license renewal fee to the State Lottery Department.

C. Sliding scale for surety bond amounts.

The department may establish a sliding scale for surety bonding requirements based on the average volume of lottery ticket sales by a retailer to ensure that the Commonwealth's interest in tickets to be sold by a licensed lottery retailer is adequately safeguarded. Such sliding scale may require a surety bond amount either greater or lesser than the amount fixed by subsection A of this section.

D. Effective date for sliding scale.

The sliding scale for surety bonding requirements will become effective when the director determines that sufficient data on lottery retailer ticket sales volume activity are available. Any changes in a retailer's surety bonding requirements that result from instituting the sliding scale will become effective only at the time of the retailer's next renewal action.

§ 2.5. Lottery bank accounts and EFT authorization.

A. Approved retailer to establish lottery bank account.

A lottery retailer approved for licensing shall establish a separate bank account to be used exclusively for lottery business in a bank participating in the automatic clearing house (ACH) system. A single bank account may be used for both on-line and instant lottery business.

B. Retailer's use of lottery account.

The lottery account will be used by the retailer to make funds available to permit withdrawals and deposits initiated by the department through the electronic funds transfer (EFT) process to settle a retailer's account for funds owed by or due to the retailer from the sale of tickets and the payment of prizes. All retailers shall make payments to the department through the electronic funds transfer (EFT) process unless the director designates another form of payment and settlement under terms and conditions he deems appropriate.

C. Retailer responsible for bank charges.

The retailer shall be responsible for payment of any fees or service charges assessed by the bank for maintaining the required account.

D. Retailer to authorize electronic funds transfer.

Within 15 calendar days of receipt of the "On-Line License Approval Notice," the lottery retailer shall return the properly executed "On-Line Electronic Funds Transfer Authorization" portion of the "License Approval Notice" to the department recording the establishment of his account.

E. Change in retailer's bank account.

If a retailer finds it necessary to change his bank account from one bank account to another, he must submit a newly executed "Electronic Funds Transfer Authorization" form for the new bank account. The retailer may not discontinue use of his previously approved bank account until he receives notice from the department that the new account is approved for use.

F. Director to establish EFT account settlement schedule.

The director will establish a schedule for processing the EFT transactions against retailers' lottery bank accounts and issue instructions to retailers on how settlement of

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accounts will be made.

§ 2.6. Deposit of lottery receipts; interest and penalty for late payment; dishonored EFT transfers or checks.

A. Payment due date.

Payments shall be due as specified by the director in the instructions to retailers regarding the settlement of accounts.

B. Penalty and interest charge for late payment.

Any retailer who fails to make payment when payment is due will have his on-line terminal disconnected. The retailer will not be reconnected until payment is made by cashiers check, certified check or wire transfer. Additionally, interest will be charged on the moneys due plus a \$25 penalty. The interest charge will be equal to the "Underpayment Rate" established pursuant to § 6621(a)(2) of the Internal Revenue Code of 1954, as amended. The interest charge will be calculated beginning the date following the retailer's due date for payment through the day preceding receipt of the late payment by the department for deposit.

C. Service charge for dishonored EFT transfer or bad check.

In addition to the penalty authorized by subsection B of this section, the director will assess a service charge of \$25 against any retailer whose payment through electronic funds transfer (EFT) or by check is dishonored.

D. Service charge for debts referred for collection.

If the department refers a debt of any retailer to the Attorney General, the Department of Taxation or any other central collection unit of the Commonwealth, the retailer owing the debt shall be liable for an additional service charge which shall be in the amount of the administrative costs associated with the collection of the debt incurred by the department and the agencies to which the debt is referred.

§ 2.7. License term and renewal.

A. License term.

A general on-line license for an approved lottery retailer shall be issued for a one-year period. A general on-line license requires the retailer to sell both on-line and instant lottery tickets.

B. License renewal.

A general on-line license shall be renewed annually at least 30 days prior to its expiration date and shall be accompanied by the appropriate fee(s) as specified elsewhere in these regulations. The director may implement a staggered, monthly basis for annual license

renewals and allow for the proration of annual license fees to credit licensees for the time remaining on their current license when the staggered renewal requirement is imposed. This section shall not be deemed to allow for a refund of license fees when a license is terminated, revoked or suspended for any other reason.

C. Amended license term.

An amended license shall be valid for the remainder of the period of the license it replaces.

D. Special license.

The director may issue special licenses. Special licenses shall be for a limited duration and under terms and conditions that he determines appropriate to serve the public interest.

§ 2.8. License fees.

A. License fee.

The fee for a lottery retailer general license to sell on-line game tickets shall be \$25. The general license fee to sell on-line game tickets shall be paid for each location to be licensed. This fee is nonrefundable.

B. License renewal fee.

The annual fee for renewal of a lottery retailer general license to sell on-line game tickets shall be an amount determined by the board at its November meeting or as soon thereafter as practicable for all renewals occurring in the next calendar year. The renewal fee shall be designed to recover all or a portion of the annual costs of the department in providing services to the retailer. The renewal fee shall be paid for each location for which a license is renewed. This fee is nonrefundable. The renewal fee shall be submitted at least 30 days prior to the expiration of a retailer's general license.

C. Amended license fee.

The fee for processing an amended license for a lottery retailer general license shall be an amount as determined by the board at its November meeting or as soon thereafter as practicable for all amendments occurring in the next calendar year. The amended license fee shall be paid for each location affected. This fee is nonrefundable. An amended license shall be submitted in cases where a business change has occurred.

§ 2.9. Fees for operational costs.

A. Installation fee.

The fee for initial terminal telecommunications installation for the on-line terminal shall be \$275. This fee may be subject to change based upon an annual cost review by the department.

1. If the retailer has purchased a business where a terminal is presently installed or telecommunication service is available, a fee of \$25 per year shall be charged upon issuance of a new license.

2. No installation fee will be charged if interruption of service to the terminal has not occurred.

B. Weekly on-line telecommunications line charge.

Each retailer shall be assessed a weekly charge of \$15 per week. This fee may be subject to change based upon an annual cost review by the department.

§ 2.10. Transfer of license prohibited; invalidation of license.

A. License not transferrable.

A license issued by the director authorizes a specified person to act as a lottery retailer at a specified location as set out in the license. The license is not transferrable to any other person or location.

B. License invalidated.

A license shall become invalid in the event of any of the following circumstances:

1. Change in business location;
2. Change in business structure (e.g., from a partnership to a sole proprietorship);
3. Change in the business owners listed on the original personal data forms for which submission of a personal data form is required under the license procedure.

C. Amended personal data form required.

A licensed lottery retailer who anticipates any change listed in subsection B must notify the department of the anticipated change at least 30 calendar days before it takes place and submit an amended personal data form. The director shall review the changed factors in the same manner that would be required for a review of an original personal data form.

§ 2.11. Denial, suspension, revocation or nonrenewal of license.

A. Grounds for refusal to license.

The director may refuse to issue a license to a person if the person has been:

1. Convicted of a felony;
2. Convicted of a crime involving moral turpitude;

3. Convicted of any fraud or misrepresentation in any connection;

4. Convicted of bookmaking or other forms of illegal gambling;

5. Convicted of knowingly and willfully falsifying, or misrepresenting, or concealing a material fact or makes a false, fictitious, or fraudulent statement or misrepresentation;

6. Determined not to meet the eligibility criteria or general standards for licensing.

B. Grounds for refusal to license partnership or corporation.

In addition to refusing a license to a partnership or corporation under subsection A of this section, the director may also refuse to issue a license to any partnership or corporation if he finds that any general or limited partner or officer or director of the partnership or corporation has been convicted of any of the offenses cited in subsection A of this section.

C. Appeals of refusal to license.

Any person refused a license under subsection A or B may appeal the director's decision in the manner provided by VR 447-01-02, Part III, Article 2, § 3.4.

D. Grounds for suspension, revocation or refusal to renew license.

After notice and a hearing, the director may suspend, revoke, or refuse to renew a license for any of the following reasons:

1. Failure to properly account for on-line terminal ticket roll stock, for cancelled ticket, for prizes claimed and paid, or for the proceeds of the sale of lottery tickets;
2. Failure to file or maintain the required bond or the required lottery bank account;
3. Failure to comply with applicable laws, instructions, terms or conditions of the license, or rules and regulations of the department concerning the licensed activity, especially with regard to the prompt payment of claims;
4. Conviction, following the approval of the license, of any of the offenses cited in subsection A;
5. Failure to file any return or report or to keep records or to pay any fees or other charges as required by the state lottery law or the rules or regulations of the department or board;
6. Commission of any act of fraud, deceit,

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misrepresentation, or conduct prejudicial to public confidence in the state lottery;

7. Failure to maintain lottery ticket sales at a level sufficient to meet the department's administrative costs for servicing the retailer, provided that the public convenience is adequately served by other retailers. This failure may be determined by comparison of the retailer's sales to a sales quota established by the director;

8. Failure to notify the department of a material change, after the license is issued, of any matter required to be considered by the director in the licensing process;

9. Failure to comply with lottery game rules; and

10. Failure to meet minimum point of sale standards.

E. Notice of intent to suspend, revoke or deny renewal of license.

Before taking action under subsection C, the director will notify the retailer in writing of his intent to suspend, revoke or deny renewal of the license. The notification will include the reason or reasons for the proposed action and will provide the retailer with the procedures for requesting a hearing before the board. Such notice shall be given to the retailer at least 14 calendar days prior to the effective date of suspension, revocation or denial.

F. Temporary suspension without notice.

If the director deems it necessary in order to serve the public interest and maintain public trust in the lottery, he may temporarily suspend a license without first notifying the retailer. Such suspension will be in effect until any prosecution, hearing or investigation into possible violations is concluded.

G. Surrender of license and lottery property upon revocation or suspension.

A retailer shall surrender his license to the director by the date specified in the notice of revocation or suspension. The retailer shall also surrender the lottery property in his possession and give a final accounting of his lottery activities by the date specified by the director.

§ 2.12. Responsibility of lottery retailers.

Each retailer shall comply with all applicable state and federal laws, rules and regulations of the department, license terms and conditions, specific rules for all applicable lottery games, and directives and instructions which may be issued by the director.

§ 2.13. Display of license.

License displayed in general view. Every licensed lottery

retailer shall conspicuously display his lottery license in an area visible to the general public where lottery tickets are sold.

§ 2.14. Display of material.

A. Material in general view.

Lottery retailers shall display lottery point-of-sale material provided by the director in a manner which is readily seen by and available to the public.

B. Prior approval for retailer-sponsored material.

A lottery retailer may use or display his own promotional and point-of-sale material, provided it has been submitted to and approved for use by the department in accordance with instructions issued by the director.

C. Removal of unapproved material.

The director may require removal of any licensed retailer's lottery promotional material that has not been approved for use by the department.

§ 2.15. Inspection of premises.

Access to premises by department. Each lottery retailer shall provide access during normal business hours or at such other times as may be required by the director or state lottery representatives to enter the premises of the licensed retailer. The premises include the licensed location where lottery tickets are sold or any other location under the control of the licensed retailer where the director may have good cause to believe lottery materials or tickets are stored or kept in order to inspect the lottery materials or tickets and the licensed premises.

§ 2.16. Examination of records; seizure of records.

A. Inspection, auditing or copying of records.

Each lottery retailer shall make all books and records pertaining to his lottery activities available for inspection, auditing or copying as required by the director between the hours of 8 a.m. and 5 p.m., Mondays through Fridays and during the normal business hours of the licensed retailer.

B. Records subject to seizure.

All books and records pertaining to the licensed retailer's lottery activities may be seized with good cause by the director without prior notice.

§ 2.17. Audit of records.

The director may require a lottery retailer to submit to the department an audit report conducted by an independent certified public accountant on the licensed retailer's lottery activities. The retailer shall be responsible

for the cost of only the first such audit in any one license term.

§ 2.18. Reporting requirements and settlement procedures.

Instructions for ordering on-line terminal ticket roll stock, reporting transactions and settling accounts. Before a retailer may begin lottery sales, the director will issue to him instructions and report forms that specify the procedures for (i) ordering on-line terminal ticket roll stock; (ii) reporting receipts, transactions and disbursements pertaining to on-line lottery ticket sales; and (iii) settling the retailer's account with the department.

§ 2.19. Training of retailers and their employees.

Retailer training. Each retailer or anyone that operates an on-line terminal at the retailer's location will be required to participate in training given by the department for the operation of each game. The director may consider nonparticipation in the training as grounds for suspending or revoking the retailer's license.

§ 2.20. License termination by retailer.

Voluntary termination of license. The licensed retailer may voluntarily terminate his license with the department by first notifying the department in writing at least 30 calendar days before the proposed termination date. The department will then notify the retailer of the date by which settlement of the retailer's account will take place. The retailer shall maintain his bond and the required accounts and records until settlement is completed and all lottery property belonging to the department has been surrendered.

PART III. ON-LINE TICKET VALIDATION REQUIREMENTS.

§ 3.1. Validation requirements.

To be valid, a Virginia lottery on-line game ticket shall meet all of the validation requirements listed here:

1. The original ticket must be presented for validation.
2. The ticket validation number shall be presented in its entirety and shall correspond using the computer validation file to the selected numbers printed on the ticket.
3. The ticket shall not be mutilated, altered, or tampered with in any manner. (see § 3.4)
4. The ticket shall not be counterfeited, forged, fraudulently made or a duplicate of another winning ticket.
5. The ticket shall have been issued by the department through a licensed on-line lottery retailer in an authorized manner.

6. The ticket shall not have been cancelled.

7. The ticket shall be validated in accordance with procedures for claiming and paying prizes. (see §§ 3.10 and 3.12)

8. The ticket data shall have been recorded in the central computer system before the drawing, and the ticket data shall match this computer record in every respect.

9. The player-selected items, the validation data, and the drawing date of an apparent winning ticket must appear on the official file of winning tickets and a ticket with that exact data must not have been previously paid.

10. The ticket may not be misregistered or defectively printed to an extent that it cannot be processed by the department.

11. The ticket shall pass any validation requirement contained in the rules published and posted by the director for the on-line game for which the ticket was issued.

12. The ticket shall pass all other confidential security checks of the department.

§ 3.2. Invalid ticket.

An on-line ticket which does not pass all the validation requirements listed in these regulations and any validation requirements contained in the rules for its on-line game is invalid. An invalid ticket is not eligible for any prize.

§ 3.3. Replacement of ticket.

The director may refund the purchase price of an invalid ticket. If a defective ticket is purchased, the department's only liability or responsibility shall be to refund the purchase price of the defective ticket.

§ 3.4. When ticket cannot be validated through normal procedures.

If an on-line ticket is partially mutilated or if the ticket cannot be validated through normal procedure but can still be validated by other validation tests, the director may pay the prize for that ticket.

§ 3.5. Director's decision final.

All decisions of the director regarding ticket validation shall be final.

§ 3.6. Prize winning tickets.

Prize winning on-line tickets are those that have been validated in accordance with these regulations and the rules of the department and determined to be official

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prize winners. Criteria and specific rules for winning prizes shall be published for each on-line game and available for all players. Final validation and determination of prize winning tickets remain with the department.

§ 3.7. Unclaimed prizes.

A. ~~All~~ *Except for free ticket prizes, all claims for on-line game winning tickets must be postmarked or received for payment as prescribed in these regulations within 180 days after the date of the drawing for which the ticket was purchased. In the event that the 180th day falls on a Saturday, Sunday or legal holiday, a claimant may redeem his prize-winning ticket on the next business day only at a lottery regional office.*

B. Any on-line lottery *cash* prize which remains unclaimed after 180 days following the drawing which determined the prize shall revert to the State Literary Fund. *Cash prizes do not include free ticket prizes or other noncash prizes such as merchandise, vacations, admissions to events and the like.*

C. *All claims for on-line game winning tickets for which the prize is a free ticket must be postmarked or received for redemption as prescribed in these regulations within 60 days after the date of the drawing for which the ticket was purchased. In the event that the 60th day falls on a Saturday, Sunday or legal holiday, a claimant may only redeem his prize-winning ticket for a free ticket at an on-line lottery retailer on or before the 60th day. Except for claims for free ticket prizes mailed to lottery headquarters and postmarked on or before the 60th day, claims for such prizes will not be accepted at lottery regional offices or headquarters after the 60th day.*

§ 3.8. Using winners' names.

The department shall have the right to use the names of prize winners and the city, town or county in which they live. Photographs of prize winners may be used with the written permission of the winners. No additional consideration shall be paid by the department for this purpose.

§ 3.9. No prize paid to people under 18.

No prize shall be claimed by or paid to any individual under 18 years of age.

§ 3.10. Where prizes claimed.

Winners may claim on-line game prizes from any licensed on-line retailer or the department in the manner specified in these regulations. Licensed on-line retailers are authorized and required to make payment of all validated prizes of less than \$600.

§ 3.11. Validating winning tickets.

Winning tickets shall be validated by the retailer or the department as set out in these regulations and in any other manner which the director may prescribe in the specific rules for each type of on-line game.

§ 3.12. How prize claim entered.

A prize claim shall be entered in the name of an individual person or legal entity. If the prize claimed is \$600 or greater, the person or entity also shall furnish a tax identification number.

A. An individual shall provide his social security number if a claim form is required by these regulations. A nonresident alien shall furnish their Immigration and Naturalization Service Number. This I.N.S. number begins with an A and is followed by numerical data.

B. A claim may be entered in the name of an organization only if the organization is a legal entity and possesses a federal employer's identification number (FEIN) issued by the Internal Revenue Service. If the department or these regulations require that a claim form be filed, the FEIN must be shown on the claim form.

C. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN may file Internal Revenue Service (IRS) Form 5754, "Statement by Person(s) Receiving Gambling Winnings," with the department. This form designates to whom winnings are to be paid and the person(s) to whom winnings are taxable.

D. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN and which does not file IRS Form 5754 with the department shall designate one individual in whose name the claim shall be entered and that person's social security number shall be furnished.

