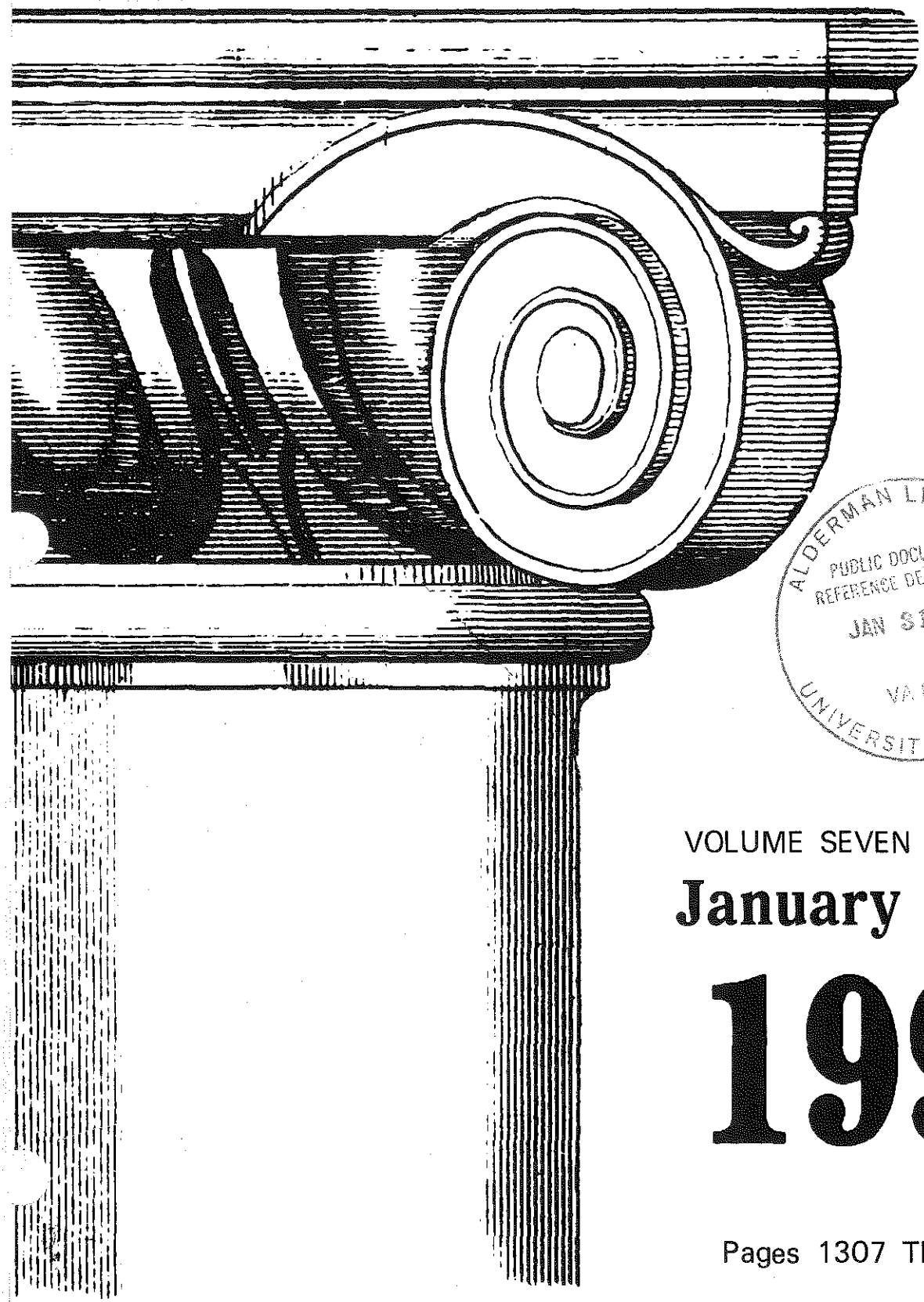
THE VIRGINIA REGISTER

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

The Virginia Register is cited by volume, issue, page number, and date. **1:3 VA.R. 75-77 November 12, 1984** refers to Volume 1, Issue 3, pages 75 through 77 of the Virginia Register issued on November 12, 1984.

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VIRGINIA REGISTER OF REGULATIONS

PUBLICATION DEADLINES AND SCHEDULES

September 1990 through December 1991

MATERIAL SUBMITTED BY Noon Wednesday	PUBLICATION DATE
Volume 7 - 1990-91	
Sept. 19	Oct. 8
Oct. 3	Oct. 22
Oct. 17	Nov. 5
Oct. 31	Nov. 19
Nov. 14	Dec. 3
Nov. 28	Dec. 17
Dec. 12	Dec. 31
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Dec. 26	Jan. 14, 1991
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Jan. 23	Feb. 11
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CALENDAR OF EVENTS

For information concerning Proposed Regulations, see information page.

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.

BOARD OF AUDIOLOGY AND SPEECH PATHOLOGY

Title of Regulation: **VR 155-01-2. Regulations of the Board of Audiology and Speech Pathology. Repealed.**

Title of Regulation: **VR 155-01-2:1. Regulations of the Board of Audiology and Speech Pathology.**

Statutory Authority: §§ 54.1-100 and 54.1-103 of the Code of Virginia.