§ 3.13. Right to prize not assignable.

No right of any person to a prize shall be assignable, except that:

1. The director may pay any prize to the estate of a deceased prize winner, and
2. The prize to which a winner is entitled may be paid to another person pursuant to an appropriate judicial order.

§ 3.14. No accelerated payments.

The director shall not accelerate payment of a prize for any reason.

§ 3.15. Liability ends with prize payment.

All liability of the Commonwealth, its officials, officers and employees, and of the department, the board, the

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director and employees of the department, terminates upon final payment of a lottery prize.

§ 3.16. Delay of payment allowed.

The director may refrain from making payment of the prize pending a final determination by the director, under any of the following circumstances:

1. If a dispute occurs or it appears that a dispute may occur relative to any prize;
2. If there is any question regarding the identity of the claimant;
3. If there is any question regarding the validity of any ticket presented for payment; or
4. If the claim is subject to any set-off for delinquent debts owed to any agency eligible to participate in the Set-Off Debt Collection Act, when the agency has registered such debt with the Virginia Department of Taxation and timely notice of the debt has been furnished by the Virginia Department of Taxation to the State Lottery Department. No liability for interest for such delay shall accrue to the benefit of the claimant pending payment of the claim.

§ 3.17. When installment prize payment may be delayed.

The director may, at any time, delay any installment in order to review a change in circumstance relative to the prize awarded, the payee, the claim, or any other matter that has been brought to the department's attention. All delayed installments shall be brought up to date immediately upon the director's confirmation. Delayed installments shall continue to be paid according to the original payment schedule after the director's decision is given.

§ 3.18. Ticket is bearer instrument.

A ticket that has been legally issued by a licensed lottery retailer is a bearer instrument until the ticket has been signed. The person who signs the ticket is considered the bearer of the ticket.

§ 3.19. Payment made to bearer.

Payment of any prize will be made to the bearer of the validated winning ticket for that prize upon submission of a prize claim form, if one is required, unless otherwise delayed in accordance with these regulations. If a validated winning ticket has been signed, the bearer may be required to present proper identification.

§ 3.20. Marking tickets prohibited; exceptions.

Marking of tickets in any way is prohibited except by a player to claim a prize or by the department or a retailer to identify or to void the ticket.

§ 3.21. Penalty for counterfeit, forged or altered ticket.

Forging, altering or fraudulently making any lottery ticket or knowingly presenting a counterfeit, forged or altered ticket for prize payment or transferring such a ticket to another person to be presented for prize payment is a Class 6 felony in accordance with the state lottery law.

§ 3.22. Lost, stolen, destroyed tickets.

The department is not liable for lost, stolen or destroyed tickets.

§ 3.23. Retailer to pay all prizes less than \$600.

Prizes less than \$600 shall be paid by any licensed on-line retailer, or by the department at the option of the ticket holder, or by the department when the ticket cannot be validated by the retailer.

§ 3.24. Retailers' prize payment procedures.

Procedures for prize payments by retailers are as follows:

1. Retailers may pay prizes in cash, by certified check, cashier's check, business check, or money order, or by any combination of these methods.
2. If a check for payment of a prize by a retailer to a claimant is denied for any reason, the retailer is subject to the same service charge for referring a debt to the department for collection and penalty payments that would apply if the check were made payable to the department. A claimant whose prize check is denied shall notify the department to obtain the prize.
3. Retailers shall pay claims for all prizes under \$600 during all normal business hours of the lottery retailer when the on-line terminal is operational and the ticket claim can be validated.
4. Prize claims shall be payable only at the location specified on the license.
5. The department will reimburse a retailer for prizes paid up to 180 days after the drawing date.

§ 3.25. When retailer cannot validate ticket.

If, for any reason, a retailer is unable to validate a prize winning ticket, the retailer shall provide the ticket holder with a department claim form and instruct the ticket holder on how to file a claim with the department.

§ 3.26. No reimbursement for retailer errors.

The department shall not reimburse retailers for prize claims a retailer has paid in error.

State Lottery Department

§ 3.27. Retailer to void winning ticket.

After a winning ticket is validated and signed by the ticket holder, the retailer shall physically void the ticket to prevent it from being redeemed more than once. The manner of voiding the ticket will be prescribed by the director.

§ 3.28. Prizes of less than \$600.

A retailer shall pay on-line prizes of less than \$600 won on tickets validated and determined by the department to be official prize winners, regardless of where the tickets were sold. The retailer shall display special informational material provided by or approved by the department informing the public that the retailer pays all prizes of less than \$600.

§ 3.29. When prize shall be claimed from the department.

The department will process claims for payment of prizes in any of the following circumstances:

1. If a retailer cannot validate a claim which the retailer otherwise would pay, the ticket holder shall send or present the ticket to the department for validation with a completed claim form.
2. If a ticket holder is unable to return to any on-line retailer, a completed claim form and the ticket may be presented or mailed to the department for validation.
3. If the prize amount is \$600 or more, a completed claim form with the ticket shall be presented or mailed to the department for validation.

§ 3.30. Prizes of \$25,000 or less.

Prizes of \$25,000 or less may be claimed from any of the department's regional offices. Regional offices will pay prizes by check after tickets are validated and after any other applicable requirements contained in these regulations are met.

§ 3.31. Prizes of more than \$25,000.

Prizes of more than \$25,000 and noncash prizes other than free lottery tickets may be claimed from the department's central office in Richmond. The central office will pay prizes by check, after tickets are validated and after any other applicable requirements contained in these regulations are met.

§ 3.32. Grand prize event.

If an on-line game includes a grand prize or jackpot event, the following general criteria shall be used:

1. Entrants in the event shall be selected from tickets which meet the criteria stated in specific game rules

set by the director consistent with § 1.1 of these regulations.

2. Participation in the drawing(s) shall be limited to those tickets which are actually purchased by the entrants on or before the date announced by the director.

3. If, after the event is held, the director determines that a ticket should have been entered into the event, the director may place that ticket into a grand prize drawing for the next equivalent event. That action is the extent of the department's liability.

4. The director shall determine the date(s), time(s) and procedures for selecting grand prize winner(s) for each on-line game. The proceedings for selection of the winners shall be open to members of the news media and to either the general public or entrants or both.

§ 3.33. When prize payable over time.

Unless the rules for any specific on-line game provide otherwise, any cash prize of \$500,000 or more will be paid in multiple payments over time. The schedule of payments shall be designed to pay the winner equal dollar amounts over a period of years until the total payments equal the prize amount.

§ 3.34. Rounding total prize payment.

When a prize or share is to be paid over time, except for the first payment, the director may round the actual amount of the prize or share to the nearest \$1,000 to facilitate purchase of an appropriate funding mechanism.

§ 3.35. When prize payable for "life."

If a prize is advertised as payable for the life of the winner, only an individual may claim the prize. If a claim is filed on behalf of a group, company, corporation or any other type of organization, the life of the claim shall be 20 years.

§ 3.36. When claims form required.

A claim form for a winning ticket may be obtained from any department office or any licensed lottery retailer. A claim form shall be required to claim any prize from the department's central office. A claim form shall be required to claim any prize of \$600 or more from the department's regional offices.

§ 3.37. Department action on claims for prizes submitted to department.

The department shall validate the winning ticket claim according to procedures contained in these regulations as follows:

State Lottery Department

1. If the claim is not valid, the department will promptly notify the ticket holder.

2. If the claim is mailed to the department and the department validates the claim, a check for the prize amount will be mailed to the winner.

3. If an individual presents a claim to the department in person and the department validates the claim, a check for the prize amount will be presented to the bearer.

§ 3.38. Withholding, notification of prize payments.

When paying any prize of \$600 or more, the department shall:

1. File the appropriate income reporting form(s) with the Virginia Department of Taxation and the Federal Internal Revenue Service;

2. Withhold any moneys due for delinquent debts listed with the Commonwealth's Set-Off Debt Collection Program; and

3. Withhold federal and state taxes from any winnings over \$5,000.

§ 3.39. Director may postpone drawing.

The director may postpone any drawing to a certain time and publicize the postponement if he finds that the postponement will serve and protect the public interest.

/s/ Kenneth W. Thorson
Director
Date: September 6, 1990

/s/ Lawrence Douglas Wilder
Governor
Date: September 7, 1990

/s/ Joan W. Smith
Registrar of Regulations
Date: September 18, 1990

* * * * *

NOTICE: The forms used in administering the On-Line Game Regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the State Lottery Department, 2201 West Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

On-Line Ticket Stock Destruction Form (X-0121, 6/89)
On-Line Ticket Stock Return (X-0120, 6/89)
Request for Inactivating Retailer Terminal (X-0118, 6/89)
Seal Verification Chart - Pick 3/4 (X-0103, 6/89)

Ticket Stock Central Distribution Form (X-0095, 6/89)
Security Check (X-0077, 2/89)
Drawing Verification Sheet (SLD-0137, 4/89)
On-Line Play Center Agreement/Order Form (SLD-0136, 4/89)
Ticket Stock Regional Distribution Form (SLD-0133, 6/89)
Weekly Settlement Form
On-Line Weekly Settlement Envelope (SLD-0127)
Ticket Problem Report
Retailer Agreement Form (SLD-0130, 3/89)
A/R On-Line Accounting Transaction Form (X-0105, 6/89)
On-Line License Approval Notice
Lottery Retailer Surety Bond
Things to Do - On-Line Retailer Checklist
Cancelled Tickets Envelope
Cash Tickets Envelope

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: VR 615-70-17. Child Support Enforcement Program.

Governor' Comment:

I concur with the form and the content of this proposal.

/s/ Lawrence Douglas Wilder
Governor
Date: September 18, 1990

DEPARTMENT OF TAXATION

Title of Regulation: VR 630-10-31. Sales and Use Tax: Dealers Returns and Payment of the Tax.

Governor's Comment:

Pending public comment, I recommend approval of the regulation.

/s/ Lawrence Douglas Wilder
Governor
Date: September 13, 1990

STATE WATER CONTROL BOARD

Title of Regulation: VR 680-14-03. Toxics Management Regulation.

Governor' Comment:

The intent of this proposal is to eliminate redundancy and possible contradictions in water quality regulations. Pending public comment and promulgation of the proposed Permit Regulation, I recommend approval of this regulatory action.

/s/ Lawrence Douglas Wilder
Governor
Date: September 18, 1990

* * * * *

Title of Regulation: VR 680-21-08.4. River Basin Section Tables, Potomac River Basin - Potomac Subbasin.

Governor' Comment:

This regulation is intended to designate waterways accurately while protecting trout populations in Virginia's waters. Pending public comment, I recommend approval of

this regulation.

/s/ Lawrence Douglas Wilder
Governor
Date: September 17, 1990

DEPARTMENT OF YOUTH AND FAMILY SERVICES (BOARD OF)

Title of Regulation: VR 690-01-001. Public Participation Guidelines.

Governor's Comment:

Promulgation of these guidelines would ensure opportunities for public participation in formulating and adopting regulations and minimum standards for juvenile correctional programs.

/s/ Lawrence Douglas Wilder
Governor
Date: September 11, 1990

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

BOARD FOR ACCOUNTANCY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Accountancy intends to consider amending regulations entitled: **VR 105-01-02. Board for Accountancy Regulations.** The purpose of the proposed action is to initiate a review process to consider adjusting fees charged by the board.

Statutory Authority: § 54.1-201(5) of the Code of Virginia.

Written comments may be submitted until November 8, 1990.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only).

CHILD DAY-CARE COUNCIL

Notice of Intended Regulatory Action

Editor's Note: The Notice of Intended Regulatory Action for VR 175-02-01, Minimum Standards for Licensed Child Care Centers, published in 5:20 V.A.R. 2920 July 3, 1990, has been withdrawn and resubmitted as follows:

Notice is hereby given in accordance with this agency's public participation guidelines that the Child Day-Care Council intends to consider amending regulations entitled: **VR 175-02-01. Minimum Standards for Licensed Child Care Centers.** The purpose of the proposed regulation is to consider changes in content, clarity, and organization as regulations for other types of day care are developed; review requirements for activity space, group size, provider training, and parental involvement; and consider developing a basic standard of care upon which requirements commensurate with the program's level of care may be added.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until October 10, 1990.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Child Day-Care Council intends to consider promulgating regulations entitled: **VR 175-05-01. Minimum Standards for Licensed Child Day-Care Camps.** The purpose of the proposed regulation is to develop minimum standards that are appropriate for child day-care camps.

Other pertinent information: House Bill 1035, which was passed by the 1990 General Assembly session, requires licensure of child day-care camps. According to the bill, these camps will not be regulated until July 1, 1992.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until October 10, 1990.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 62-9217.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Child Day-Care Council intends to consider promulgating regulations entitled: **VR 175-06-01. Minimum Standards for Licensed Preschools and Nursery Schools.** The purpose of the proposed regulation is to develop minimum standards that are appropriate for preschools and nursery schools.

Other pertinent information: House Bill 1035, which was passed by the 1990 General Assembly session, requires licensure of preschools and nursery schools. According to the bill, these schools will not be regulated until July 1, 1992.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until October 10, 1990.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

Notice of Intended Regulatory Action

General Notices/Errata

Notice is hereby given in accordance with this agency's public participation guidelines that the Child Day-Care Council intends to consider promulgating regulations entitled: **VR 175-07-01. Minimum Standards for Licensed Before-School and After-School Day Care Programs.** The purpose of the proposed regulation is to develop minimum standards that are appropriate for before school and after school day care programs.

Other pertinent information: House Bill 1035, which was passed by the 1990 General Assembly session, requires licensure of before-school and after-school day care programs. The definition of these programs still needs to be determined. Effective date for regulation is July 1, 1992.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until October 10, 1990.

Contact: Peggy Friedenberg, Legislative Analyst, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229, telephone (804) 662-9217.

DEPARTMENT OF COMMERCE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Commerce intends to consider amending regulations entitled: **VR 190-01-1. Rules and Regulations Governing Employment Agencies.** The purpose of the proposed action is to solicit public comment regarding adjustments to its fee structure and to bring its application in line with these adjustments.

Statutory Authority: § 54.1-1302 of the Code of Virginia.

Written comments may be submitted until November 8, 1990.

Contact: Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534 or toll-free 1-800-552-3016.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Commerce intends to consider amending regulations entitled: **VR 190-05-1. Virginia Asbestos Licensing Regulations.** The purpose of the proposed action is to amend the current regulations to include requirements created by legislative action.

Statutory Authority: § 54.1-501 of the Code of Virginia.

Written comments may be submitted until October 15, 1990.

Contact: Peggy J. Wood, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or toll-free 1-800-552-3106

DEPARTMENT OF CORRECTIONS (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider amending regulations entitled: **VR 230-30-001. Minimum Standards for Jails and Lockups.** The purpose of the proposed action is to amend § 6.1 to provide for annual fire safety inspections and to require local facilities to have inspections conducted by the appropriate authority. This change is necessary to make the standard consistent with the Code of Virginia.

Statutory Authority: § 53.1-68 of the Code of Virginia.

Written comments may be submitted until October 10, 1990.

Contact: Cynthia J. Jackson, Methods Lead Analyst, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3237.

BOARD FOR GEOLOGY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Geology intends to consider amending regulations entitled: **VR 335-01-2. Rules and Regulations of the Board for Geology.** The purpose of the proposed action is to review fees.

Statutory Authority: § 54.1-201 of the Code of Virginia.

Written comments may be submitted until November 8, 1990.

Contact: Nelle P. Hotchkiss, Acting Assistant Director, Asbestos Licensing Program, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8597.

DEPARTMENT OF HEALTH (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-30-01. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.** The purpose of

the proposed action is to amend the existing Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations so that the regulations are consistent with amended law. These amendments appeared as Emergency Regulations in the July 30, 1990, issue of the Virginia Register.

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et. seq. of the Code of Virginia.

Written comments may be submitted until October 15, 1990.

Contact: Marilyn H. West, Director, Division of Resources Development, Virginia Department of Health, James Madison Bldg., Room 1005, 109 Governor St., Richmond, VA 23219, telephone (804) 786-7463.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-34-01. Private Well Regulations.** The purpose of the proposed action is to amend the Private Well Regulations which establish a permitting process for the construction and location of all private drilled wells.

Statutory Authority: §§ 32.1-176.1 through 32.1-176.7 of the Code of Virginia.

Written comments may be submitted until November 8, 1990.

Contact: Donald J. Alexander, Director, Bureau of Sewage and Water Services, Madison Building, 109 Governor St., Suite 500, Richmond, VA 23219, telephone (804) 786-1750.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider amending regulations entitled: **VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.** The purpose of the proposed action is to allow investor-owned institutions organized as proprietorships, partnerships, or S-corporations to have their income tax imputed into the aggregate cost of operating the facility thereby allowing them to be treated similarly to corporations.

Statutory Authority: §§ 9-158 and 9-164 of the Code of Virginia.

Written comments may be submitted until October 23, 1990.

Contact: G. Edward Dalton, Deputy Director, Virginia Health Services Cost Review Council, 805 E. Broad Street, 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

BOARD FOR HEARING AID SPECIALISTS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Hearing Aid Specialists intends to consider amending regulations entitled: **VR 375-01-02. Board for Hearing Aid Specialists.** The purpose of the proposed action is to solicit public comment regarding adjustments to its fee structure and to bring its application in line with these adjustments.

Statutory Authority: § 54.1-201 of the Code of Virginia.

Written comments may be submitted until November 8, 1990.

Contact: Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534 or toll-free 1-800-552-3016.

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

Editor's Note: The Notice of Intended Regulatory Action relating to General Industry Safety and Health Standard: Welding, Cutting and Brazing, originally published in 6:23 V.A.R. 3710 August 13, 1990, is being withdrawn. The reason for this withdrawal is because the Standard in question is a federal one and will have to be adopted as it stands as an identical federal standard.

VIRGINIA STATE LIBRARY AND ARCHIVES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider amending regulations entitled: **VR 440-01-137.1 Standards for the Microfilming of Public Records for Archival Retention.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

General Notices/Errata

Notice of Intended Regulatory Action

786-5579.

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider amending regulations entitled: **VR 440-01-137.2. Archival Standards for Recording Deeds and other Writings by a Procedural Microphotographic Process.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider amending regulations entitled: **VR 440-01-134.4. Standards for the Microfilming of Ended Law Chancery and Criminal Cases the Clerks of the Circuit Courts prior to Disposition.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider amending regulations entitled: **VR 440-01-137.5. Standards for Computer Output Microfilm (COM) for Archival Retention.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider amending regulations entitled: **VR 440-01-137.6. Standards for Plats.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider amending regulations entitled: **VR 440-01-137.7. Standards for Recorded Instruments.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Amount, Duration, and Scope of Services: Coverage of Hospice Services.** The purpose of the proposed action is to promulgate permanent rules for the coverage of hospice services. The agency is presently providing this service under the authority of an emergency regulation.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until October 22, 1990, to Marjorie Jernigan, Analyst, Division of Quality

Care Assurance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Community Based Care for the Elderly and Disabled Individuals**. The purpose of the proposed action is to modify existing community services to reduce the frequency of site visits by Department of Medical Assistance Services staff. This rule making procedure will supersede effective emergency regulations.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until October 22, 1990, to Chris Pruett, Analyst, Community Based Care, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Community Based Care Ventilator Services for Technology Dependent Children**. The purpose of the proposed action is to modify existing community services to provide services for children with various physical dependencies on technological services. This rule making procedure will supersede effective emergency regulation.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until October 22, 1990, to Chris Pruett, Analyst, Community Based Care, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Nursing Home Reimbursement Methodology: 3 Cost Savings Initiatives**. The purpose of the proposed action is to revise new PIRS nursing facilities payment methodology to incorporate three cost savings initiatives: management fees, inhouse pharmacies, and coverage of speech/occupational therapies.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until October 22, 1990, to William R. Blakely, Jr., Director, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Pharmacy Reimbursement Methodology (Estimated Acquisition Cost)**. The purpose of the proposed action is to revise the agency's method of paying for pharmacy services, to conform to federal requirements, to be based on the estimated acquisition cost to pharmacists of obtaining pharmaceuticals from distributors or manufacturers.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until October 22, 1990, to David Shepherd, RPh., Division of Quality Care Assurance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider promulgating regulations entitled: **Drug Utilization Review**. The purpose of the proposed action is to implement direction to the department in the 1990 Appropriations Act concerning a program of drug utilization review.

General Notices/Errata

Statutory Authority: § 32.1-325 of the Code of Virginia.

367-8595.

Written comments may be submitted until October 15, 1990, to Michael Jurgensen, Policy Analyst, Division of Policy and Research, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

BOARD OF MEDICINE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-01. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed action is to amend the regulations for compliance with § 54.1-2962 of the Code of Virginia, relating to solicitation or receipt of remuneration in exchange for referral prohibited.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Written comments may be submitted until November 9, 1990, to the Board of Medicine, 1601 Rolling Hills Drive, Richmond, Virginia.

Contact: Eugenia K. Dorson, Deputy Executive Director, Department of Health Professions, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9925.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Professional Soil Scientists intends to consider amending regulations entitled: **VR 627-02-1. Board for Professional Soil Scientists Regulations.** The purpose of the proposed action is to review fees.

Statutory Authority: § 54.1-201 of the Code of Virginia.

Written comments may be submitted until November 8, 1990, to Assistant Director, Board for Professional Soil Scientists, Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

Contact: Nelle P. Hotchkiss, Acting Assistant Director, Asbestos Licensing Program, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804)

REAL ESTATE BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Real Estate Board intends to consider amending regulations entitled: **VR 585-01-1. Real Estate Board Regulations.** The purpose of the proposed action is to amend license fees.

Statutory Authority: § 54.1-201 of the Code of Virginia.

Written comments may be submitted until November 8, 1990.

Contact: Joan L. White, Assistant Director, Department of Commerce, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552 or toll-free 1-800-552-3016.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider amending regulations entitled: **VR 615-25-01. Minimum Standards for Licensing Group Family Day Care Homes.** The purpose of the proposed action is to develop appropriate regulations according to the new definition of Group Family Day Care which was changed with HB1035.

Statutory Authority: §§ 63.1-25 and 63.1-202 of the Code of Virginia.

Written comments may be submitted until October 10, 1990.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider amending regulations entitled: **VR 615-26-01. Minimum Standards for Licensed Family Day Care Systems.** The purpose of the proposed action is to revise for improvements in content and clarity and to have consistency between System regulations and Group Family Day Care Homes.

Statutory Authority: §§ 63.1-25 and 63.1-202 of the Code of Virginia.

Written comments may be submitted until October 10, 1990.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider amending regulations entitled: **VR 615-33-01. Schedule of Fees.** The purpose of the proposed action is to review existing fees and establish fees for facilities which will become subject to licensure effective July 1, 1992.

Statutory Authority: §§ 63.1-25, 63.1-174.01 and 63.1-202 of the Code of Virginia.

Written comments may be submitted until October 10, 1990.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider promulgating regulations entitled: **Child Protective Services Registry Information.** Above action is to change the existing procedures which establish the basis for entry and retention of name information in the child protective services central registry.

Statutory Authority: §§ 63.1-25 and 63.1-248.1 et seq. of the Code of Virginia.

Written comments may be submitted until October 10, 1990, to Janine Tondrowski, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229-8699.

Contact: Margaret Friedenber, Legislative Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217 or toll free 1-800-552-7091.

DEPARTMENT of SOCIAL SERVICES (BOARD OF) AND CHILD DAY-CARE COUNCIL

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services and Child Day-Care Council intend to consider

amending regulations entitled: **VR 615-30-01 and 175-03-01. General Procedures and Information for Licensure.** The purpose of the proposed action is to revise according to the requirements of HB 1035, streamline departmental procedures, and make changes for improvements in clarity and content.

Statutory Authority: §§ 63.1-174 and 63.1-202 of the Code of Virginia.

Written comments may be submitted until October 10, 1990.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217.

DEPARTMENT OF TAXATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider amending regulations entitled: **VR 630-7-905. Filing Returns and Payment of Tax.** The purpose of the proposed action is to set forth the application of the revised statutory provision conforming Virginia's estate tax extension to federal law, allowing an extension of time for payment of Virginia estate taxes equal to the federal payment extension granted by the Internal Revenue Service.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until October 22, 1990.

Contact: Janie E. Bowen, Director, Tax Policy Division, Department of Taxation, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010.

VIRGINIA RACING COMMISSION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider promulgating regulations entitled: **Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Claiming Races.** The purpose of the proposed regulation is to establish conditions under which claiming races may be run and eligibility to claim horses is established.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until October 17, 1990.

General Notices/Errata

Contact: William H. Anderson, Senior Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider promulgating regulations entitled: **Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Entries.** The purpose of the proposed regulation is to establish conditions under which horses may be entered for racing and their eligibility determined.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until October 17, 1990.

Contact: William H. Anderson, Senior Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider promulgating regulations entitled: **VR 662-05-01. Conduct of Flat Racing.** The purpose of the proposed action is to establish conditions under which horses, ridden by jockeys over flat surfaces, shall race.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until November 21, 1990, to Donald R. Price, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208.

Contact: William H. Anderson, Senior Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider promulgating regulations entitled: **VR 662-05-02. Conduct of Standardbred Racing.** The purpose of the proposed action is to establish the specialized conditions under which trotting and pacing horses, hitched to sulkies, shall be driven in races.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until November 21, 1990, to Donald R. Price, Virginia Racing Commission, P.O.

Box 1123, Richmond, VA 23208.

Contact: William H. Anderson, Senior Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider promulgating regulations entitled: **VR 662-05-03. Conduct of Steeplechase Racing.** The purpose of the proposed action is to establish the specialized conditions under which horses, ridden by jockeys and racing over fences, shall be conducted.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until November 21, 1990, to Donald R. Price, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208.

Contact: William H. Anderson, Senior Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider promulgating regulations entitled: **VR 662-05-04. Conduct of Quarter Horse Racing.** The purpose of the proposed action is to establish the specialized conditions under which Quarter Horses, ridden by jockeys, shall be raced.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until November 21, 1990, to Donald R. Price, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208.

Contact: William H. Anderson, Senior Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider amending regulations entitled: **VR 672-30-01. Regulations Governing the Transportation of Hazardous Materials.** The purpose of the proposed action is to incorporate by reference changes that were made by U.S. DOT to Title 49 Code of

Federal Regulations from July 1, 1989, to June 30, 1990.

Statutory Authority: §§ 10.1-1402(11) and 10.1-1450 of the Code of Virginia.

Written comments may be submitted until November 7, 1990, to Mr. William F. Gilley, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia.

Contact: C. Ronald Smith, Hazardous Waste Enforcement Chief, 11th Floor, Monroe Building, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2667 or toll-free 1-800-552-2075.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board For Waterworks and Wastewater Works Operators intends to consider amending regulations entitled: **VR 675-01-02. Board For Waterworks and Wastewater Works Operators.** The purpose of the proposed action is to consider revisions throughout its regulations, including amendments to add new classes of waterworks and wastewater works. These new classes may include consecutive water systems or groundwater systems with no treatment and consecutive water systems employing repumping or rechlorination, or both; alternative discharging sewage systems (§§ 32.1-163 and 32.1-164 of the Code of Virginia) serving single family dwellings with flows less than or equal to 1,000 gallons per day; very small water and wastewater systems employing sophisticated treatment; and wastewater systems collection and pumping systems. The board invites comments on these classes, including, but not limited to, class definition, minimum education, experience, and examination requirements for licensure.

Statutory Authority: §§ 54.1-201 and Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia.

Written comments may be submitted until October 15, 1990.

Contact: Mr. Gerald W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

GENERAL NOTICES

NOTICES TO STATE AGENCIES

RE: Forms for filing material on dates for publication in the Virginia Register of Regulations.

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT of PLANNING AND BUDGET (Transmittal Sheet) - DPBR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

ERRATA

BOARD FOR BRANCH PILOTS

Title of Regulation: **VR 535-01-2. Branch Pilot Regulations.**

Publication: 6:25 VA.R 4079-4082 September 10, 1990.

Correction to Proposed Regulation:

Page 4079, Summary, third line from the end of the paragraph, should read, "...provision of a copy of the test to the Board..."

Page 4080, § 2.1 B 1, insert and strike text as follows: "Possess a valid First Class Pilot License issued by the United States Coast Guard for the same waters as his branch and an unlimited..."

Page 4080 § 4.1 1, line 6, insert "a" before "conviction."

Page 4081 § 4.1 8, line 2, change "of" to "to."

CALENDAR OF EVENTS

Symbols Key	
†	Indicates entries since last publication of the Virginia Register
Ⓜ	Location accessible to handicapped
☎	Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD OF ACCOUNTANCY

† **October 22, 1990 - 10 a.m.** – Open Meeting
† **October 23, 1990 - 8 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. Ⓜ

A meeting to (i) review applications for certificate, license and endorsement; (ii) review correspondence; (iii) review enforcement cases; (iv) conduct regulatory review; and (v) conduct routine board business.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only).

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

December 6, 1990 - 2 p.m. – Public Hearing
1100 Bank Street, Room 204, Washington Building, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to amend regulations entitled: **VR 115-06-01. Rules Governing the Solicitation of Contributions.** The proposed amendments to the regulation are for the purpose of bringing the regulation into conformity with

amendments in the statute; to define certain terms contained in the statute regarding exemption from annual registration; to specify, pursuant to § 57-55.2(i) of the Code of Virginia, the name or names by which a professional solicitor may identify himself and his employer; to standardize documentation required for filing with the Commissioner of the Department of Agriculture and Consumer Services; to establish procedures for compliance with the statute; to consider other measures to enforce laws governing the solicitation of contributions in Virginia (§ 57-48 et seq. of the Code of Virginia), hereinafter referred to as the "Virginia Solicitation of Contributions Law"; and to assure uniform regulation of charitable solicitations throughout the Commonwealth.

PLEASE NOTE:

"The statement of basis, purpose, substance, issues, and impact on proposed regulation VR 115-06-01, Rules Governing the Solicitation of Contributions, published on August 27, 1990, in the Virginia Register (pp. 4045-4047 (Volume 6, issue 24)), states as one of the proposed regulation's purposes the establishment of certain evidence deemed adequate to lift a suspension of registration. This is not one of the purposes of the proposed regulation, and the proposed regulation does not address this matter."

Statutory Authority: § 57-66 of the Code of Virginia.

NOTE: CORRECTION IN WRITTEN COMMENT DATE.

Written comments may be submitted until November 12, 1990.

Contact: Jo Freeman, Chair, Revisions Committee, Virginia Department of Agriculture and Consumer Services, Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209 or 1100 Bank Street, Room 204, Richmond, VA 23219, telephone (804) 786-1343 or toll-free 1-800-552-9963.

STATE AIR POLLUTION CONTROL BOARD

October 10, 1990 - 10 a.m. - Public Hearing
Washington County, Board of Supervisors' Meeting Room, 205 Academy Drive, Abingdon, Virginia.

October 10, 1990 - 10 a.m. – Public Hearing
Virginia Department of Transportation, Materials Lab Building, 731 Harrison Avenue, Salem, Virginia.

October 10, 1990 - 10 a.m. – Public Hearing

Calendar of Events

Lynchburg Recreation Center Auditorium, 301 Grove Street, Lynchburg, Virginia.

October 10, 1990 - 10 a.m. - Public Hearing
Central Rappahannock Regional Library, Administrative Offices, 705 Princess Anne Street, Fredericksburg, Virginia.

October 10, 1990 - 10 a.m. - Public Hearing
Virginia War Memorial Auditorium, 621 South Belvidere Street, Richmond, Virginia.

October 10, 1990 - 2 p.m. - Public Hearing
Hampton Roads Planning District Commission, Regional Building, 723 Woodlake Drive, Chesapeake, Virginia.

October 10, 1990 - 2 p.m. - Public Hearing
Pohick Regional Library Meeting Room, 6450 Sydenstricker Road, Burke, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution.** The proposed regulation requires a permit to operate for all stationary sources with exemptions for some smaller facilities. Operating permits will be issued for a period not to exceed five years and will be renewed if the facility meets the standards and conditions set out in the regulation. Emission limits will be set to restrict the emissions allowed for each existing facility to some level above the actual levels currently emitted but below the levels allowed now by regulation. Permit applications for larger facilities will be subject to a public comment period of 30 days, and a public hearing may be held if there is sufficient public interest. The program will be phased in slowly over its first four years, during which time only larger existing facilities will be issued operating permits.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Written comments may be submitted until October 26, 1990, to Director of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, Virginia 23208.

Contact: Nancy S. Saylor, Policy Analyst, Department of Air Pollution Control, Division of Program Development, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249.

DEPARTMENT OF AIR POLLUTION CONTROL

† **October 16, 1990 - 2 p.m. - Open Meeting**
Colonial Heights Municipal Building, Council Chambers, Boulevard and James Avenue, Colonial Heights, Virginia. ☒

A meeting to consider an amendment to a Prevention of Significant Deterioration permit for Colonial heights

Packaging, Inc., 1106 West Roslyn Road, Colonial Heights, Virginia, to: (i) modify and operate a 2-color coater; (ii) construct and operate a 5-color press; and (iii) modify two 8-color presses.

Contact: Robert Beasley, Department of Air Pollution Control, 8205 Hermitage Road, Richmond, VA 23228, telephone (804) 371-8471/TDD or (804) 371-3067.

Region V

† **October 22, 1990 - 7 p.m. - Public Hearing**
Pamplin Administration Building, Dinwiddie, Virginia. ☒

A public hearing to discuss issuance of an air pollution control permit to allow construction and operation of a coal fired cogeneration plant by Cogentrix of Dinwiddie located 1 kilometer southeast of the intersection of Route 672 and the Norfolk and Southern Railway.

Contact: Mark Williams, Senior Environmental Engineer, 8205 Hermitage Road, Richmond, VA 23228, telephone (804) 371-3067.

ALCOHOLIC BEVERAGE CONTROL BOARD

October 15, 1990 - 10 a.m. - Public Hearing
First Floor Hearing Room, 2901 Hermitage Road, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to amend regulations entitled: **VR 125-01-2. Advertising; VR 125-01-3. Tied-House; VR 125-01-5. Retail Operations; VR 125-01-6. Manufacturers and Wholesalers Operations; and VR 125-01-7. Other Provisions.** The amendments relate to the (i) expansion of size limitations and types of advertising materials that manufacturers, bottlers and wholesalers may supply to retail licensees, (ii) definition of "college student publication," (iii) prohibition of reference to brands or prices for alcoholic beverage advertising by a dining establishment in college student publications, (iv) sponsorship of government-endorsed civic events and advertising related to such events, (v) limitations on distribution of novelty and specialty items to retailers, their employees and patrons by manufacturers, importers, bottlers, brokers, and wholesalers, (vi) restrictions on nonmember use of licensed club premises, (vii) compliance with 1990 statutory changes involving the mixed beverage food to alcoholic beverage ratio, bed and breakfast licenses and the number of additional retail establishments allowed farm wineries, and (viii) mixed licensee being left with one, unopened, 50 milliliter sample of each brand of distilled spirits being promoted by the permittee.

Statutory Authority: § 4-11 of the Code of Virginia.

Calendar of Events

Written comments may be submitted until 10 a.m., October 15, 1990.

Contact: Robert N. Swinson, Secretary to the Board, P.O. Box 27491, 2901 Hermitage Rd., Richmond, VA 23261, telephone (804) 367-0616.

ATHLETIC BOARD

October 30, 1990 - 10 a.m. - Open Meeting
3600 West Broad Street, Board Room 2, Richmond, Virginia. ☒

A meeting to discuss rules and regulations.