Public Hearing Date: February 28, 1991 - 10 a.m.
(See Calendar of Events section for additional information)

Summary:

The Board proposes to amend existing regulations and promulgate new regulations to (i) establish qualifications for licensure of audiologists and speech pathologists prior to January 1, 1993 (ii) establish qualifications for licensure of audiologists and speech pathologists after January 1, 1993. The qualifications are prescribed by the American Speech and Hearing Association for all colleges and university programs accredited by that association. Since the board requires graduation from institutes of higher learning with such accreditation, the board is adopting these qualifications in its regulations for clarity and understanding (iii) increase renewals (iv) revise public participation guidelines to increase clarity as to how the board provides for public participation in the regulatory process and (v) establish standards of practice and stipulate disciplinary actions available to the board in cases in which a violation of statutes and regulations occur. Pathology.

PART I.
GENERAL PROVISIONS.

Article 1.
Definitions.

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

"Audiologist" means any person who accepts compensation for examining, testing, evaluating, treating or counseling persons having or suspected of having disorders or conditions affecting hearing and related communicative disorders or who assists persons in the perception of sound and is not authorized by another regulatory or health regulatory board to perform any such services.

"Advertisement" means any information disseminated or placed before the public.

"Applicant" means a person applying for licensure by the board.

"Board" means the Board of Audiology and Speech Pathology.

"Department" means the Department of Health Professions.

"Director" means the director of the Department of Health Professions.

"Executive director" means the board administrator for the Board of Audiology and Speech Pathology.

"Practice of audiology or speech pathology" means the performance for compensation of any nonmedical service, not authorized by another regulatory or health regulatory board, relating to the prevention, diagnosis, evaluation and treatment of disorders or impairments of speech, language, voice or hearing, whether of organic or nonorganic origin. Any person offering services to the public under any descriptive name or title which would indicate that professional audiology or speech pathology services are being offered shall be deemed to be practicing audiology and speech pathology.

"Speech pathologist" means any person who accepts compensation for examining, testing, evaluating, treating or counseling persons having or suspected of having disorders or conditions affecting speech, voice or language and is not authorized by another regulatory or health regulatory board to perform any such services.

Article 2.
Legal Base.

§ 1.2. The following legal base describes the responsibility of the Board of Audiology and Speech Pathology to promulgate regulations governing the licensure of audiologists and speech pathologists in the Commonwealth of Virginia:

Title 54.1:

Chapter 1 (§§ 54.1-100 through 54.4-114);

Chapter 24 (§§ 54.1-2400 through 54.1-2402.1);

Chapter 25 (§§ 54.1-2500 through 54.1-2510); and

Chapter 26 (§§ 54.1-2600 through 54.1-2603) of the Code of Virginia.

Article 3.
Purpose.

§ 1.3. These regulations establish the standards for training, examination, licensure, and practice of persons as audiologists and speech pathologists in the Commonwealth of Virginia.

Article 4.
Applicability.

§ 1.4. Individuals subject to these regulations are (i) audiologists and (ii) speech pathologists.

Exemptions: The provisions of these regulations shall not prevent (i) any persons employed by a federal, state, county or municipal agency, or an educational institution as a speech or hearing specialist or therapist from performing the regular duties of his office or position; (ii) any student, intern, or trainee in audiology or speech pathology, pursuing a course of study at an accredited university or college, or working in a recognized training center, under the direct supervision of a licensed or certified audiologist or speech pathologist from performing services constituting a part of his supervised course of study; (iii) a licensed audiologist or speech pathologist from employing or using the services of unlicensed persons as necessary to assist him in his practice.

Article 5.
Public Participation Guidelines.

§ 1.5. Mailing list.

The executive director of the board shall maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. Notice of intent to promulgate regulations;

2. Notice of public hearings or informational proceedings, the subject of which is proposed or existing regulations; and

3. Final regulations when adopted.

§ 1.6. Additions and deletions to mailing list.

A. Any person wishing to be placed on the mailing list shall have his name added by writing to the board.

B. The board may, in its discretion, add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations.

C. Those on the list may be periodically requested to indicate their desire to continue to receive documents or to be deleted from the list.

D. When mail is returned as undeliverable, persons shall be deleted from the list.

§ 1.7. Notice of intent.

A. At least 30 days prior to publication of the notice to conduct an informational proceeding as required by § 9-6.14:7.1 of the Code of Virginia, the board shall publish a notice of intent.

B. The notice shall contain a brief and concise statement of the possible regulation or the problem the regulation would address and invite any person to provide written comment on the subject matter.

C. The notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

§ 1.8. Informational proceedings or public hearings for existing rules.

A. At least once each biennium, the board shall conduct an informational proceeding, which may take the form of a public hearing, to receive public comment on existing regulations. The purpose of the proceeding will be to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Notice of such proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

C. The proceeding may be held separately or in conjunction with other informational proceedings.

A. Any person may petition the board to adopt, amend, or delete any regulation.

B. Any petition received within 10 days prior to a board meeting shall appear on the agenda of that meeting of the board.

C. The board shall have sole authority to dispose of the petition.

§ 1.10. Notice of formulation and adoption.

Prior to any meeting of the board or subcommittee of the board at which the formulation or adoption of regulations is to occur, the subject matter shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

§ 1.11. Advisory committees.

The board may appoint advisory committees as it may deem necessary to provide for citizen and professional

participation in the formation, promulgation, adoption, and review of regulations.

PART II.
OPERATIONAL RESPONSIBILITIES.

Article 1.
Posting of License.

§ 2.1. Each licensee shall post his license in a main entrance or place conspicuous to the public in the facility in which the licensee is practicing. request.

Article 2.
Records.

§ 2.3. Accuracy of information.

A. All changes of mailing address or name shall be furnished to the board within five days after the change occurs.

B. All notices required by law and by these regulations to be mailed by the board to any registrant or licensee shall be validly given when mailed to the latest address on file with the board.

PART III.
FEES.

Article 1.
Initial Fees.

§ 3.1. The following fees shall be paid as applicable for licensure:

1. Application for audiology license $125

2. Application for speech pathology license $125

3. Verification of licensure requests from other states $ 50

Article 2.
Renewal Fees.

§ 3.2. The following annual fees shall be paid as applicable for license renewal:

1. Audiology license renewal ..... $ 55

2. Speech pathology license renewal ..... $ 55

Article 3.
Other Fees.

§ 3.3. Duplicates.

Duplicate wall certificates shall be issued by the board after the licensee submits to the board a signed affidavit that a document has been lost, destroyed, or the applicant has had a name change.

Duplicate wall certificates ..... $ 50

§ 3.4. Other information.

1. There shall be a fee of $25 for returned checks.

2. Fees shall not be refunded once submitted.

PART IV.
RENEWALS.

Article 1.
Expiration Dates.

§ 4.1 The following licenses shall expire on December 31 of each calendar year:

1. Audiologist; and

2. Speech pathologist.

§ 4.2. A licensee who fails to renew his license by the expiration date shall have an invalid license.

Article 2.
Renewal.

§ 4.3. A person who desires to renew his license for the next year shall, not later than the expiration date:

1. Return the renewal notice;

3. Notify the board of any changes in name and address.

§ 4.4. When a license is not renewed by the expiration date, an applicant for licensure shall:

1. Through December 31, 1992:

a. Reapply for licensure; and

b. Meet the board's qualifications for licensure (see § 5.2);

OR

c. Reapply for licensure; and

d. Meet the board's qualifications for licensure by endorsement (see § 5.1 1).

2. After January 1, 1993:

a. Reapply for licensure; and

b. Meet the board's qualifications for licensure (see § 5.3);

OR

e. Meet the board's qualifications for licensure by endorsement (see § 5.1 1).

PART V.
REQUIREMENTS FOR LICENSURE.

Article 1.
Licensure.

§ 5.1. All candidates shall meet one of the following requirements:

1. Licensure by endorsement. The board may grant a license without examination to any applicant who holds a current "Certificate of Clinical Competence," in the area in which they seek licensure issued by the American Speech-Language Hearing Association.

2. Licensure by examination. The applicant shall pass a qualifying examination approved by the board. The examination shall have been passed within two years preceding the date of application.

Exception: No further examination will be required for applicants having passed the board approved examination at anytime prior to application if they have been actively engaged in the respective profession during the 24 months immediately preceding the date of application.

Article 2.
Qualifications (through December 31, 1992).

§ 5.2. Degree.

The applicant shall have completed at least 60 semester hours approved by the board from a college or university whose audiology and speech program is accredited by the Educational Standards Board or an equivalent accreditation.

§ 5.3. Coursework

The applicant shall have completed the following coursework:

1. 12 semester hours in courses that provide fundamental knowledge applicable to the normal development and use of speech, voice, hearing and language; and

2. 42 semester hours in courses providing knowledge about the training in the management of speech, voice, hearing and language disorders, and information supplementary to such fields. Of these 42 semester hours:

a. At least six semester hours shall be in audiology for those desiring a license as a speech pathologist, or in speech pathology for those desiring a license as an audiologist;

b. No more than six semester hours may in courses that provide academic credit for clinical practice;

c. At least 24 semester hours, including no more than three semester hours of credit for thesis or dissertation, shall be in the field in which the license is sought; and

d. At least 30 semester hours shall be in courses beyond the bachelor's degree and acceptable toward a graduate degree by the college or university where these courses are taken and shall be applicable to the field for which licensure is sought.

§ 5.4. Supervised clinical experience.

The applicant shall have completed 300 clock hours of direct client contact hours with individuals presenting a variety of disorders of communication. This experience shall have been within the college or university attended by the applicant or within a clinical training program acceptable to the board. A minimum of 200 clock hours shall be in the professional area in which licensure is sought, that is, in either audiology or speech pathology.

Article 3.
Qualifications (to begin January 1, 1993).

§ 5.5. Degree.

Effective January 1, 1993, the applicant shall hold, at a minimum, a Master's degree or its equivalent from a college or university whose audiology and speech program is accredited by the Educational Standards Board or an equivalent accreditation:

§ 5.6. Coursework (all candidates).

Effective January 1, 1993, the applicant shall have completed at least 75 semester hours of coursework from a college or university whose audiology and speech program is accredited by the Educational Standards Board or an equivalent accreditation as follows:

1. Basic science coursework. At least 27 of the 75 semester hours (see § 5.6) shall be in basic science coursework as follows:

a. Six semester hours in biological/physical sciences and mathematics;

b. Six semester hours in behavioral or social sciences; and

c. 15 semester hours in basic human communication processes to include the anatomic and physiologic basis, the physical and psychophysical bases, and the linquistic and psycholinquistic aspects.

2. Professional coursework. At least 36 of the 75 semester hours (see § 5.6) shall be in professional coursework. At least 30 of the 36 semester hours of professional coursework shall be in courses for which graduate credit was received. Six of the 36 semester hours of professional coursework may be at the undergraduate level.

a. Speech and language candidates.

(1) Six of the 30 graduate credits prescribed in subdivision 2 of § 5.6 shall be required in audiology.

(a) Three semester hours in hearing disorders and hearing evaluation; and

(b) Three semester hours in habilitative/rehabilitative procedures.

(2) At least 21 of the 30 semester hours of graduate credit prescribed in subdivision 2 of § 5.6 shall be in the professional area in which licensure is sought.