Contact: Doug Beavers, Assistant Director, 3600 W. Broad St., Board Room 2, Richmond, VA 23230, telephone (804) 367-8507.

AUCTIONEERS BOARD

† **October 16, 1990 - 9 a.m. - Open Meeting**
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to discuss adjustments to its fee structure and bringing its application in line with the adjustments.

Contact: Mr. Geralde W. Morgan, Administrator, Department of Commerce, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8534 or toll-free 1-800-552-3016.

VIRGINIA AVIATION BOARD

† **October 8, 1990 - 10 a.m. - Open Meeting**
The Homestead, Hot Springs, Virginia. ☒

A meeting to discuss aviation matters of interest to the Commonwealth.

Contact: Nancy C. Brent, 4508 S. Laburnum Avenue, Richmond, VA 23231-2422, telephone (804) 786-6286.

BOARD FOR BRANCH PILOTS

November 13, 1990 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Branch Pilots intends to amend regulations entitled: **VR 535-01-2. Branch Pilot Regulations**. The proposed amendment is to maintain standards for initial licensure, renewal of license, and conduct of licensed branch pilots in the Commonwealth.

Pursuant to § 54.1-902 of the Code of Virginia, the Board for Branch Pilots proposes to amend its regulations. These regulations apply directly to 49 licensed branch pilots in Virginia.

The purpose of the proposed amendments is to establish licensing and renewal fees in accordance with § 54.1-113 of the Code of Virginia, to ensure that applicants for initial licensure and renewal of licenses provide accurate information to the board in a timely manner regarding possible abuse of alcohol or a controlled substance by a pilot during the performance of his duties, and to require timely reporting to the board and staff by pilots regarding maritime mishaps occurring during the performance of their duties. The proposed new requirements will protect the public by ensuring the competence of pilots who direct the movement of vessels through the waters of the Commonwealth. The potential consequences of incompetent performance by these licensees are severe, involving possible injury or loss of life, costly damage to property, and the far-reaching environmental effects of possible oil or chemical spills.

Statutory Authority: § 54.1-902 of the Code of Virginia.

Written comments may be submitted until November 13, 1990.

Contact: Florence R. Brassier, Deputy Director for Regulatory Programs, Virginia Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2194.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

October 11, 1990 - 1 p.m. - CANCELLED
Senate Room B, General Assembly Building, Richmond, Virginia. ☒

The open meeting to conduct general business, including consideration of local government program progress has been cancelled.

Contact: Tina Halsted, 701 8th St. Office Bldg., Richmond, VA 23219, telephone (804) 225-3440.

CHILD DAY-CARE COUNCIL

† **October 11, 1990 - 9 a.m. - Open Meeting**
Koger Executive Center, West End, Blair Building, Conference Rooms A and B, 8007 Discovery Drive, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A meeting to discuss issues, concerns, and programs that impact licensed child care centers.

Contact: Peggy Friedenber, Legislative Analyst, Office of

Governmental Affairs, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-9217.

DEPARTMENT FOR CHILDREN

Teen Pregnancy Prevention Task Force

† **October 24, 1990 - 10 a.m. - Open Meeting**
Virginia Department for Children, 805 East Broad Street, Richmond, Virginia. ☐

A regular business meeting.

Contact: Martha J. Frickert, Staff, Virginia Department for Children, 805 East Broad Street, Richmond VA 23219, telephone (804) 786-5994.

State-level Runaway Youth Services Network

† **October 11, 1990 - 10:30 a.m. - Open Meeting**
Department of Corrections, 6900 Atmore Drive, Rooms 2103 and 2104, Richmond, Virginia. ☐

A bi-monthly meeting.

Contact: Martha Frickert, Community Services Coordinator, Virginia Department for Children, 805 E. Broad St., 11th Fl., Richmond, VA 23219, telephone (804) 786-5994.

COORDINATING COMMITTEE FOR INTERDEPARTMENTAL REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN

October 19, 1990 - 8:30 a.m. - Open Meeting
Office of the Coordinator, Interdepartmental Regulation, 1603 Santa Rosa Road, Tyler Building, Suite 208, Richmond, Virginia. ☐

Regularly scheduled meetings to consider such administrative and policy issues as may be presented to the committee. A period for public comment is provided at each meeting.

Contact: John J. Allen, Jr., Coordinator, Interdepartmental Regulation, Office of the Coordinator, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-7124.

DEPARTMENT OF COMMERCE

† **October 25, 1990 - 10 a.m. - Public Hearing**
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Commerce intends to adopt regulations entitled: VR

190-06-01. Regulations Governing Athlete Agents. The proposed Regulations Governing Athlete Agents will establish the licensing requirements and standards of practice and conduct for athlete agents in the Commonwealth of Virginia.

Pursuant to § 54.1-518 of the Code of Virginia, the Department of Commerce proposes to promulgate new regulations governing athlete agents. These regulations will affect any individual or firm desiring to act as an athlete agent in the Commonwealth. This will apply to an estimated 15 to 60 athlete agents. This estimate is based on the size of licensed populations in other states currently regulating athlete agents.

The purpose of the proposed regulations is to establish licensing requirements for persons who desire to act as athlete agents in the Commonwealth. The proposed regulations set criteria for licensure as an individual or as a firm, provide procedures for renewal of a license, identify standards for maintaining a license and contracting with an amateur athlete and describe specific records which the athlete agent is required to maintain. The proposed regulations also provide standards of conduct for the licensee. These regulations will protect the public by ensuring the athlete agents are qualified, competent, and subject to disciplinary action for violation of the law or regulations governing their activities. These regulations will protect amateur athletes from being taken advantage of as they negotiate their first professional sport services contract with a professional sports team. The regulations will also protect institutions of higher learning in the Commonwealth from problems caused by athletes signing professional contracts while they are still playing for a college team.

1. Section 1.1 provides definitions for words/terms used in the regulations which were not defined in the statute. The impact of these definitions will be to clarify terms for potential licensees and to provide the department with guidelines for implementing the regulations.

2. Section 2.12 establishes the qualifications for individuals seeking initial licensure as athlete agents in the Commonwealth. These individuals will be required to provide evidence of appropriate experience and a discipline-free record in other jurisdictions where they are licensed. Department staff will need to evaluate applicants based on the information provided. The public will be protected by the assurance that only qualified, competent individuals are licensed.

3. Section 2.2 sets the requirements for a firm license. Like individual applicants, firms will be required to meet experience requirements and certify a discipline-free record wherever licensed as athlete agents. The department will need to review these applications to assure that the required standards are met prior to issuance of the license. The public will

Calendar of Events

be protected by the assurance that only qualified, competent firms are licensed.

4. Section 2.3 provides that the director may deny licensure to an applicant with a criminal conviction related to the practice of this occupation. Applicants with criminal convictions will be required to report this information which will need to be reviewed by department staff. The public will be protected by the disclosure and evaluation of this information as it relates to the activities of athlete agents.

5. Section 2.4 establishes the requirement that all applicants for licensure be in good standing if they are already licensed/registered to act as athlete agents in another jurisdiction. This regulation will only affect applicants who hold such licenses/registrations. Department staff will be required to screen applicants who have had a license suspended, revoked or surrendered as a result of their activities as athlete agents in another jurisdiction. This requirement protects Virginia's amateur athletes from possible misconduct by agents who already have records of poor performance.

6. Section 2.5 establishes the requirement for a \$100,000 surety bond or equivalent professional liability insurance for each licensee. Although licensees will have to bear the cost of this requirement, it is anticipated that many applicants will be attorneys who already carry the required professional liability insurance. Department staff will monitor submission of the bond or insurance information and maintain these forms. Amateur athletes will be protected by the monetary protections provided by this requirement.

7. Section 2.6 provides the standards for licensure by reciprocity for athlete agents who are already licensed in other jurisdictions. This regulation facilitates the movement of licensees from one jurisdiction to another by making the Virginia requirements clear while assuring that reciprocal applicants meet the same standards as Virginia applicants. No impact on the department is anticipated. Maintenance of consistent standards will protect the public.

8. Section 2.7 establishes the fee for licensure as an athlete agent at \$550. This fee is established in accordance with § 54.1-113 of the Code of Virginia. This amount could be prohibitive for some applicants, but the proposed fee is necessary to assure that the expenses of this program are adequately covered by revenues generated from the licensees. The public will not be affected by this requirement.

9. Section 3.1 establishes the requirement for annual renewal of the license issued to an athlete agent and indicates when the license shall be renewed.

10. Section 3.2 establishes the qualifications for renewal of the athletes license. Each individual or

firm wishing to continue as an athlete agent is required to submit a renewal card asserting continued compliance with the entry requirements, a list of records required in § 54.1-524 of the Code of Virginia, a renewal fee, and certification that the surety bond/professional liability insurance remains in force. Department staff will process these forms, but this workload should be small due to the low number of licensees. The public will benefit by the assurance of the continued competence of licensees.

11. Section 3.3 outlines the procedures to be followed in applying for renewal of an athlete agent license. This regulation provides licensees precise information on the steps to be followed in this process. The public will not be affected by this proposed regulation.

12. Section 3.4 provides for a renewal fee to be paid by licensees at the time of renewal. It is not anticipated that this fee will have a significant impact of licensees, although it may be a deterrent for some. There will be no significant impact on the workload in the department due to the fact that renewals are annual and the number of licensees is expected to be small.

13. Section 3.5 states the procedure to be followed to reapply for a new license if renewal is not completed. The impact on licensees is significant because of the cost and effort involved in reapplication. Department workload will be minimal.

14. Section 3.6 allows the director the discretion to deny renewal for the same reasons as he might deny an initial license. Licensees who no longer meet the standard will be affected. The public is protected by the assurance of the continued competence of each licensee.

15. Section 4.1 states the notification procedures for changes of address or name and for personnel changes within a firm. This requirement will affect those individuals or firms having to make such changes. It will also require department staff to make the appropriate changes to the affected records; again, the workload should be small. The public will be protected by the availability of accurate information on each licensee.

16. Section 4.2 provides the basis for the contractual relationship between an athlete agent and an amateur athlete. This regulation specifies the form to be used in the contractual agreement, the requirements for filing the contract and cancellation of the contract, as well as the fee structure for negotiating one specific type of contract. Both the athlete agent and the amateur athlete will be affected by this regulation which assures appropriate disclosure in the contracts.

17. Section 4.3 sets out the record keeping requirements for licensees. Athlete agents who do not

currently maintain this information will be required to do so. Amateur athletes will be protected by the availability of these documents should a problem arise regarding the contract with the licensee.

18. Section 5.1 identifies prohibited acts for which the athlete may be subject to disciplinary action by the director. Licensees who fail to comply with these requirements may be required to pay a monetary penalty or suffer suspension or revocation of the license. The department will need to investigate complaints of violations of the regulations and to provide staff support to the director in the resolution of these complaints. These activities protect amateur athletes from misconduct by licensees.

19. Section 5.1 A prohibits the athlete agent from engaging in those prohibited acts listed in § 54.1-521 of the Code of Virginia. The anticipated impact of this regulation is the same as that outlined in Item 18 above.

20. Section 5.1 B states that any applicant who fails to comply with either the provisions of Title 54.1, Chapter 5.1 of the Code of Virginia or any of these regulations is subject to disciplinary action by the director. The anticipated impact of this regulation is the same as that outlined in Item 18 above.

21. Section 5.1 C states that any applicant who submits inaccurate or incomplete information when applying for an initial license or for renewal of a license may be subject to disciplinary action. This regulation protects the public by assuring that disciplinary action can be taken against licensees who falsified their credentials.

22. Section 5.1 D provides for disciplinary action against an athlete agent who aids or assists an unlicensed person to violate any of the provisions of Title 54.1, Chapter 5.1 of the Code of Virginia or any regulations promulgated by the department. This regulation allows disciplinary action against licensees who become involved with illegal unlicensed activity.

23. Section 5.1 E states that an athlete agent may not allow an unlicensed agent to use his license and forbids an athlete agent to act on the behalf of an unlicensed agent. The same impact found in Item 22 applies to this regulation.

24. Section 5.1 F states that a criminal conviction which relates to an applicant's activities as an athlete agent may be grounds for disciplinary action. Any licensee in this category can be disciplined if he is convicted of a felony or a misdemeanor involving moral turpitude.

25. Section 5.1 G also applies to criminal convictions and requires that the athlete agent notify the director within 30 days of such conviction. If notice is not

provided within the required period, disciplinary action may be taken by the director. This regulation places the responsibility for disclosure of these conditions on the licensee.

26. Section 5.1 H prohibits an athlete agent from having a potential "conflict of interest" when dealing with a professional sports team on behalf of an amateur athlete thus assuring that the interest of the amateur athlete are protected.

27. Section 5.2 requires the athlete agent to follow the standards set in § 54.1-522 of the Code of Virginia in making contact with an amateur athlete prior to his last intercollegiate contest. These standards restrict the period during which such contact is permitted, protecting the interests of the college or university in assuring that the athlete remains an amateur during this time.

Statutory Authority: § 54.1-525 of the Code of Virginia.

Written comments may be submitted until December 8, 1990.

Contact: Pamela M. Templin, Regulatory Programs Intern, Department of Commerce, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8531.

STATE BOARD FOR COMMUNITY COLLEGES

† November 7, 1990 - Time to be determined. - Open Meeting
Board Room, 15th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia.

Committee meetings.

† November 8, 1990 - 10 a.m. - Open Meeting
Board Room, 15th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia.

A regularly scheduled meeting. (Agenda available by November 1, 1990).

Contact: Joy Graham, 15th Floor, Monroe Building, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2126.

BOARD ON CONSERVATION AND DEVELOPMENT OF PUBLIC BEACHES

October 31, 1990 - 10:30 a.m. - Open Meeting
King James Motor Hotel, Queen Ann Room, 6045 Jefferson Avenue, Newport News, Virginia. FT1203 5

A meeting to discuss proposals from localities requesting matching grant funds from the board.

Calendar of Events

Contact: Jack E. Frye, Shoreline Programs Bureau Manager, P.O. Box 1024, Gloucester Point, VA 23062, telephone (804) 642-7121.

Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

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DEPARTMENT OF CONSERVATION AND RECREATION

Falls of the James Scenic River Advisory Board

† **October 19, 1990 - Noon** – Open Meeting
Planning Commission Conference Room, 5th Floor, City Hall, Richmond, Virginia.

A review of river issues and programs.

Contact: Richard G. Gibbons, Environmental Programs Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132 or (804) 786-2121/TDD ☎

BOARD FOR CONTRACTORS

† **October 17, 1990 - 9 a.m.** – Open Meeting
3600 West Broad Street, Conference Room 1, Richmond, Virginia.

A regular quarterly meeting of the board to address policy and procedural issues as well as other routine business matters. The meeting is open to the public; however, a portion of the board's discussions may be conducted in executive session.

Contact: Kelly G. Ragsdale, Assistant Director, 3600 W. Broad St., Richmond, VA 23219, telephone (804) 367-8557.

Complaints Committee

† **October 17, 1990 - 11 a.m.** – Open Meeting
3600 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

A meeting to review and consider complaints filed by consumers against licensed contractors.

Contact: A.R. Wade, Complaints Administrator, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8561 or toll-free 1-800-552-3016.

BOARD OF CORRECTIONS

† **October 10, 1990 - 10 a.m.** – Open Meeting
† **November 14, 1990 - 10 a.m.** – Open Meeting
Board of Corrections Board Room, 6900 Atmore Drive, Richmond, Virginia. ☒

A regular monthly meeting.

Contact: Ms. Vivian Toler, Secretary of the Board, 6900

October 10, 1990 - 10 a.m. – Public Hearing
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Corrections intends to consider adopting regulations entitled: **VR 230-30-008. Regulations for State Reimbursement of Local Correctional Facility Construction Costs.** These regulations provide instructions for local correctional facilities to apply for reimbursement for construction, enlargement, or renovation costs.

Statutory Authority: §§ 53.1-5 and 53.1-80 through 53.1-82 of the Code of Virginia.

Written comments may be submitted until November 10, 1990.

Contact: A. T. Robinson, Local Facilities Administrator, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3251.

BOARD FOR COSMETOLOGY

October 15, 1990 - 9 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A regular business meeting to review correspondence, enforcement cases, applications and discuss routine board business.

October 15, 1990 - 2 p.m. – Open Meeting
General Assembly Building, House Room C, 9th and Broad Streets, Richmond, Virginia. ☒

October 17, 1990 - 11 a.m. – Open Meeting
Fairfax City Hall, Room 305, 10455 Armstrong Street, Fairfax, Virginia. ☒

A meeting to solicit comment on the proposed emergency nail technician regulations. The board will also be conducting a 30-day comment period beginning September 24 and ending October 24, 1990. Written comments should be submitted to Roberta L. Banning, Assistant Director, Department of Commerce, 3600 West Broad Street, Richmond, Virginia 23230-4917.

Contact: Roberta L. Banning, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

BOARD OF DENTISTRY

† November 7, 1990 – Extended written comment period

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Dentistry intends to amend regulations entitled: VR 255-01-01. **Virginia Board of Dentistry Regulations.** The board voted on September 16, 1990 to extend the comment period for an additional 30 days from October 8 through November 7, 1990. Specifically, the board wishes to allow the public additional time to comment on only (i) the licensure by endorsement for dentists and dental hygienists, and (ii) the application fees for endorsement candidates. The proposals are found in §§ 1.4 L and 2.3 of the proposed regulation, which was published in Volume 6, Issue 18 (June 4, 1990), pages 2814-2686.

Statutory Authority: § 54.1-2400 and Chapter 27 (§ 54.1-2700 et seq.) of Title 54.1 of the Code of Virginia.

Written comments may be submitted until November 7, 1990.

Contact: Nancy T. Feldman, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9906.

BOARD OF EDUCATION

October 25, 1990 - 9 a.m. – Open Meeting
October 26, 1990 - 9 a.m. – Open Meeting
General Assembly Building, 910 Capitol Street, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: Margaret Roberts, Executive Director, Board of Education, P.O. Box 6-Q, Richmond, VA 23216, telephone (804) 225-2540.