(a) Six semester hours in speech disorders;

(b) Six semester hours in language disorders; and

(c) Nine semester hours in electives in speech and language.

(3) Three of the 30 semester hours of graduate credit prescribed in subdivision 2 of § 5.6 may be electives in any area of graduate credit (speech, language, or audiology).

b. Audiology candidates.

(1) At least six of the 30 graduate credits prescribed in subdivision 2 of § 5.6 shall be required in speech-language pathology, not associated with hearing impairment, as follows:

(a) Three semester hours in speech disorders; and

(b) Three semester hours in language disorders.

(2) At least 21 of the 30 semester hours prescribed in subdivision 2 of § 5.6 shall be in the professional area in which licensure is sought:

(a) Six semester hours in hearing disorders and hearing evaluation;

(b) Six semester hours in habilitative/rehabilitative procedures; and

(c) Nine semester hours in electives in audiology.

(3) Three of the 30 semester hours prescribed above shall be electives in any area of graduate credit (audiology, speech, or language.

§ 5.7. Supervised clinical experience (all candidates).

A. The applicant shall complete 375 clock hours of supervised clinical observation and supervised clinical practicum combined. The clock hours of supervised clinical experience shall be provided by a college or university whose audiology and speech pathology program is accredited by the Educational Standards Board of an equivalent accreditation or by one of its cooperating programs.

B. The supervision for the practicum and observation shall be provided by a person who is licensed by the Board of Audiology and Speech Pathology in the appropriate area of practice.

§ 5.8. Clinical observation.

Twenty-five of the 375 clock hours (see § 5.5 A) shall be in clinical observation prior to beginning clinical practicum.

§ 5.9. Clinical practicum.

Three hundred fifty of the 375 clock hours (see § 5.7) shall be in a clinical practicum. At least 250 of those 350 clock hours shall be in clinical hours at the graduate level in the area in which the license is sought. At least 50 of the 350 clock hours shall be in each of three types of clinical settings such as, but not limited to, public schools, private practice, free clinic, hospital setting.

A. Speech and language candidates.

1. At least 160 of the 250 graduate clock hours prescribed in § 5.8 shall be in each of the following eight categories (20 clinical hours in each category):

a. Evaluation: Speech disorders in children

b. Evaluation: Speech disorders in adults

c. Evaluation: Language disorders in children

d. Evaluation: Language disorders in adults

e. Treatment: Speech disorders in children

f. Treatment: Speech disorders in adults

g. Treatment: Language disorders in children

h. Treatment: Language disorders in adults

2. Up to 20 of the 250 graduate clock hours prescribed in § 5.8 shall be in related disorders in the major professional area.

3. At least 35 of the 250 graduate clock hours prescribed in § 5.8 shall be in audiology.

a. 15 clock hours in evaluation/screening

b. 15 clock hours in habilitation/rehabilitation.

c. 5 clock hours in audiology electives.

4. Thirty-five of the 250 graduate clock hours prescribed in § 5.8 shall be in electives.

B. Audiology candidates:

1. At least 160 of the 250 graduate clock hours prescribed in § 5.8 shall be in the following (40 graduate clock hours in each area):

a. Evaluation: Hearing in children

b. Evaluation: Hearing in adults

c. Selection and Use: Amplification and assistive devices for children

d. Selection and Use: Amplification and assistive devices for children

2. At least 20 of the 250 graduate clock hours prescribed in § 5.8 shall be in treatment: Hearing disorders in children and adults.

3. Up to 20 of the 250 graduate clock hours prescribed in § 5.8 shall be in related disorders in the major professional area.

4. At least 35 of the 250 graduate clock hours prescribed in § 5.8 shall be in speech-language pathology unrelated to hearing impairment as follows:

a. 15 graduate clock hours in evaluation/screening

b. 15 graduate clock hours in treatment

c. 5 graduate clock hours in electives.

5. Fifteen of the 250 graduate clock hours prescribed in § 5.8 shall be in electives.

Article 3.
Application Process

§ 5.10. Prior to seeking licensure as an audiologist or speech pathologist, an applicant shall submit:

1. A completed and signed application;

2. The applicable fee prescribed in § 3.1; and

3. Additional documentation as may be required by the board to determine eligibility of the applicant.

§ 5.11. All required parts of the application shall be submitted at the same time. An incomplete application package shall be returned.

Exception: Some schools require that certified transcripts be sent directly to the licensing authority. That policy is acceptable to the board.

National examination scores also will be accepted from the examining authority.

PART VI.
STANDARDS OF PRACTICE.

Article 1.
General.

§ 6.1. There shall be separate licenses for the practice of Audiology and Speech Pathology.

§ 6.2. It is prohibited for any person to practice as an Audiologist or Speech Pathologist unless such person has been issued a license in the appropriate classification.

§ 6.3. The titles of Audiologist and Speech Pathologist shall be reserved under law for the use by licensed practitioners only.

§ 6.4. No person unless otherwise licensed to do so, shall prepare, order, dispense, alter or repair hearing aids or parts of or attachments to hearing aids for consideration. However, audiologists licensed under this chapter may make earmold impressions and prepare and alter earmolds for clinical use and research.

Article 2.
Core of Knowledge

§ 6.5. The practice of audiology and speech pathology and audiology (see §§ 5.1 through 5.5) shall include, knowledge of:

1. Psychological and sociological aspects of human development;

2. Anatomical, physiological, neurological, psychological, and physical bases of speech, voice, hearing and language;

3. Genetic and cultural aspects of speech and language development;

4. Current principles, procedures, techniques, and instruments used in evaluating the speech, language, voice, and hearing of children and adults;

5. Various types of disorders of speech, language, voice, and hearing classifications, causes and manifestations;

6. Principles, remedial procedures, hearing aids, tinnitus devices, and other instruments used in the habilitation and rehabilitation for those with various

disorders of communication;

7. Relationships among speech, language, voice, and hearing problems, with particular concern for the child or adult who presents multiple problems;

8. Organization and administration of programs designed to provide direct service to those with disorders of communications;

9. Theories of learning and behavior in their application to disorders of communication;

10. Services available from related fields for those with disorders of communication; and

11. Effective use of information obtained from related disciplines about the sensory, physical, emotional, social, and intellectual status of a child or an adult;

§ 6.6. In addition, the audiologist shall have knowledge of:

1. Conducting evaluation of the function of the auditory and vestibular systems, including the use of electrophysiological techniques and the evaluation of tinnitus;

2. Evaluation of auditory processing; and

3. Principles, procedures, and techniques of organizing and administering industrial hearing conservation programs, including noise surveys, the use of hearing protective devices, and the training and supervising of audiometric technicians.

§ 6.7. In addition, the speech pathologist shall have knowledge of:

1. The evaluation and treatment of disorders of the oral and pharnyngeal mechanism as they relate to communication, including but not limited to dysphagia; and

2. The use of alternative communication devices and appliances facilitating communication.

PART VII.
REFUSAL, SUSPENSION, REVOCATION, AND DISCIPLINARY ACTION.

Article 1.
Unprofessional Conduct.

§ 7.1. The board may refuse to issue a license or approval to any applicant, and may suspend for a stated period of time or indefinitely, or revoke any license or approval, or reprimand any person, or place his license on probation with such terms and conditions and for such time as it may designate, or impose a monetary penalty for any of the following causes:

1. Guaranteeing the results of any speech, voice, language, or hearing consultative or therapeutic procedure;

2. Diagnosis or treatment of speech, voice, language, and hearing disorders by correspondence, provided this shall not preclude;

a. Follow-up correspondence of individuals previously seen, or

b. Providing the persons served professionally with general information of an educational nature.

3. Revealing to unauthorized persons confidential patient information obtained from the individual he serves professionally without the permission of the individual served;

4. Exploitation of persons served professionally by accepting them for treatment when benefit cannot reasonably be expected to occur, or by continuing treatment unnecessarily;

5. Incompetence or negligence in the practice of the profession (see § 6.5);

6. Failing to recommend a physician consultation and examination for any communicatively impaired person (before the fitting of a new or replacement prosthetic aid on such person) not referred or examined by a physician within the preceding six months;

7. Failing to refer a client to a physician when there is evidence of an impairment that might respond to medical treatment. Exception: This would not include communicative disorders of nonorganic origin.

8. Failing to supervise persons who assist them in the practice of speech pathology and audiology without being present at all times within the same building when unlicensed supportive personnel are delivering services.

9. Conviction of a felony related to the practice for which the license is granted;

10. Failure to comply with federal, state, or local laws and regulations governing the practice of audiology and speech pathology;

11. Failure to comply with any regulations of the board;

12. Inability to practice with skill and safety because of physical, mental, or emotional illness, or substance abuse;

13. Making, publishing, disseminating, circulating, or placing before the public, or causing directly or indirectly to be made, an advertisement of any sort

regarding services or anything so offered to the public which contains any promise; assertion; representation; or statement of fact which is untrue, deceptive, or misleading; and

14. Exceeding the scope of practice.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: **VR 480-05-22. Rules and Regulations for Conservation of Oil and Gas Resources and Well Spacing.**

Statutory Authority: §§ 45.1-1.3 and 45.1-361.27 of the Code of Virginia.

Public Hearing Date:
March 26, 1991 - 10 a.m.
March 27, 1991 - 1 p.m.
(See Calendar of Events section for additional information)

Summary:

The Department of Mines, Minerals and Energy is proposing to repeal the existing regulations governing gas, oil and geophysical operations in Virginia. This regulation as well as the emergency VR 480-05-22.1, Gas and Oil Regulations, will be replaced by the new VR 480-05-22.1, Gas and Oil Regulations, which will be adopted concurrently with the repeal of this regulation.

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REGISTRARS NOTICE: Due to its length, the proposed regulation filed by the Department of Mines, Minerals and Energy is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the Department of Mines, Minerals and Energy.

Title of Regulation: **VR 480-05-22.1. Gas and Oil Regulations.**

Statutory Authority: §§ 45.1-1.3 and 45.1-361.27 of the Code of Virginia.

Public Hearing Dates:
March 26, 1991 - 10 a.m.
March 27, 1991 - 1 p.m.
(See Calendar of Events section for additional information)

Summary:

The Department of Mines, Minerals and Energy is proposing to adopt regulations governing gas, oil and geophysical operations in Virginia. The regulations are authorized by the Virginia Gas and Oil Act of 1990, Chapter 22.1 of Title 45.1 of the Code of Virginia. This regulation will replace VR 480-05-22, Rules and Regulations For Conservation of Oil and Gas Resources and Well Spacing which will be repealed concurrently with promulgation of this regulation, and VR 480-05-22.1, emergency Gas and Oil Regulations, which will expire with promulgation of this regulation or on June 30, 1991, whichever comes first.

This regulation will protect the citizens and environment of the Commonwealth from the public safety and environmental risks associated with the development and production of gas and oil, and ensure the safe recovery of coal and other minerals without substantially affecting the rights of coal, mineral, gas, oil or geophysical operators to explore for and produce coal, minerals, gas or oil.