GOVERNOR'S COMMISSION ON EDUCATIONAL OPPORTUNITY FOR ALL VIRGINIANS

† **October 31, 1990 - 4 p.m. – Public Hearing**
Southampton High School, Courtland, Virginia. ☒

Commission public hearing.

Contact: Kris Ragan, Staff, P.O. Box 1422, Room 329, Richmond, VA 23211, telephone (804) 786-1688.

NOTE: CHANGE OF MEETING LOCATION
December 5, 1990 - 9:30 a.m. – Open Meeting
Monroe Building, Conference Rooms D & E, 1st Floor,

Richmond, Virginia. ☒

A full commission meeting.

Contact: Kris Ragan, Staff, P.O. Box 1422, Ninth Street Office Bldg., Room 329, Richmond, VA 23211, telephone (804) 786-1688.

LOCAL EMERGENCY PLANNING COMMITTEE - DANVILLE

† **October 11, 1990 - 3 p.m. – Open Meeting**
Industrial Avenue Fire Station, 1315 Industrial Avenue, Danville, Virginia.

Local Committee, SARA Title III. Hazardous Material Community Right-to-Know.

Contact: C. David Lampley, Chairman, LEPC, 297 Bridge St., Danville, VA 24541, telephone (804) 799-5228.

LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF PORTSMOUTH

† **November 14, 1990 - 9 a.m. – Open Meeting**
Portsmouth General Hospital, 850 Crawford Parkway, Portsmouth, Virginia.

Portsmouth LEPC conducts business as authorized and required by the provisions of SARA Title III "Superfund Amendments and Reauthorization Act of 1986," also referred to as Title III - Emergency Planning and Community Right-to-Know Act of 1986."

Contact: Don Brown, LEPC Coordinator Director, EOC, 801 Crawford St., Portsmouth, VA 23705, telephone (804) 393-8551.

LOCAL EMERGENCY PLANNING COMMITTEE - COUNTY OF PRINCE WILLIAM, CITY OF MANASSAS, AND CITY OF MANASSAS PARK

October 15, 1990 - 2:30 p.m. – Open Meeting
1 County Complex Court, Prince William, Virginia. ☒

Local emergency preparedness committee meeting as required by SARA Title III.

Contact: Thomas J. Hajduk, Information Coordinator, 1 County Complex Court, Prince William, VA 22192-9201, telephone (703) 335-6800.

COUNCIL ON THE ENVIRONMENT

October 9, 1990 - 7:30 p.m. - Open Meeting
Shenandoah College, Henkel Hall, Hester Auditorium, Winchester, Virginia. ☒

Calendar of Events

A quarterly meeting to discuss environmental issues in the Commonwealth. The public is invited and will be given the opportunity to comment or ask questions during the public forum segment of the meeting. An agenda is being developed and will be available prior to the meeting.

Contact: David J. Kinsey, Special Projects Coordinator, Council on the Environment, Richmond, VA 23219, telephone (804) 786-4500.

VIRGINIA EMPLOYMENT COMMISSION

Advisory Board

October 9, 1990 - 1 p.m. - Open Meeting
October 10, 1990 - 3 p.m. - Open Meeting
Radisson Hotel, 555 East Canal Street, Richmond, Virginia.
☐

A regular meeting to conduct general business.

Contact: Ron Montgomery, 703 E. Main St., Richmond, VA 23219, telephone (804) 786-1070.

FAMILY AND CHILDREN'S TRUST FUND OF VIRGINIA

Board of Trustees

October 12, 1990 - 10 a.m. - Open Meeting
November 9, 1990 - 10 a.m. - Open Meeting
December 7, 1990 - 10 a.m. - Open Meeting
Koger Executive Center, West End, Blair Building, Conference Room C, 8007 Discovery Drive, Richmond, Virginia. ☐

The board will plan and evaluate its fund raising campaign. It will carry out all the activities necessary for implementation of this project.

Contact: Molly Moncure Jennings, Executive Director, Family and Children's Trust Fund, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

VIRGINIA FARMERS' MARKET BOARD

November 1, 1990 - 1 p.m. - Open Meeting
State Capitol, House Room 1, Capitol Square, Richmond, Virginia.

A regular board meeting.

Contact: Nancy L. Israel, Farmers' Market Network Program Director, 1100 Bank St., Richmond, VA 23219, telephone (804) 371-6157.

VIRGINIA FIRE SERVICES BOARD

† **October 25, 1990 - 7:30 p.m. - Public Hearing**
Galax Fire Department, 106 Adams Street, Galax, Virginia.

A public hearing to discuss fire training and fire policies. This public hearing is for comments and questions relating to the fire services in the Commonwealth and the area in which the hearing is held.

† **October 26, 1990 - 9 a.m. - Open Meeting**
Galax Fire Department, 106 Adams Street, Galax, Virginia.

A regular business meeting. This meeting is open to the public for their input and comments.

Contact: Anne J. Bales, Executive Secretary Senior, James Monroe Building, 17th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2681.

Fire Prevention and Control Committee

† **October 25, 1990 - 9 a.m. - Open Meeting**
Galax Fire Department, 106 Adams Street, Galax, Virginia.

A meeting to discuss fire training and fire policies. The committee meeting is open to the public for their input.

Contact: Anne J. Bales, Executive Secretary Senior, James Monroe Building, 17th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2681.

Fire Training/EMS Education Committee

† **October 25, 1990 - 1 p.m. - Open Meeting**
Galax Fire Department, 106 Adams Street, Galax, Virginia.

A meeting to discuss fire training and fire policies. The committee meeting is open to the public for their input.

Contact: Anne J. Bales, Executive Secretary Senior, James Monroe Building, 17th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2681.

Legislative Committee

† **October 25, 1990 - 1 p.m. - Open Meeting**
Galax Fire Department, 106 Adams Street, Galax, Virginia.

A meeting to discuss fire training and fire policies. The committee meeting is open to the public for their input.

Contact: Anne J. Bales, Executive Secretary Senior, James

Calendar of Events

Monroe Building, 17th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2681.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

October 10, 1990 - 11 a.m. - Open Meeting
1601 Rolling Hills Drive, Conference Room 3, Richmond, Virginia. ☒

FDE reciprocity committee meeting.

October 16, 1990 - 8 a.m. - Open Meeting
1601 Rolling Hills Drive, Conference Room 2, Richmond, Virginia. ☒

FDE informal conference.

October 17, 1990 - 9 a.m. - Open Meeting
1601 Rolling Hills Drive, Conference Room 1, Richmond, Virginia. ☒

FDE legislative committee meeting.

October 17, 1990 - 10 a.m. - Open Meeting
1601 Rolling Hills Drive, Conference Room 1, Richmond, Virginia. ☒

FDE regularly scheduled board meeting.

November 27, 1990 - 9 a.m. - Open Meeting
1601 Rolling Hills Drive, Conference Room 3, Richmond, Virginia. ☒

FDE Informals.

November 28, 1990 - 9 a.m. - Open Meeting
1601 Rolling Hills Drive, Conference Rooms 3 and 4, Richmond, Virginia. ☒

At 9 a.m. - FDE Examinations given.

At 1 p.m. - FDE Board Meeting.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9111.

November 9, 1990 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to adopt regulations entitled: **VR 320-01-03. Regulations for Preneed Funeral Planning.** The proposed regulations establish standards for the sale of preneed funeral arrangements by licensing of the Board of Funeral Directors and Embalmers in Virginia.

Statutory Authority: §§ 54.1-2400 and 54.1-2803(10) of the Code of Virginia.

Written comments may be submitted until November 9, 1990.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9941.

BOARD OF GAME AND INLAND FISHERIES

October 12, 1990 - 9:30 a.m. - Open Meeting
4010 West Broad Street, Richmond, Virginia. ☒

The Law and Education Committee will meet to review, revise and rewrite board policies and to discuss and act on other administrative matters that may be necessary.

† **October 19, 1990 - 9:30 a.m. - Open Meeting**
4010 West Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

At 9:30 a.m., the Planning Committee will meet, followed by the Law and Education Committee, Wildlife and Boat Committee and Finance Committee. The Law and Education Committee will review and discuss changes to the board's existing policies. The Wildlife and Boat Committee will discuss the proposed fish regulations that will be presented for adoption at this month's board meeting. In addition, each committee will discuss, as necessary, administrative and related matters appropriate to each.

Any item requiring board action will be presented to the full board for action at its meeting October 20, 1990.

† **October 20, 1990 - 9:30 a.m. - Public Hearing**
Marriott Hotel, Salons 5-8, 500 East Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

The board of the Department of Game and Inland Fisheries will meet jointly with the board of the Virginia Marine Resources Commission to discuss matters of interest common to both agencies. In addition, the board of the Department of Game and Inland Fisheries will adopt proposed fishing regulations changes and act on other general and administrative matters as necessary. Committee meeting reports will be given.

Contact: Belle Harding, Secretary to Director, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000, toll-free 1-800-252-7717 or (804) 367-1000/TDD ☒

BOARD OF HEALTH PROFESSIONS

Calendar of Events

† **October 16, 1990 - 10 a.m. – Open Meeting**
Department of Health Professions, 1601 Rolling Hills Drive,
Room 1, Richmond, Virginia. ☒

Regular quarterly meeting of the board.

Public comments will be accepted at the end of the meeting (approximately 3:30 p.m.).

Contact: Richard D. Morrison, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9918.

Planning and Budget Committee

† **October 15, 1990 - 5 p.m. – Open Meeting**
Department of Health Professions, 1601 Rolling Hills Drive,
Room 3, Richmond, Virginia. ☒

A meeting to (i) review Attorney General Cost Allocation Formula; (ii) review fund balances; and (iii) review budget reductions.

Contact: Richard D. Morrison, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9918.

Regulatory Research Committee

† **October 15, 1990 - 3 p.m. – Open Meeting**
Department of Health Professions, 1601 Rolling Hills Drive,
Room 2, Richmond, Virginia. ☒

A meeting to review draft report on proposal for certification of athletic trainers and therapeutic recreation specialists, and review and prepare any comments on board regulations for further consideration by the Board of Health Professions.

Public comments will be accepted at the end of the meeting (approximately 5:45 p.m.).

Contact: Richard D. Morrison, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9918.

STATE BOARD OF HEALTH

October 15, 1990 - 10 a.m. – Public Hearing
James Madison Building, Main Floor Conference Room,
109 Governor Street, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health intends to amend regulations entitled: **VR 355-30-01. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.** The purpose of this action is to amend the existing Virginia Medical Care

Facilities Certificate of Public Need (COPN) Rules and Regulations in order to implement the COPN program consistent with amended COPN Law that became effective on July 1, 1990.

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Written comments may be submitted until October 26, 1990.

Contact: Marilyn H. West, Director, Division of Resources Development, Virginia Department of Health, James Madison Bldg., Room 1005, 109 Governor St., Richmond, VA 23219, telephone (804) 786-7463.

† **October 29, 1990 - 10 a.m. – Open Meeting**

† **October 30, 1990 - 9 a.m. – Open Meeting**
Main Floor Conference Room, Madison Building, 109 Governor Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A work session to discuss health policy issues is planned for Monday and a business meeting on Tuesday.

Contact: Susan R. Rowland, M.P.A., Assistant to the Commissioner, Virginia Department of Health, 109 Governor St., Suite 400, Richmond, VA 23219, telephone (804) 786-3561.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

October 23, 1990 - 9:30 a.m. – Open Meeting
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. ☒

A monthly meeting to address financial, policy or technical matters which may have arisen since the last meeting.

Contact: G. Edward Dalton, Deputy Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371/TDD ☎

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **November 7, 1990 - 9:30 a.m. – Open Meeting**
Council Conference Room, 9th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia. ☒

A general business meeting. (Contact Council for more information.)

Contact: Barry Dorsey, Associate Director, 9th Floor Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2629.

VIRGINIA HISTORIC PRESERVATION FOUNDATION

† **October 22, 1990 - 4 p.m.** – Open Meeting
221 Governor Street, Richmond, Virginia.

A general business meeting.

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

DEPARTMENT OF HISTORIC RESOURCES

State Review Board

October 16, 1990 - 10 a.m. – Open Meeting
General Assembly Building, Senate Room A, Richmond, Virginia.

A meeting to consider the nomination of the following properties to the Virginia Landmarks Register and the National Register of Historic Places:

1. Airville, Gloucester County
2. Cockram's Mill, Patrick County
3. Colonial Hotel, Wise County
4. Main Street Methodist Church, Danville
5. Mt. Airy, Bedford County
6. Piedmont, Albemarle County
7. Tetley, Orange County
8. Wavertree, Albemarle County
9. Woodlawn, King George County
10. Bristoe Battlefield Historic District, Prince William County

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or 786-1934/TDD ☎

BOARD OF HISTORIC RESOURCES

October 16, 1990 - 1:30 p.m. – Open Meeting
General Assembly Building, Senate Room A, Richmond, Virginia.

A general business meeting.

October 23, 1990 - 2 p.m. – Open Meeting
October 24, 1990 - 9 p.m. – Open Meeting
Virginia House, 4301 Sulgrave Road, Richmond, Virginia.

A workshop for board members.

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or 786-1934/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

November 6, 1990 - 9 a.m. – Open Meeting
December 4, 1990 - 9 a.m. – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☒ (Interpreter for deaf provided upon request)

Local Emergency Preparedness Committee Meeting on Emergency Preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **October 16, 1990 - 9 a.m.** – Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ☒

A regular meeting to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as they may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

COUNCIL ON INDIANS

October 10, 1990 - 2 p.m. – Open Meeting
Koger Executive Complex, Blair Building, 8007 Discovery Drive, Conference Room C, Richmond, Virginia.

A regular meeting to conduct general business and to receive reports from the council standing committees.

Contact: Mary Zoller, Information Director, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9285 or toll-free 1-800-552-7096.

Calendar of Events

COUNCIL ON INFORMATION MANAGEMENT

† **October 19, 1990 - 9 a.m.** – Open Meeting
1100 Bank Street, Suite 901, Richmond, Virginia. ☒

A regular business meeting.

Contact: Linda Hening, Administrative Assistant, Washington Building, Suite 901, 1100 Bank St., Richmond, VA 23219, telephone (804) 225-3622 or (804) 225-3624/TDD ☎.

DEPARTMENT OF LABOR AND INDUSTRY

Apprenticeship Council

† **October 18, 1990 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Street, House Room C, Richmond, Virginia. ☒

A general business meeting. The agenda is available upon request.

Contact: Robert S. Baumgardner, Director of Apprenticeship, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-2381.

Safety and Health Codes Board

NOTE: CHANGE IN MEETING DATE

October 10, 1990 - 7 p.m. – Open Meeting
Roanoke County Administration Building, 3738 Brambleton Avenue, S.W., Roanoke, Virginia.

In accordance with this agency's Public Participation Guidelines, comments on the proposed changes to the proposed regulation concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits and Permit Fees (VR 425-01-74) will be accepted at the open meetings listed. The proposed regulation appears in this issue of the Register. Oral comments to be presented must be accompanied by a written copy. Written copies will be accepted at the meetings or by mail prior to the meeting date.

Contact: John J. Cirsanti, Director Office of Enforcement Policy, P.O. Box 12064, Richmond, VA 23241-0064, telephone (804) 786-2384.

* * * * *

January 8, 1991 - 10 a.m. – Public Hearing
Virginia Housing and Development Authority Conference Center, 601 South Belvidere Street, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Labor and Industry intends to amend regulations entitled: VR 425-01-74. Licensed Asbestos Contractor Notification, Asbestos Project Permits and Permit Fees. The

proposed regulation provides a procedure for notification to the Department of Labor and Industry of asbestos projects and establishes permit fees for those projects.

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Written comments may be submitted until October 15, 1990.

Contact: John J. Crisanti, Director, Office of Enforcement Policy, P.O. Box 12064, Richmond, VA 23241-0064, telephone (804) 786-2384.

LOCAL GOVERNMENT ADVISORY COUNCIL

† **October 8, 1990 - 1 p.m.** – Open Meeting
General Assembly Building, Capitol Square, Senate Room A, Richmond, Virginia.

A regular meeting of the Local Government Advisory Council to consider various state-local issues.

Contact: Robert H. Kirby, Secretary, 702 8th Street Office Bldg., 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

LONGWOOD COLLEGE

Advisory Committee

† **October 10, 1990 - 4:30 p.m.** – Open Meeting
Longwood College, East Ruffner, Board Room, Farmville, Virginia.

A routine business meeting.

Contact: William F. Dorrill, President, Longwood College, Farmville, VA 23901, telephone (804) 395-2001.

Board of Visitors

October 11, 1990 - 8 p.m. – Open Meeting
October 12, 1990 (if necessary) - 9 a.m. – Open Meeting
Longwood College Campus, Ruffner Building, Farmville, Virginia.

A routine business meeting.

Contact: William F. Dorrill, Office of the President, Longwood College, Farmville, VA 23901, telephone (804) 395-2001.

STATE LOTTERY BOARD

October 24, 1990 - 10 a.m. – Open Meeting
November 28, 1990 - 10 a.m. – Open Meeting

Calendar of Events

December 19, 1990 - 10 a.m. - Open Meeting
State Lottery Department, 2201 West Broad Street,
Conference Room, Richmond, Virginia. ☐

A regular monthly meeting to conduct business according to items listed on agenda which has not yet been determined. Two periods for public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

MARINE RESOURCES COMMISSION

† **October 23, 1990 - 9:30 a.m. - Open Meeting**
2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ☐

The Commission will hear and decide marine environmental matters at 9:30 a.m.: permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues.

The Commission will hear and decide fishery management items at approximately 2:00 p.m.: regulatory proposals; fishery management plans; fishery conservation issues; licensing; shellfish leasing.

Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits, licensing. Public comments are taken on resource matters, regulatory issues, and items scheduled for public hearing.

The Commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Cathy W. Everett, Secretary to the Commission, P.O. Box 756, Room 1006, Newport News, VA 23607, telephone (804) 247-8088.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

New Drug Review Committee

† **October 18, 1990 - 1 p.m. - Open Meeting**
600 East Broad Street, Suite 1300, Richmond, Virginia. ☐

A meeting to review new chemical entities, new dosage forms of existing chemical entities and selected new strengths. The committee will review eight chemical entities for recommendation to the Department's Board of Medical Assistance Services.

Contact: David B. Shepherd, R.Ph., Pharmacy Supervisor, 600 E. Broad St., Suite 1300, Richmond, VA 23219,

telephone (804) 786-3820.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

November 23, 1990 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-04-8.7. Client Appeals.** This proposed regulation will govern the appeal process of Medicaid recipients.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until 4:30 p.m., November 23, 1990, to Marsha Vandervall, Director Division of Client Appeals, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

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† **December 7, 1990 -** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to adopt regulations entitled: **VR 460-04-8.11. Home and Community-Based Services to Individuals with Acquired Immune Deficiency Syndrome and Aids Related Complex.** This regulation will provide for home and community based services for individuals with AIDS/ARC.

STATEMENT

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews. House Joint Resolution 427 (HJR 427) 1989 directed DMAS to develop a home and community-based care alternative to institutionalization for individuals having AIDS or AIDS Related Complex.

Purpose: The purpose of this proposal is to provide regulatory authority to administer home and community

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based care services under § 1915 (c) waiver for individuals with AIDS/ARC who would otherwise require nursing facility or inpatient hospital level of care.

Summary and Analysis: Virginia has requested approval from the Health Care Financing Administration (HCFA) for a model waiver for an initial 3-year period under § 1915 (c) of the Social Security Act. Under the waiver, Virginia will provide home and community-based services to individuals with HIV infection, who have been diagnosed and are experiencing the symptoms associated with AIDS or ARC, and who would otherwise require the level of care provided in a hospital or nursing facility, the cost of which would be reimbursed under the State Plan for Medical Assistance.

As of April 1, 1990, 1,584 cases of AIDS have been reported in Virginia. Of those, around 60% (1,010 persons) have died. The Virginia Department of Health projects that by 1992 Virginia will have approximately 3,000 AIDS cases cumulatively reported and 1,800 cumulative deaths. Based upon national estimates and the current state experience, 40% of all AIDS patients will spend down their financial resources to qualify for Medicaid eligibility.

Because of these projections, DMAS has monitored the estimated numbers of cases and their impact on the Medicaid budget and the Commonwealth. Based on a study of Medicaid claims data on 38 Medicaid recipients with AIDS, it is estimated that individuals with AIDS in the Commonwealth will be enrolled in Medicaid an average of 10.3 months after their diagnosis and have an average of 3.5 hospitalizations, lasting approximately 12 days each. Most adult HIV-infected persons will not become Medicaid eligible until they have exhausted all their resources as their level of disability increases.

All Medicaid eligible individuals must be screened prior to admission to the waiver according to a standardized assessment instrument, and be determined to meet the criteria for nursing facility or hospital level of care before waiver services will be authorized. Authorization must be given by DMAS prior to implementation of waiver services for all individuals. DMAS intends to contract with local and regional AIDS service organizations and local and acute-care preadmission screening committees already contracted with DMAS to perform the preadmission screening. The preadmission screening includes a complete assessment, determination of level of care, and development of plans of care. Medicaid eligible individuals who meet the nursing facility or hospital level of care criteria may be offered a range of home and community based services which include case management, personal care, respite care, skilled nursing, and nutritional supplements which are not available through State Plan services or other food programs.

All waiver services must be furnished pursuant to written plans of care which have been approved by DMAS. The plans of care will be routinely reviewed and updated at least once every three months by the individuals' primary

case managers. The plans of care will be revised as indicated by the individuals' changing needs and will be subject to ongoing approval by DMAS.

DMAS will contract with any service provider which meets the department's provider standards and is willing to adhere to DMAS' policies and procedures. DMAS expects that the providers of personal care, respite care, and skilled nursing will be those already enrolled to provide those services for other populations. DMAS does not currently contract with case management providers so these will be new providers.

Impact: This initiative is required by Chapter 972 of the Acts of Assembly and is expected to be budget neutral. Home and community-based care services are expected to be a cost effective alternative to hospital care.

The proposed regulations have been reviewed by service providers and the Department of Health. All reviewers have expressed approval of DMAS' proposed program.

Forms: One new form, the Medicaid HIV Waiver Services Plan of Care, is required to implement this proposed regulation. This form is to be used in conjunction with the Long Term Case Information System Assessment instrument to complete the assessment, determination of level of care, and service planning for the individual being screened for AIDS waiver services.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until 4:30 p.m., December 7, 1990, to Chris Pruett, Manager, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

BOARD OF MEDICINE

† November 15, 1990 - 8 a.m. - Open Meeting
† November 16, 1990 - 8 a.m. - Open Meeting
† November 17, 1990 - 8 a.m. - Open Meeting
† November 18, 1990 - 8 a.m. - Open Meeting
Department of Health Professions, Board Room 1, 1601 Rolling Hills Drive, Richmond, Virginia. ☐

The full board will meet on Thursday, November 15, 1990, in open session to conduct general board business and discuss any other items which may come before the board. The board will also meet on Friday, Saturday, and Sunday, November 16, 17 and 18, 1990, to review reports, interview licensees and make decisions on discipline matters.

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Contact: Eugenia K. Dorson, Deputy Executive Director, Department of Health Professions, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9925.

Informal Conference Committee

October 11, 1990 - 9 a.m. - Open Meeting
Fredericksburg Resort and Conference Center, I-95 and Rt. 3, Fredericksburg, Virginia. ☒

The committee will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

† **October 19, 1990 - 9 a.m. - Open Meeting**
Williamsburg Hilton, 50 Kings Mill Road, Williamsburg, Virginia. ☒

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia. Public comment will not be received.

Contact: Karen D. Waldron, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9908.

Advisory Committee on Acupuncture

NOTE: CHANGE IN MEETING DATE

† **October 26, 1990 - noon - Open Meeting**
Department of Health Professions, Board Room 3, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to (i) review the statistical information on patient treatment, (ii) review proposed training program petition, (iii) review regulations and other matters which may come before the Advisory Committee.

Public comment will be received upon invitation of the Chairman at the conclusion of the meeting.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9925.

Credentials Committee

† **November 3, 1990 - 8:15 a.m. - Open Meeting**
Department of Health Professions, Board Room 3, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to conduct general business, interview, and review medical credentials of applicants applying for licensure in Virginia in open and executive session and discuss any other items which may come before this committee.

The committee will not receive public comments.

Contact: Eugenia K. Dorson, Deputy Executive Director, Department of Health Professions, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9925.

Legislative Committee

† **November 8, 1990 - 2 p.m. - Open Meeting**
Department of Health Professions, Board Room 4, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to (i) consider amendments to VR 465-02-01, (ii) further define § 54.1-2919 of the Code of Virginia, for the purpose of restructuring the membership or appointees to serve on Informal Conferences before the board, and (iii) make recommendations to the full board.

Public comments may be entertained at the conclusion of the meeting.

Contact: Eugenia K. Dorson, Deputy Executive Director, Department of Health Professions, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9925.

Advisory Committee on Physician's Assistants

† **November 9, 1990 - 10 a.m. - Open Meeting**
Department of Health Professions, Board Room 3, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

The Advisory Committee on Physician's Assistants will review Protocol Forms as required by VR 465-04-01 § 2.2 and other such business that requires action and recommendations to the Board of Medicine.

Public comments may be received at the conclusion of the meeting.

Contact: Eugenia K. Dorson, Deputy Executive Director, Department of Health Professions, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9925.

Advisory Board on Respiratory Therapy

† **October 30, 1990 - 2 p.m. - Open Meeting**
Department of Health Professions, Board Room 2, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to (i) elect officers, (ii) review the current bylaws and regulations (VR 465-04-01) and (iii) to

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consider any other matters that may come before it.

Public comment may be entertained at the conclusion of the business meeting.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9923.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

State Human Rights Committee

† October 19, 1990 - 10 a.m. - Open Meeting
Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor Street, James Madison Building, 13th Floor Conference Room, Richmond, Virginia. ☒

A regular meeting to discuss business relating to human rights issues. Agenda items are listed prior to the meeting.

Contact: Elsie D. Little, State Human Rights Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Human Rights, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3988.

Substance Abuse Advisory Council

† October 25, 1990 - 10 a.m. - Open Meeting
13th Floor Board Room, James Madison Building, 109 Governor Street, Richmond, Virginia. ☒

A meeting to discuss issues related to the planning and delivery of substance abuse services in Virginia.

Contact: Wayne Thacker, Director, Office of Substance Abuse Services, Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor St., Richmond, VA 23219, telephone (804) 786-3906 or (804) 786-2991/TDD ☎ .

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† October 24, 1990 - 10 a.m. - Open Meeting
James Madison Building, 13th Floor Conference Room, Central Office, 109 Governor Street, Richmond, Virginia. ☒

A regular monthly meeting. The agenda will be published on October 17 and may be obtained by calling Jane Helfrich.

Contact: Jane Helfrich, Board Administrator, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

November 10, 1990 - 8:30 a.m. - Open Meeting
Virginia Military Institute, Lexington, Virginia. ☒

A regular meeting of the VMI Board of Visitors. Committee reports.

Contact: Colonel Edwin L. Dooley, Jr., Secretary, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206.

MINE SAFETY BOARD

† October 12, 1990 - 10 a.m. - Open Meeting
Holiday Inn, Norton, Virginia. ☒

A quarterly meeting to discuss amendments to the Rules and Regulations Governing the Use of Vertical Mine Ventilation Holes.

Contact: Harry D. Childress, Chief, Division of Mines, 219 Wood Avenue, Big Stone Gap, VA 24219, telephone (703) 523-8226 or (703) 523-8100 (Switchboard).

DEPARTMENT OF MOTOR VEHICLES

Medical Advisory Board

October 10, 1990 - 1 p.m. - Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ☒

A regular business meeting open to the public.

Contact: Karen Ruby, Manager, 2300 W. Broad St., Richmond, VA 23220, telephone (804) 367-0406.

VIRGINIA MUSEUM OF NATURAL HISTORY

Personnel Committee

† October 26, 1990 - 8 p.m. - Open Meeting
Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia.

A meeting to discuss budget reduction, lay-offs and grievance hearings.

Contact: Rhonda J. Knighton, Executive Secretary, Virginia Museum of Natural History, 1001 Douglas Avenue, Martinsville, VA 24112, telephone (703) 666-8616, SCATS 857-6950 or (703) 666-8638/TDD ☎

Planning and Facilities Committee

† **October 26, 1990 - 7 p.m.** – Open Meeting
Key Bridge Marriott, 1401 Lee Highway, Arlington,
Virginia. ☒

A meeting to discuss renovation freeze and long-range
facility plans.

Contact: Rhonda J. Knighton, Executive Secretary, Virginia
Museum of Natural History, 1001 Douglas Avenue,
Martinsville, VA 24112, telephone (703) 666-8616, SCATS
857-6950 or (703) 666-8638/TDD ☎

Board of Trustees

† **October 27, 1990 - 10 a.m.** – Open Meeting
Smithsonian Institute, National Museum of National
History, Constitution Avenue and 10th Street, Washington,
D.C. ☒

The meeting will include reports from the executive
finance, development, education and exhibits,
marketing, personnel, planning/facilities, and research
and collections committees.

Public comment will be received following approval of
the minutes of the July meeting.

Contact: Rhonda J. Knighton, Executive Secretary, Virginia
Museum of Natural History, 1001 Douglas Avenue,
Martinsville, VA 24112, telephone (703) 666-8616, SCATS
857-6950 or (703) 666-8638/TDD ☎

BOARD OF NURSING

Special Conference Committee

† **October 9, 1990 - 8:30 a.m.** – Open Meeting
Department of Health Professions, Conference Room 4,
1601 Rolling Hills Drive, Richmond, Virginia. ☒
(Interpreter for deaf provided upon request)

† **October 11, 1990 - 9 a.m.** – Open Meeting
† **October 22, 1990 - 8:30 a.m.** – Open Meeting
Department of Health Professions, Conference Room 2,
1601 Rolling Hills Drive, Richmond, Virginia. ☒
(Interpreter for deaf provided upon request)

A meeting to inquire into allegations that certain
licensees may have violated laws and regulations
governing the practice of nursing in Virginia.

Public comment will not be received.

Contact: Corinne F. Dorsey, R.N., Executive Director, 1601
Rolling Hills Drive, Richmond, VA 23229, telephone (804)
662-9909 or toll-free 1-800-533-1560.

Education Advisory Committee

October 23, 1990 - 10 a.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive,
Richmond, Virginia. ☒

A meeting to consider matters related to educational
programs approved by the board and make
recommendations to the board as needed. Public
comment will be accepted at 1 p.m.

Contact: Corinne F. Dorsey, R.N., Executive Director, 1601
Rolling Hills Dr., Richmond, VA 23229, telephone (804)
662-9909 or (804) 662-7197/TDD ☎

BOARD OF NURSING HOME ADMINISTRATORS

† **December 5, 1990 - 9 a.m.** – Open Meeting
1601 Rolling Hills Drive, Conference Room 1, Richmond,
Virginia. ☒

NHA Examinations.

† **December 6, 1990 - 8:30 a.m.** – Open Meeting
1601 Rolling Hills Drive, Conference Rooms 3 and 4,
Richmond, Virginia. ☒

NHA regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, 1601
Rolling Hills Drive, Richmond, VA 23229, telephone (804)
662-9907.

BOARD OF OPTOMETRY

† **October 17, 1990 - 8:30 a.m.** – Open Meeting
1601 Rolling Hills Drive, Conference Room 4, Richmond,
Virginia. ☒ (Interpreter of deaf provided if requested)

A general business meeting.

Contact: Lisa J. Russell, Executive Director, 1601 Rolling
Hills Drive, Richmond, VA 23229, telephone (804) 662-9942.

PRIVATE SECURITY SERVICES ADVISORY COMMITTEE

October 17, 1990 - 9 a.m. – Open Meeting
Massanutten, P.O. Box 1227, Harrisonburg, Virginia.

A meeting to discuss business of the committee.

Contact: Paula J. Scott, Staff Executive, 805 E. Broad St.,
10th Floor, Richmond, VA 23219, telephone (804) 786-4000.

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BOARD OF PROFESSIONAL COUNSELORS

† **October 12, 1990 - 9 a.m.** – Open Meeting
1601 Rolling Hills Drive, Conference Room 3, Richmond,
Virginia. ☒

A meeting to (i) conduct general board business; (ii) review regulations; and (iii) respond to correspondence. Comments will be received at beginning of meeting.

Contact: Evelyn B. Brown, Executive Director, 1601 Rolling Hills Drive, Suite 200, Richmond, VA 23229, telephone (804) 662-9912.

PROTECTION AND ADVOCACY FOR MENTALLY ILL INDIVIDUALS ADVISORY COUNCIL

† **October 25, 1990 - 10 a.m.** – Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, 4th Floor, Richmond, Virginia. ☒
(Interpreter for deaf provided upon request)

A regularly scheduled meeting for the conduct of business. Public participation welcomed. For directions please call 804/225-2042 or toll free 1-800-552-3962.

Contact: Barbara Hoban, PAMI Program Manager, Department for Rights of Virginians with Disabilities, James Monroe Building, 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 225-2042/TDD ☎ or 1-800-552-3962/TDD ☎

BOARD OF PSYCHOLOGY

† **November 15, 1990 - 9 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to (i) conduct general board business; (ii) discuss results of national and state written examinations; and (iii) discuss regulatory review.

Public comment will be received at the beginning of the meeting.

Written comments may be submitted until November 2, 1990, for distribution to the board members.

Contact: Evelyn B. Brown, Executive Director, 1601 Rolling Hills Drive, Suite 200, Richmond, Virginia, 23229-3005, telephone (804) 662-9913.

VIRGINIA PUBLIC TELECOMMUNICATIONS BOARD

† **October 18, 1990 - 10:30 a.m.** – Open Meeting
Jefferson Sheraton Hotel, Coolidge Room, Franklin and Adams Street, Richmond, Virginia.

The regularly scheduled quarterly meeting will include (i) official transmittal of the report from the Master Plan Advisory Committee, (ii) review of budget reductions for 1990-92, (iii) recommendations of revised distribution formulas for contracts and grants, and (iv) updates on other items of interest. Committees will review items prior to the full board convening and a joint meeting will be held with the Council on Information Management to discuss the revised master plan and future strategic planning.

Contact: Suzanne J. Piland, Public Telecommunications, 110 S. 7th St., 1st Floor, Richmond, VA 23219, telephone (804) 334-5544.

REAL ESTATE BOARD

October 17, 1990 - 10 a.m. – Open Meeting
Hampton City Council Chambers, 22 Lincoln Street, Hampton, Virginia.

The board will meet to conduct a formal hearing: File Number 90-00137, Real Estate Board v. Donna R. Goodson.

October 17, 1990 - 1 p.m. – Open Meeting
Hampton City Council Chambers, 22 Lincoln Street, Hampton, Virginia.

The board will meet to conduct a formal hearing: File Number 90-01440, Real Estate Board v. Benjamin E. Garrett, Jr.

† **November 27, 1990 - 10 a.m.** – Open Meeting
† **November 28, 1990 - 10 a.m.** – Open Meeting
Council Chambers, Municipal Building, 4th Floor, 215 Church Street, Roanoke, Virginia.

The board will conduct a formal hearing: File Numbers 86-00183, 87-01417, 8801102, Real Estate Board v. Floyd Earl Frith and Kenneth Gusler, Jr.

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

November 23, 1990 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services, intends to adopt regulations entitled: **VR 615-01-28. Aid to Dependent Children (ADC) Program - Entitlement Date.** The purpose of the proposed amendment is to revise the entitlement date policy to require that when an application is approved in the month of application, entitlement will begin with the date of authorization.