This regulation establishes general standards governing permitting, enforcement, reporting, technical operations, plugging wells and coreholes and reclamation of disturbed lands. The regulation also establishes specific standards governing conventional gas and oil wells, including injection wells, as well as coalbed methane gas wells, geophysical operations and gathering pipelines.

* * * * * * * *

Title of Regulation: **VR 480-05-96. Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells.**

Statutory Authority: §§ 45.1-1.3(4), 45.1-92.1 and 45.1-104 of the Code of Virginia.

Public Hearing Dates:
March 26, 1991 - 10 a.m.
March 27, 1991 - 10 a.m.
(See Calendar of Events section for additional information)

Summary:

The Department of Mines, Minerals and Energy plans to amend its vertical ventilation hole regulations to improve the effectiveness of its program to protect the health and safety of underground coal miners who conduct mining activities near drill holes installed for the purpose of removing gas and oil from subsurface strata. The agency proposes to (i) incorporate provisions for safety mining near gas or oil wells that pass through mineable coal seams; (ii) provide a mechanism allowing operators to avoid duplication of requirements when they plan to operate a drilled hole both as a vertical ventilation hole and as a gas well; and (iii) update existing provisions to improve the effectiveness and consistency of the program.

VR 480-05-96. Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells.

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:

"Approved" means approved by the Division of Mines or other recognized agencies.

"Building" means a building regularly occupied in whole or in part as a habitation for human beings or any church, schoolhouse, railroad station, store or other building where people are accustomed to live, work, or assemble.

"Casing" means a string or strings of pipe commonly placed in wells drilled for petroleum and natural gas, *except conductor pipe and tubing.*

"Cement" means hydraulic cement properly mixed with water ~~only~~ .

"Certified mail" means mail which is carried by the U.S. Postal Service with a request for the return of a receipt showing that the mail was delivered to the addressee.

"Chief" means the chief of the Division of Mines *or his designee* .

"Coalbed methane gas well" means a well capable of producing coalbed methane.

"Coal operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine.

"Coal-protection string" means a casing designed to protect a coal seam by excluding all fluids, oil, gas or gas pressure from the seam, except such as may be found in the coal seam itself.

~~"Deviation Test" means any test made to determine the variation from the vertical of a well or hole bore.~~

"Directional survey" means any process to determine (i) the angle of deviation of the hole bore from the true vertical beneath the apex on the same horizontal subsurface plane, and (ii) the direction of an imaginary line from the true vertical beneath the apex to the hole bore on the same horizontal subsurface plane, using the surface location of the hole as the apex.

"Division" means the Division of Mines.

"Gas" means natural gas including casing-head gas obtained from gas wells or ventilation holes regardless of its chemical analysis.

"Gas or oil operator" means any person who has been designated to operate or does operate any gas or oil well.

"Gob well" means a coalbed methane gas well which produces coalbed methane from the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coal seam.

"Highway" means and includes any public street, public alley, or public road.

"Mine" means an underground or surface excavation or development withor without any shafts, slopes, drifts or tunnels for the extraction of coal,minerals or nonmetallic materials, commonly designated as mineral resources (excluding petroleum and natural gas), containing the same with hoisting or haulage equipment and appliances for the extraction of the said mineral resources; and embraces any and all of the land or property of the mining plant, and the surface and underground, that is used or contributes directly or indirectly to the mining property, concentration or handling of said mineral resources.

"Mine operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a mine.

"Owner" means the person or persons listed as owner of record by the Clerk of the Circuit Court of the county in which the property is located.

"Permanent point" means an established physical point of reference on the land surface, based on the applicant's coordinate system, used for a map or plat submitted with a permit application.

"Person" means any natural person, firm, partnership, partnership association, association, company, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind.

"Pillar" means a solid block of coal or ore or other material, left unmined to support the overlying strata in a mine.

"Plug" means the stopping *of or a device used for the stopping* ~~or sealing off~~ of the flow of water, oil or gas *from one stratum to another* in a well or ventilation hole.

"Railroad" means and includes any steam, electric or other motive-powered transportation systems operating on track which carries passengers for hire, or over which loaded or empty equipment is transported.

"Vertical ventilation hole" means any hole drilled from the surface to the coal seam used only for the safety

purpose of removing gas from the underlying coal seam and the adjacent strata, thus, removing the gas that would normally be in the mine ventilation system. ~~This does not prohibit the hole, at a later date when no longer used for safety, to be declared a gas well or for any other purpose meeting the approval of the chief as provided in Chapters 1-12, Title 45.1, Code of Virginia.~~

"Water-protection string" means a string of pipe in a vertical ventilation hole or gas or oil well designed to protect groundwater-bearing strata.

"Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction, injection or placement of any gaseous or liquid substance, or any shaft or hole sunk or used in conjunction with such extraction, injection or placement. The term shall not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural, or public use and shall not include water boreholes, vertical ventilation holes where methane is vented or flared rather than produced and saved, subsurface boreholes drilled from the mine face of an underground coal mine, any other boreholes necessary or convenient for the extraction of coal or drilled pursuant to a uranium exploratory program carried out pursuant to the laws of this Commonwealth, or any coal or non-fuel mineral core hole or borehole for the purpose of exploration.

"Workable coal ~~bed~~ *seam"* means a coal ~~bed~~ *seam* in fact being ~~operated~~ *mined* commercially, or which, in the judgment of the chief, can ~~,~~ ~~and that is~~ reasonably ~~to~~ be expected ~~will~~ *to* be ~~so operated~~ *mined* , and which, when ~~operated~~ *mined* , will require protection if holes are drilled through it.

PART II.
APPLICATIONS FOR PERMITS: MAPS OR PLATS , *NOTICE.* ~~ADJACENT OWNERS, ETC., TO FILE OBJECTIONS~~ .

§ 2.1. Before drilling a mine ventilation hole on any tract of land, the mine operator shall ~~have prepared by a competent engineer or surveyor and~~ file with the chief, together with the application required, an accurate plat or map *certified by a licensed professional engineer or licensed land surveyor* on a scale ~~,~~ to be stated thereon ~~,~~ ~~not smaller than~~ *of* 400 feet to the inch, showing the proposed location and surface elevation of the hole determined by survey, the courses and distances of such location from two permanent points or landmarks ~~on said tract~~ *as shown on the map or plat,* the name and number proposed to be given to the hole, the name of the owner and the boundaries and acreage of the tract on which the hole is to be drilled, the names of the owners of all ~~adjoining~~ *surface and mineral* tracts ~~and of any other tract~~ within ~~500~~ *750* feet of the proposed location and any building, highway, railroad, stream, ventilation hole, oil or gas ~~well~~ *operation* , mine, mine openings or workings, or quarry within ~~500~~ *750* feet of the proposed location. *A survey accuracy of 1:5000 is required for the location of the subject hole with reference to the two permanent points or landmarks as shown on the map or plat.*

§ 2.2. Copies of such *application and* plat or map shall be mailed to each ~~adjacent landowner~~ *owner of the surface on the tract which is to be drilled* , and to each owner, or lessee, or operator of any mineral rights on, in or under, such land or mine, well or quarry within ~~500~~ *750* feet of the proposed location, by ~~registered~~ *certified* mail ~~,~~ ~~together with notice (on forms provided by the chief) of his intention to drill a vertical mine ventilation hole~~ . Each such owner, lessee, or operator ~~shall~~ *may* , within ~~10~~ *15* days from receipt of such notice, file with the chief any objection ~~which he may have~~ to the proposed location. ~~The chief may, if he deems necessary, allow five additional days before the issuance of any permits to drill.~~ *The notice shall inform all persons with standing to object to the permit of their right to object to the proposed location, and shall state the prescribed time limit for objections. Objections filed under this section shall be limited to objections to the proposed location of the vertical ventilation hole addressed in the application, and shall state the nature of the objection to the proposed location.*

§ 2.3. Each application also shall contain a description of all safety equipment and safety facilities to be utilized on the surface during the drilling and after completion of the vertical ventilation hole. Such description shall include a schematic diagram showing the placement of the equipment and facilities described. Equipment and facilities described shall include, but are not limited to, any flame arrestors, back-pressure systems, pressure-relief systems, vent systems and fire-fighting equipment.

PART III.
SIMULTANEOUS APPLICATIONS FOR PERMITS; COALBED METHANE GAS WELLS TO BE CONVERTED TO VERTICAL VENTILATION HOLES; VERTICAL VENTILATION HOLES TO BE CONVERTED TO GOB WELLS.

§ 3.1. Applicants who intend to operate a coalbed methane gas well for a period of time and then later convert that well to operation as a vertical ventilation hole may elect to submit simultaneous applications for both permits prior to commencement of any activity on the proposed well site. This application process also may be used by applicants who plan to convert from a coalbed methane gas well to a vertical ventilation hole while mining through, and then later operate the hole as a gob well. Applications made under this part for vertical ventilation holes shall be in accordance with the requirements of Part II of these regulations. Applications made under this part for coalbed methane gas wells or gob wells shall be in accordance with the requirements of the Virginia Gas and Oil Act, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia and the Gas and Oil Regulations, VR 480-05-22.1.

§ 3.2. Applications submitted simultaneously under this part shall contain, in addition to the information required for each type of permit when submitted separately, a detailed description of the nature of the activities to be conducted from the time activity commences on the site until final plugging of the holes takes place. The description shall include the estimated date for converting the well.

§ 3.3. Applicants who submit simultaneous applications under this part shall fulfill the notice requirements for each type of permit at the time of the application. The notice shall inform all persons with standing to object to any permit of their right to object, and state the prescribed time limits for objections. Any person who objects to applications for permits filed under this part shall comply with the applicable requirements for filing objections to the type of permit being requested.

§ 3.4. If there are timely objections made to permits proposed in simultaneously submitted applications, then the chief and the gas and oil inspector shall determine who has authority to hear the objections and schedule a hearing according to applicable provisions of the laws and regulations pertaining to the permits for which objections are made. If objections are filed against more than one type of permit, then the objections may be heard jointly at a single hearing.

§ 3.5. The operators of coalbed methane gas wells and vertical ventilation holes that have been permitted under Part III must notify the Chief of the Division of Mines and the Gas and Oil Inspector in writing at least 10 working days prior to commencement of activity on conversion of a coalbed methane well to a vertical ventilation hole or conversion of a vertical ventilation hole to a gob well. Such notice shall state whether there have been any changes in the persons that were required to be notified at the time of the original application for a permit. If such changes have occurred, then the operator must notify by certified mail each new person so identified of the intention to convert the operation. Such notification shall include a copy of the original application for a permit, the map or plat, and the description of activity to take place on the site.

§ 3.6. Nothing in this part shall prevent the operator of a permitted coalbed methane gas well from venting methane from the well in accordance with the requirements of the Virginia Gas and Oil Act, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia and the Gas and Oil Regulation, VR 480-05-22.1.