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Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until November 23, 1990, to Mr. Guy Lusk, Director, Division of Benefit Programs, 8007 Discovery Dr., Richmond, VA 23229-8699.

Contact: Peggy Friedenber, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

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November 24, 1990 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to adopt regulations entitled: **VR 615-53-01. Child Day Care Services Policy.** The proposed regulation establishes child day care policy that the department must have to implement federal requirements related to welfare reform pursuant to Federal Public Law 100-485.

Statutory Authority § 63.1-25 of the Code of Virginia.

Written comments may be submitted until November 24, 1990.

Contact: Margaret Friedenber, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9182.

BOARD OF SOCIAL SERVICES

† **October 17, 1990 - 2 p.m.** – Open Meeting
† **October 18, 1990 - 9 a.m.** – Open Meeting (If Necessary)
Howard Johnsons-Danville, 100 Tower Drive, Danville, Virginia. ☒

A work session and formal business meeting.

Contact: Phyllis Sisk, Administrative Staff Specialist, Virginia Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-9236.

BOARD OF SOCIAL WORK

October 19, 1990 - 10 a.m. – Open Meeting
October 20, 1990 - 10 a.m. – Open Meeting
October 21, 1990 - 10 a.m. – Open Meeting
Cascades Hotel and Conference Center, Williamsburg, Virginia.

A general board business meeting to review and plan for the next biennium and long-range goals.

Contact: Evelyn B. Brown, Executive Director, 1601 Rolling Hills Drive, Suite 200, Richmond, VA 23229, telephone

(804) 662-9914.

† **November 1, 1990 - 9 a.m.** – Open Meeting
† **November 2, 1990 - 9 a.m.** – Open Meeting
1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to (i) conduct general board business; (ii) review applications for licensure and supervision of trainees; (iii) review regulations; and (iv) respond to correspondence.

Contact: Stephanie Sivert, Executive Director, 1601 Rolling Hills Drive, Suite 200, Richmond, VA 23229, telephone (804) 662-9214.

DEPARTMENT OF TAXATION

† **November 8, 1990 - 10 a.m.** – Public Hearing
General Assembly Building, House Room C, 9th and Broad Streets, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-2-322.02 Individual Income Tax: Age Subtraction.** This proposed regulation sets forth the age 62 and over income subtraction available to taxpayers.

Substance: The regulation defines the necessary terms and sets forth the Department of Taxation's policies related to the computations required to arrive at the age subtraction amount.

Issues: One of the major issues under consideration involves the computation of this subtraction by married couples with different ages, filing a joint income tax return, yet each spouse is age 62 or over. Rather than compute the subtraction jointly and limit the maximum subtraction amount to the maximum amount that would be allowed to one spouse, the regulation requires such married taxpayers to recompute their incomes and age subtractions, as if they had filed separate returns or filed separately on a combined return.

Another issue considered under the regulation is how part-year residents should be required to compute the age subtraction. Generally, the regulation requires these taxpayers to prorate the amount of subtraction that they would have been allowed if they were full-year residents by the ratio of their Virginia portion of federal adjusted gross income to their total federal adjusted gross income. At the same time, the regulation ensures that the amount of age subtraction allowed to a part-year resident does not exceed their Virginia portion of federal adjusted gross income.

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

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Purpose: This regulation sets forth the Department of Taxation's policies as they relate to the 1990 law change which enacted the Age Subtraction for taxpayers age 62 and over. (Chapters 507 and 525, 1990 Acts of Assembly)

Estimated Impact: This regulation will affect only those taxpayers who are age 62 and over. Currently, the department estimates that approximately 400,000 to 500,000 individual taxpayers potentially may be able to reduce their Virginia taxable income by claiming this subtraction.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until December 7, 1990.

Contact: to Janie E. Bowen, Director, Tax Policy, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010.

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† **November 8, 1990 - 10 a.m. – Public Hearing**
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-323.1 Corporation Income Tax: Excess Cost Recovery.** The amendment to the statutory recovery period and percentages for the outstanding balance of ACRS depreciation affects the subtraction claimed by corporate taxpayers. The adoption of this regulation will make the regulation consistent with the changes made to the law.

Issues: There were no new issues to consider. The only changes made were to the recovery period and percentages, as stated in the law.

Basis: This regulation is issued under authority granted by § 58.1-203 the Code of Virginia.

Purpose: The regulation is being adopted to make the regulation consistent with the revised statutory recovery period and percentages for the outstanding balance of ACRS depreciation for corporate taxpayers.

Estimated Impact: This regulation will affect corporate taxpayers which have outstanding amounts of deferred ACRS depreciation which have not been previously subtracted.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until December 7, 1990.

Contact: Janie E. Bowen, Director, Tax Policy, P.O. Box

6-L, Richmond, VA 23282, telephone (804) 367-8010.

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† **November 8, 1990 - 10 a.m. – Public Hearing**
General Assembly Building, House Room C, 9th and Broad Streets, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-2-492. Declaration of Estimated Income Tax: Failure by Individual to Pay Estimated Tax.** This regulation sets forth the \$150 tax threshold on the underpayment of estimated taxes by an individual.

Substance: This proposed regulation sets forth the application of the \$150 tax threshold exception for avoiding the addition to the tax which is imposed when an individual fails to pay enough estimated income tax.

Issues: The major issues considered in drafting this proposed regulation involves clarifying that this additional exception for avoiding the addition to the tax is applicable only in cases in which the taxpayer's installment payments are timely filed and the sum of all underpayments is \$150 or less.

Basis: This regulation is issued under authority granted by § 58.1-203 the Code of Virginia.

Purpose: This proposed regulation amends the existing regulation to reflect the 1990 law change (Chapter 335, 1990 Acts of Assembly) which eliminates the addition to the tax imposed for the underpayment of estimated income taxes in instances when the underpayment is \$150 or less for the taxable year.

Estimated Impact: Generally, individual taxpayers that do not pay a minimum of 90% of their income tax liability throughout the year by way of employer withholding on their wages or timely estimated income tax payments are subject to an addition to the tax charge. This regulation would eliminate the addition to the tax charge for those individuals who under pay their estimated income taxes by \$150 or less.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until December 7, 1990.

Contact: Janie E. Bowen, Director, Tax Policy, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010.

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† **November 8, 1990 - 10 a.m. – Public Hearing**
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

Calendar of Events

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-302. Corporation Income Tax: Definitions - "Sales"** and **VR 630-3-414. Corporation Income Tax: Sales Factor**. The amendment to the statutory definition of "sales" affects the computation of the sales factor for multistate corporations with sales of intangible property. The adoption of these regulations will make the regulations consistent with the revised statutory definition and set forth the method for computing net gain from the sale of intangible property for multistate corporations required to compute the Virginia sales factor.

Issues: The major issue under consideration involves the definition of net gain and whether it should be determined on a per transaction basis or on a cumulative basis.

Basis: These regulations are issued under authority granted by § 58.1-203 of the Code of Virginia.

Purpose: These regulations are being adopted to make the regulations consistent with the revised statutory definition of "sales" found in § 58.1-302 of the Code of Virginia and set forth the application of the revised definition to corporations required to compute the Virginia sales factor.

Estimated Impact: These regulations will affect multistate corporations with sales of intangible property that are required to apportion income between Virginia and other states using the three-factor apportionment formula (sales, property and payroll).

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until December 7, 1990.

Contact: Janie E. Bowen, Director, Tax Policy, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010.

TREASURY BOARD

October 17, 1990 - 9 a.m. - Open Meeting
November 21, 1990 - 9 a.m. - Open Meeting
101 North 14th Street, James Monroe Building, 3rd Floor,
Treasury Board Conference Room, Richmond, Virginia. ☒

A regular meeting.

Contact: Laura Wagner-Lockwood, Senior Debt Manager,
Department of the Treasury, P.O. Box 6-H, Richmond, VA
23215, telephone (804) 225-4931.

BOARD OF VETERINARY MEDICINE

October 10, 1990 - 8:30 a.m. - Open Meeting
1601 Rolling Hills Drive, Conference Room 1, Richmond,
Virginia. ☒ (Interpreter for deaf provided if requested)

A general board business and formal hearing.

October 11, 1990 - 9 a.m. - Open Meeting
1601 Rolling Hills Drive, Conference Rooms 1, 3, and 4,
Richmond, Virginia. ☒ (Interpreter for deaf provided if
requested)

Informal conferences, State Board Exam.

Contact: Terri H. Behr, 1601 Rolling Hills Dr., Richmond,
VA 23229, telephone (804) 662-9915.

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

EDITORS NOTE: The Commission of VASAP has been
requested to extend the period for public comment on the
following regulations:

The period for official comment is extended until 5:00
p.m., November 28, 1990.

October 15, 1990 - 10 a.m. - Public Hearing
October 16, 1990 - 1 p.m. - Public Hearing
State Capitol, House Room 1, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1
of the Code of Virginia that the Commission on the
Virginia Alcohol Safety Action Program intends to
amend regulations entitled: **VR 647-01-02. Commission
on VASAP Policy and Procedure Manual**. These
regulations describe policies and direction for
operation of local ASAPs and procedures to be utilized
when conforming to policy directives.

Statutory Authority: §§ 18.2-271.1 and 18.2-271.2 of the Code
of Virginia.

Written comments may be submitted until November 28,
1990, to William T. McCollum, Commission on VASAP, 1001
E. Broad St., Suite 245, Box 28, Old City Hall Bldg.,
Richmond, VA 23219.

Contact: Commission on VASAP, 1001 E. Broad St., Suite
245, Old City Hall Bldg., Box 28, Richmond, VA 23219,
telephone (804) 786-5895.

* * * * *

October 15, 1990 - 10 a.m. - Public Hearing
October 16, 1990 - 1 p.m. - Public Hearing
State Capitol, House Room 1, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1

Calendar of Events

of the Code of Virginia that the Commission on the Virginia Alcohol Safety Action Program intends to amend regulations entitled: **VR 647-01-03. VASAP Case Management Policy and Procedure Manual.** These regulations provide policy and guidance to local ASAP programs and the process for handling offenders referred for education and treatment of convictions for driving under the influence (DUI).

Statutory Authority: §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Written comments may be submitted until November 28, 1990, to William T. McCollum, Commission on VASAP, 1001 E. Broad St., Suite 245, Box 28, Old City Hall Bldg., Richmond, VA 23219.

Contact: Commission on VASAP, 1001 E. Broad St., Suite 245, Old City Hall Bldg., Box 28, Richmond, VA 23219, telephone (804) 786-5895.

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October 15, 1990 - 10 a.m. - Public Hearing

October 16, 1990 - 1 p.m. - Public Hearing
State Capitol, House Room 1, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Commission on the Virginia Alcohol Safety Action Program intends to amend regulations entitled: **VR 647-01-04. Certification Requirements Manual.** All programs are established under § 18.2-271.1 of the Code of Virginia and are required to be certified by the Commission on VASAP. These regulations provide guidance for meeting the certification requirements.

Statutory Authority: §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Written comments may be submitted until November 28, 1990, to William T. McCollum, Commission on VASAP, 1001 E. Broad St., Suite 245, Box 28, Old City Hall Bldg., Richmond, VA 23219.

Contact: Commission on VASAP, 1001 E. Broad St., Suite 245, Old City Hall Bldg., Box 28, Richmond, VA 23219, telephone (804) 786-5895.

VIRGINIA RACING COMMISSION

† **October 17, 1990 - 9:30 a.m. - Open Meeting**
VSRS Building, 1204 East Main Street, Richmond, Virginia.
☒

A regular commission meeting.

Contact: William H. Anderson, Senior Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23219, telephone (804) 371-7363.

VIRGINIA RESOURCES AUTHORITY

† **October 9, 1990 - 10 a.m. - Open Meeting**
Mutual Building, 909 East Main Street, Suite 707, Conference Room A, Richmond, Virginia.

The board will meet to approve minutes of the meeting of September 11, 1990, to review the authority's operations for the prior months; and to consider other matters and take other actions as they may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., 909 East Main Street, Suite 707, Mutual Building, Richmond, VA 23219, telephone (804) 644-3100.

BOARD FOR THE VISUALLY HANDICAPPED

October 18, 1990 - 1:30 p.m. - Open Meeting
Virginia Industries for Blind, 1102 Monticello Road, Charlottesville, Virginia. ☒ (Interpreter for deaf provided upon request)

A quarterly meeting to review policy and procedures of the Virginia Department for the Visually Handicapped. Board reviews and approves department's budget.

Contact: Joseph A. Bowman, Executive Assistant, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140/TDD ☎ or toll-free 1-800-622-2155.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Advisory Committee on Services

October 13, 1990 - 11 a.m. - Open Meeting
Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. FT3001 5 (Interpreter for deaf provided upon request)

The committee meets quarterly to advise the Virginia Board for the Visually Handicapped on matters related to services for blind and visually handicapped citizens of the Commonwealth.

Contact: Barbara G. Tyson, Executive Secretary, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3350, toll-free 1-800-622-2155 or 371-3140/TDD ☎

Interagency Coordinating Council on Delivery of Related Services to Handicapped Children

October 23, 1990 - 2 p.m. - Open Meeting

Calendar of Events

Virginia Housing Development Authority, 601 South Belvidere Boulevard, Richmond, Virginia. ☐

A regular monthly meeting of the 13 agency representatives that comprise the council.

The council is designed to facilitate the timely delivery of appropriate services to handicapped children and youth in Virginia.

Contact: Glen R. Slonneger, Jr., Program and Policy Specialist, Program for Infants, Children and Youth, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140.

VIRGINIA COUNCIL ON VOCATIONAL EDUCATION

† November 7, 1990 - 8:30 a.m. - Open Meeting
† November 8, 1990 - 8:30 a.m. - Open Meeting
Ramada Inn, 57th Street, Oceanfront, Virginia Beach, Virginia.

November 7, 1990:

8:30 a.m. - Orientation session for program visits in area.

9:30 a.m. - Program visits in the area.

1:30 p.m. - Committee meetings.
State Plan and Private Sector Involvement Committee
Evaluation and Access Committee

3:30 p.m. - Executive Committee

November 8, 1990:

8:30 a.m. - Business session.

Reports will be received from council committees, Virginia Department of Education, Governor's Job Training Coordinating Council, Virginia Community College System, and Department of Correctional Education.

Contact: George S. Orr, Jr., Executive Director, Virginia Council on Vocational Education, 7420-A Whitepine Road, Richmond, VA 23237, telephone (804) 275-6218.

DEPARTMENT OF WASTE MANAGEMENT

† November 7, 1990 - 7:30 p.m. - Public Hearing
Circuit Court Room, Municipal Building, 619 Second Street, Radford, Virginia.

Pursuant to the requirements of Part VII of the Solid Waste Management Regulations (§ 7.E., VR 672-20-1), the Draft Solid Waste Disposal Facility permit for the

southern expansion of the Ingles Mountain Interim Sanitary Landfill, proposed by the New River Resource Authority, is available for public review and comment. This new permit will effectively supercede the existing solid waste disposal facility permit (No. 479), which will be revoked upon issuance of the new permit and incorporated within the new permit.

Contact: E. D. Gillespie, Environmental Engineering Consultant, Virginia Department of Waste Management, 101 N. 14th St., 11th Fl., Monroe Bldg., Richmond, VA 23219, telephone (804) 761-0514.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

December 3, 1990 - 8:30 a.m. - Open Meeting
December 4, 1990 - 8:30 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☐

An open meeting to conduct regulatory review and routine board business.

Contact: Mr. Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534 or toll-free 1-800-552-3016.

VIRGINIA WINEGROWERS ADVISORY BOARD

October 15, 1990 - 10 a.m. - Open Meeting
Birdwood Pavillion, Charlottesville, Virginia.

The board will hear committee and project monitor reports; review old and new business; and vote on project proposals for the FY 90-91.

Contact: Annette Ringwood, Secretary, 1100 Bank St., Suite 1010, Richmond, VA 23219, telephone (804) 786-0481 or (804) 371-7685.

STATE BOARD OF YOUTH AND FAMILY SERVICES

October 11, 1990 - 10 a.m. - Open Meeting
Board of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☐

A regular monthly meeting to consider such matters as may be presented to the board.

Contact: Ms. Joyce Fogg, Secretary of the board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3013.

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Calendar of Events

LEGISLATIVE

HOUSE LABOR AND COMMERCE SUBCOMMITTEE STUDYING CHILD LABOR LAWS OF VIRGINIA

† **October 10, 1990 - 10:30 a.m.** – Public Hearing
Fairfax City Council Chambers, Room 305, 10455
Armstrong Street, Fairfax, Virginia.

Public hearing concerning child labor laws of Virginia.

Contact: Arlen K. Bolstad, Staff Attorney, Division of
Legislative Services, General Assembly Bldg., 2nd Fl.,
Richmond, VA 23219.

VIRGINIA STATE CRIME COMMISSION

† **October 16, 1990 - 3:30 p.m.** – Open Meeting
6th Floor, Speakers Conference Room, General Assembly
Building, Richmond, Virginia.

The purpose of the meeting is for the Jail Issues
Subcommittee to review matters concerning the
authority of regional jail administrators, and to discuss
matters regarding the decision-making process with
respect to pretrial detention. (HJR 20, HJR 79 and
SJR 33.)

† **October 17, 1990 - 10 a.m.** – Public Hearing
House Room D, General Assembly Building, Richmond,
Virginia.

The purpose of this meeting is for the Full Crime
Commission to hear legislative proposals from the
general public for the 1991 General Assembly Session.

Contact: D. Robie Ingram, Acting Director, 9th Fl.,
General Assembly Bldg., Room 915, Richmond, VA 23219,
telephone (804) 225-4534.

Drug Study Task Force

† **October 17, 1990 - 2 p.m.** – Open Meeting
House Room D, General Assembly Building, Richmond,
Virginia.

The purpose of this meeting is for the task force to
receive and review the subcommittees draft reports.
SJR 144.

Contact: D. Robie Ingram, Acting Director, 9th Fl.,
General Assembly Bldg., Room 915, Richmond, VA 23219,
telephone (804) 225-4534.

Ritual Crime Task Force

† **October 18, 1990 - 9 a.m.** – Open Meeting
Senate Room A, General Assembly Building, Richmond,
Virginia.

The purpose of this meeting is for the Ritual Crime
Task Force to address effects of ritual crime across
the state of Virginia as authorized by HJR 147.

Contact: D. Robie Ingram, Acting Director, 9th Fl.,
General Assembly Bldg., Room 915, Richmond, VA 23219,
telephone (804) 225-4534.

CITIZEN COMMITTEE STUDYING DANGEROUS DOMESTIC ANIMALS

October 11, 1990 - 10:30 p.m. – Open Meeting
General Assembly Building, Third Floor West, Richmond,
Virginia. ☒

A regular meeting. SJR 136

Contact: Liz Sills, 219 86th St., Virginia Beach, VA 23451,
telephone (804) 428-6682.

JOINT SUBCOMMITTEE TO STUDY DIVORCEMENT AND REPRESENTATIVE OFFERING FOR INCLUSION IN THE VIRGINIA PETROLEUM FRANCHISE ACT

October 23, 1990 - 10 a.m. – Open Meeting
General Assembly Building, 6th Floor Conference Room,
Richmond, Virginia.

A working session to consider HJR 120.

Contact: Maria Everett, Staff Attorney, Division of
Legislative Services, General Assembly Bldg., 910 Capitol
St., Richmond, VA 23219, telephone (804) 786-3591.

VIRGINIA CODE COMMISSION

October 11, 1990 - 9 a.m. – Open Meeting
October 12, 1990 - 9 a.m. – Open Meeting
Boar's Head Inn, Route 250 West, Charlottesville, Virginia.

The commission will continue with its revisions of (i)
Title 65.1 (Workers' Compensation laws) of the Code
of Virginia; and (ii) the criminal tax statutes in Title
58.1.

November 20, 1990 - 10 a.m. – Open Meeting
General Assembly Building, Sixth Floor Conference Room,
910 Capitol St., Richmond, Virginia. ☒

The commission will continue with its revision of Title
65.1.

Contact: Joan W. Smith, Virginia Code Commission, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE TO STUDYING EARLY INTERVENTION SERVICES TO INFANTS AND TODDLERS WITH HANDICAPPING CONDITIONS

† **November 7, 1990 - 1 p.m.** – Open Meeting
House Room D, General Assembly Building, Richmond, Virginia.

A meeting to continue its study. HJR 164.

Contact: Jessica F. Bolecek, Staff Attorney, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING ELECTION LAWS

October 24, 1990 - 10 a.m. – Open Meeting
November 27, 1990 - 10 a.m. – Open Meeting
General Assembly Building, Senate Room A, 910 Capitol Street, Richmond, Virginia. ☐

An open meeting to consider SJR 82.

Contact: Mary Spain, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591 or John McE. Garrett, Deputy Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-4638.

JOINT SUBCOMMITTEE TO STUDYING THE ENVIRONMENTAL IMPACT OF OIL AND GAS DRILLING UNDER THE CHESAPEAKE BAY

† **October 24, 1990 - 1:30 p.m.** – Public Hearing
House Room D, General Assembly Building, Richmond, Virginia.

A public hearing to receive testimony from the public and industry regarding oil drilling under the Chesapeake. HJR 251.

Contact: Martin G. Farber, Research Associate, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE TO ASSESS THE LONG-RANGE FINANCIAL STATUS OF THE GAME PROTECTION FUND

† **October 17, 1990 - 6 p.m.** – Public Hearing
Roanoke City Council Chamber, 215 Church Avenue, Roanoke, Virginia.

A public hearing in a continuation of the study to assess the long-range financial status of the Game Protection Fund. HJR 76.

Contact: John Heard, Staff Attorney, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING HUMAN IMMUNODEFICIENCY VIRUSES (AIDS)

† **November 7, 1990 - 10 a.m.** – Open Meeting
† **November 27, 1990 - 10 a.m.** – Open Meeting
House Room C, General Assembly Building, Richmond, Virginia.

A meeting to continue their study. HJR 129.

Contact: Norma Szakal, Staff attorney, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

LOCAL AND STATE GOVERNMENT INFRASTRUCTURE AND REVENUE RESOURCES COMMISSION

† **October 25, 1990 - 10 a.m.** – Open Meeting
State Capitol, House Room 4, Richmond, Virginia.

The commission will continue its meetings to study local and state government infrastructure and revenue resources.

Contact: John Garka, Manager, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING LABOR FORCE NEEDS OF THE 1990's

October 15, 1990 - 10 a.m. – Open Meeting
General Assembly Building, Senate Room A, 910 Capitol Street, Richmond, Virginia. ☐

An open meeting to consider SJR 64.

Contact: Mark Pratt, Research Associate, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591 or Thomas C. Gilman, Chief Committee Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-3838.

JOINT SUBCOMMITTEE STUDYING LICENSING OF BOAT OPERATORS

† **October 16, 1990 - 10 a.m.** – Open Meeting
State Capitol, House Room 2, Richmond, Virginia. ☐

Calendar of Events

Members of the joint subcommittee will hold a second meeting of the interim on this date. HJR 102.

Contact: Deanna Byrne, Staff Attorney, or Martin Farber, Research Associate, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING THE NECESSITY AND DESIRABILITY OF REVISING THE COMMONWEALTHS "COMPARATIVE PRICE ADVERTISING" STATUTE

† **November 8, 1990 - 10 a.m.** – Public Hearing
Northern Virginia, Location to be announced.

† **December 5, 1990 - 10 a.m.** – Public Hearing
Tidewater - Location to be announced.

A public hearing in a continuation of its study of the necessity and desirability of revising the Commonwealth's "Comparative Price Advertising" Statute. HJR 184.

† **December 19, 1990 - 10 a.m.** – Public Hearing
General Assembly Building, House Room C, Richmond, Virginia.

A work session and public hearing in a continuation of its study of the necessity and desirability of revising the Commonwealth's "Comparative Price Advertising" Statute. HJR 184.

Contact: Mary Geisen, Research Associate, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

COMMISSION ON POPULATION GROWTH AND DEVELOPMENT

† **October 23, 1990 - 10 a.m.** – Open Meeting
† **November 29, 1990 - 10 a.m.** – Open Meeting
† **December 20, 1990 - 10 a.m.** – Open Meeting
Richmond, Location to be announced.

Statutory Commission, §§ 9-145.11 through 9-145.15 (c.833, 1990).

Agendas have not been set.

Each meeting will be held in Richmond; however, the exact location of the meetings has not been determined. You will be notified once meeting rooms have been established.

Contact: Jeff Finch, Assistant Clerk for Projects and Research, House of Delegates, P.O. Box 406, Richmond, VA 23203, telephone (804) 786-2227.

JOINT SUBCOMMITTEE STUDYING MEANS OF REDUCING PREVENTABLE DEATH AND DISABILITY IN THE COMMONWEALTH AND TO EXAMINE THE FEASIBILITY OF IMPLEMENTING A COMPREHENSIVE PREVENTION PLAN IN VIRGINIA

† **October 30, 1990 - 10 a.m.** – Open Meeting
General Assembly Building, House Room C, Richmond, Virginia.

A meeting to study means of reducing preventable death and disability in the Commonwealth. HJR 179.

Contact: Kathleen G. Harris, Staff Attorney, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE OF HOUSE COUNTIES, CITIES AND TOWNS AND SENATE LOCAL GOVERNMENT STUDYING TDR AND OTHER LAND-USE CARRYOVER LEGISLATION

† **October 8, 1990 - 11:30 a.m.** – Open Meeting
McCoart Administration Building, Prince William County Complex, Davis Ford Road., Prince William, Virginia.

A working session to review proposals to 1991 General Assembly.

† **October 8, 1990 - 8 p.m.** – Public Hearing
Auditorium, Center for Innovative Technology, 2214 Rock Hill Road, Herndon, Virginia.

A public hearing to receive testimony from interested persons in Northern Virginia.

Contact: C. M. Conner, Jr., Staff Attorney, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING SCHOOL DROPOUTS AND WAYS TO PROMOTE THE DEVELOPMENT OF SELF-ESTEEM IN YOUTH

† **October 24, 1990 - 10 a.m.** – Open Meeting
State Capitol, House Room 4, Richmond, Virginia.

Agenda for this meeting has not been set.

Contact: Brenda Edwards, Senior Research Associate, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING USE OF VEHICLES POWERED BY CLEAN TRANSPORTATION FUELS

† **October 23, 1990 - 2 p.m.** – Open Meeting
State Capitol, House Room 4, Richmond, Virginia.

Members of the committee will hold a working session. HJR 113.

Contact: Dr. Alan Wambold, Research Associate, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

CHRONOLOGICAL LIST

OPEN MEETINGS

October 8

- † Aviation Board, Virginia
- † Local Government Advisory Council
- † TDR and Other Land-Use Carryover Legislation, Joint Subcommittee Studying

October 9

- Employment Commission, Virginia
- † - Advisory Board
- Environment, Council on the
- † Nursing, Board of
- Special Conference Committee
- † Virginia Resources Authority

October 10

- Corrections, Board of
- Employment Commission, Virginia
- Advisory Board
- Funeral Directors and Embalmers, Board of
- Indians, Council On
- Labor and Industry, Department of
- Safety and Health Codes Board
- † Longwood College
- Advisory Committee
- Motor Vehicles, Department of
- Medical Advisory Board
- Veterinary Medicine, Board of

October 11

- † Child Day-Care Council
- † Children, Department for
- State-level Runaway Youth Services Network
- Citizen Committee Studying Dangerous Domestic Animals
- Code Commission, Virginia
- † Emergency Planning Committee, Local - Danville
- Longwood College
- Board of Visitors
- Medicine, Board of
- Informal Conference Committee
- † Nursing, Board of
- Special Conference Committee
- Veterinary Medicine, Board of
- Youth and Family Services, Board of

October 12

- Code Commission, Virginia
- Family and Children's Trust Fund of Virginia
- Board of Trustees
- Game and Inland Fisheries, Board of
- Longwood College
- Board of Visitors
- † Mine Safety Board
- † Professional Counselors, Board of

October 13

- Visually Handicapped, Department of
- Advisory Committee on Services

October 15

- Cosmetology, Board for
- Emergency Planning Committee for the County of Prince William, City of Manassas, and City of Manassas Park, Local
- † Health Professions, Board of
- † - Planning and Budget Committee
- † - Regulatory Research Committee
- Labor Force Needs of the 1990's, Joint Subcommittee Studying
- Winegrowers Advisory Board, Virginia

October 16

- † Air Pollution Control, Department of
- Auctioneers, Board of
- † Crime Commission, Virginia State
- Funeral Directors and Embalmers, Board of
- † Health Professions, Board of
- Historic Resources, Board of
- Historic Resources, Department of
- State Review Board
- † Housing Development Authority, Virginia
- † Licensing of Boat Operators, Joint Subcommittee Studying

October 17

- † Contractors, Board for
- † - Complaints Committee
- Cosmetology, Board for
- † Crime Commission, Virginia State
- Drug Study Task Force
- Funeral Directors and Embalmers, Board of
- † Optometry, Board of
- Private Security Services Advisory Committee
- Real Estate Board
- † Social Services, Board of
- Treasury Board
- † Virginia Racing Commission

October 18

- † Crime Commission, Virginia State
- Ritual Crime Task Force
- † Labor and Industry, Department of
- Apprenticeship Council
- † Medical Assistance Services, Department of
- New Drug Review Committee
- † Public Telecommunications Board, Virginia

Calendar of Events

† Social Services, Board of (if necessary)
Visually Handicapped, Board for the

October 19

Children, Coordinating Committee for
Interdepartmental Regulation of Residential Facilities
for

† Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
† Game and Inland Fisheries, Board of
† Information Management, Council on
† Medicine, Board of
- Informal Conference Committee
† Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- State Human Rights Committee
Social Work, Board of

October 20

† Game and Inland Fisheries, Board of
Social Work, Board of

October 21

Social Work, Board of

October 22

† Accountancy, Board for
† Air Pollution Control, Department of
- Region V
† Historic Preservation Foundation, Virginia
† Nursing, Board of
- Special Conference Committee

October 23

† Accountancy, Board for
Divorcement and Representative Offering for Inclusion
in the Virginia Petroleum Franchise Act, Joint
Subcommittee to Study
Health Services Cost Review Council, Virginia
Historic Resources, Board of
† Marine Resources Commission
Nursing, Board of
- Education Advisory Committee
Use of Vehicles Powered by Clean Transportation
Fuels, Joint Subcommittee Studying
† Population Growth and Development, Commission on
Visually Handicapped, Department for the
- Interagency Coordinating Council on Delivery of
Related Services to Handicapped Children

October 24

Children, Department for
- Teen Pregnancy Prevention Task Force
Election Laws, Joint Subcommittee Studying
Historic Resources, Board of
Lottery Board, State
† Mental Health, Mental Retardation and Substance
Abuse Services Board, State
† School Dropouts and Ways to Promote the
Development of Self-Esteem in Youth, Joint
Subcommittee Studying

October 25

Education, Board of
† Fire Services Board, Virginia
† - Fire Prevention and Control Committee
† - Fire Training/EMS Education Committee
† - Legislative Committee
† Infrastructure and Revenue Resources Commission,
Local and State Government
† Protection and Advocacy for Mentally Ill Individuals
Advisory Council
† Mental Health, Mental Retardation and Substance
Abuse Service, Department of
- Substance Abuse Advisory Council

October 26

Education, Board of
† Fire Services Board, Virginia
† Medicine, Board of
† - Advisory Committee on Acupuncture
† Museum of Natural History, Virginia
† - Personnel Committee
† - Planning and Facilities Committee

October 27

† Museum of Natural History, Virginia
- Board of Trustees

October 29

† Health, State Board of

October 30

Athletic Board
† Health, State Board of
† Medicine, Board of
† - Advisory Board on Respiratory Therapy
† Reducing Preventable Death and Disability in the
Commonwealth and to Examine the Feasibility of
Implementing a Comprehensive Prevention Plan in
Virginia, Joint Subcommittee Studying

October 31

Conservation and Development of Public Beaches,
Board on
† Educational Opportunity for All Virginians,
Governor's Commission

November 1

Corrections Resources Board, Community - Middle
Virginia
Farmers' Market Board, Virginia
† Social Work, Board of

November 2

† Social Work, Board of

November 3

† Medicine, Board of
† - Credentials Committee

November 6

Hopewell Industrial Safety Council

Calendar of Events

November 7

- † Community Colleges, State Board for
- † Early Intervention Services to Infants and Toddlers with Handicapping Conditions, Joint Subcommittee Studying
- † Higher Education for Virginia, State Council on
- † Human Immunodeficiency Viruses (AIDS), Joint Subcommittee Studying
- † Vocational Education, Virginia Council on

November 8

- † Community Colleges, State Board for
- † Medicine, Board of
- † - Legislative Committee
- † Vocational Education, Virginia Council on

November 9

- Family and Children's Trust Fund of Virginia
- Board of Trustees
- † Medicine, Board of
- † - Advisory Committee on Physician's Assistants

November 10

- Military Institute, Virginia
- Board of Visitors

November 14

- † Corrections, Board of
- † Emergency Planning Committee, Local - City of Portsmouth

November 15

- † Medicine, Board of
- † Psychology, Board of

November 16

- † Medicine, Board of

November 17

- † Medicine, Board of

November 18

- † Medicine, Board of

November 20

- Code Commission, Virginia

November 21

- Treasury Board

November 27

- Election Laws, Joint Subcommittee Studying
- Funeral Directors and Embalmers, Board of
- † Human Immunodeficiency Viruses (AIDS), Joint Subcommittee Studying
- † Real Estate Board

November 28

- Funeral Directors and Embalmers, Board of
- Lottery Board, State
- † Real Estate Board

November 29

- † Population Growth and Development, Commission on

December 3

- Waterworks and Wastewater Works Operators, Board for

December 4

- Hopewell Industrial Safety Council
- Waterworks and Wastewater Works Operators, Board for

December 5

- Educational Opportunity for All Virginians, Governor's Commission on
- † Nursing Home Administrators, Board of

December 6

- † Nursing Home Administrators, Board of

December 7

- Family and Children's Trust Fund of Virginia
- Board of Trustees

December 19

- Lottery Board, State

December 20

- † Population Growth and Development, Commission on

PUBLIC HEARINGS

October 8

- † TDR and Other Land-Use Carryover Legislation, Joint Subcommittee Studying

October 10

- Air Pollution Control Board, State
- † Child Labor Laws of Virginia, House Labor and Commerce Subcommittee Studying
- Corrections, Board of

October 15

- Alcoholic Beverage Control, Department of Health, State Board of
- Virginia Alcohol Safety Action Program, Commission on the

October 16

- Virginia Alcohol Safety Action Program, Commission on the

October 17

- † Crime Commission, Virginia State
- † Game Protection Fund, Joint Subcommittee Studying
- Long-Range Financial Status of the

Calendar of Events

October 24

† Environmental Impact of Oil and Gas Drilling under the Chesapeake Bay, Joint Subcommittee Studying

October 25

† Commerce, Department of
† Fire Services Board, Virginia

November 7

† Waste Management, Department of

November 8

† Necessity and Desirability of Revising the Commonwealth's "Comparative Price Advertising" Statute, Joint Subcommittee Studying
† Taxation, Department of

December 5

† Necessity and Desirability of Revising the Commonwealth's "Comparative Price Advertising" Statute, Joint Subcommittee Studying

December 6

Agriculture and Consumer Services, Department of

December 19

† Necessity and Desirability of Revising the Commonwealth's "Comparative Price Advertising" Statute, Joint Subcommittee Studying

January 8, 1991

Labor and Industry, Department of
- Safety and Health Codes Board