PART ~~III~~ *IV*.
ISSUANCE OF PERMIT WHEN NO OBJECTIONS FILED.

§ ~~3.1.~~ *§ 4.1.* Upon the filing of an application for a permit to drill vertical ventilation hole, the chief shall, if no objection has been made within the specified ~~10~~ *15* day period to such drilling by any person to whom notice is required to be sent *under Part II,* issue the requested permit *, provided all other conditions have been met.*

§ 4.2. If, however, an operator has elected to make simultaneous applications for permits under Part III of these regulations, and vertical ventilation of methane is not the initial use for the drilled hole described in the operator's plans, then the chief shall postpone issuance of a permit for the vertical ventilation hole until after he has received the Notice of Commencement of Activity required under Part III.

§ 4.3. Any permit so issued shall recite the filing of an application for a permit to drill and a plat or map showing the proposed location of the hole and other required information, that no objection has been made to the proposed location by any interested person, or found by the chief, that the same is approved and the mine operator is authorized to proceed to drill vertical mine ventilation hole at such location.

§ 4.4. If the operator shows there is a compelling reason to drill a vertical ventilation hole without delay for safety reasons, and submits proof in writing that none of the persons with standing to object to the permit have any objections, then the chief may waive the notice requirements under Part II and issue the permit for a vertical ventilation hole, provided all other conditions have been met. However, this exception shall not apply to vertical ventilation holes permit applications submitted simultaneously under Part III of this regulation.

PART ~~IV~~ *V*.
WHEN OBJECTIONS FILED: HEARING: ISSUANCE OF PERMIT AFTER HEARING AND AGREEMENT ON LOCATION.

§ ~~4.1.~~ *§ 5.1.* If any objection or objections are filed by any person ~~having an interest in such land or adjacent lands~~ *notified under Part II of these regulations,* the chief shall notify the applicant for permit of the ~~character~~ *nature* of the objections and by whom made and fix a time and place for a hearing, not less than ~~10~~ *20* nor more than ~~40~~ *30* days after the original filing of the application for a permit to drill, at which hearing such objections will be considered, of which every person to whom notice was required to be sent shall be given at least ~~five~~ *10* days written notice. At such hearing *the chief shall consider any evidence presented by* the applicant, or any person filing objections *to the proposed location* ~~, and all other interested persons shall proceed to consider the location and objection thereto, and to agree upon the location either as made or so moved as to satisfy all objections and satisfy the Chief, and any change in the original location so agreed upon shall be indicated on the plat or map on file with the Chief~~ . *Within 30 days after the close of any hearing for objections to the proposed location of a vertical ventilation hole, the chief shall render a decision in writing and send notice of his decision by certified mail to all parties to the hearing. Such notice shall indicate the approved location of the hole or, if the chief for reasons of safety finds there is no suitable location for the hole,*

state his reasons for denying approval of the location. When a location is approved, ~~Whereupon~~ the chief shall issue to the applicant a drilling permit reciting the filing of an application for a permit to drill and a plat or map showing the proposed location of the hole and other required information, that ~~at~~ *after* a hearing duly held the location shown was ~~agreed upon and~~ approved, and that the applicant is authorized to drill at such location.

§ 5.2. If, however, an operator has elected to make simultaneous applications for permits under Part III of these regulations, and vertical ventilation of methane is not the initial use of the drilled hole described in the operator's plans, then the chief shall postpone issuance of a permit for the vertical ventilation hole until after he has received the Notice of Commencement of Activity required under Part III.

PART ~~V~~ *VI* .
FIXING LOCATION OF HOLE PENETRATING WORKABLE COAL ~~BED~~ SEAM.

§ ~~5.1.~~ *§ 6.1.* If the requested location is such that the mine ventilation hole would penetrate a workable coal ~~bed~~ *seam* , then the chief shall fix the location on such tract of land as near to the requested location as possible in a pillar of suitable size, through which the ventilation hole can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal. Should no such pillar exist, the ventilation hole may be located and drilled through open workings where, in the judgment of the chief, it is practicable and safe to do so, taking into consideration the dangers from creeps, squeezes and other disturbances. ~~The chief shall be governed by the information contained in Attachments (1) and (2) in making his decision as to the location of the proposed vertical mine ventilation hole.~~

PART ~~VI~~ *VII* .
RECORDS TO BE KEPT BY CHIEF.

§ ~~6.1.~~ *§ 7.1.* The chief shall number, index and keep as a permanent record each application, plat or map and notice filed with him and shall record the name of the applicant, names of the persons notified and their addresses, the date of receipt of any such application, plat or map and all objections filed, dates of hearings and all actions taken by the chief and permits issued or refused, which records shall be open to inspection by the public.

PART ~~VII~~ *VIII* .
REVIEW OF ACTION OF CHIEF.

§ ~~7.1.~~ *§ 8.1.* Any person aggrieved by any action of the chief in fixing or approving any location for the drilling of a vertical mine ventilation hole, or by the issuance of or refusal to issue any drilling permit, shall have the right to apply to the circuit court of the county wherein the location lies for review of the chief's decision.

~~PART VIII.~~

~~HOW A MINE VENTILATION HOLE PENETRATING WORKABLE COAL BED TO BE DRILLED AND CASED.~~

~~A mine ventilation hole penetrating one or more workable coal beds shall be drilled to such depth, and of such size, as will permit the placing of casing and packers in the hole at such points and in such manner as will exclude all fresh or salt water, oil, gas or gas pressure from the coal bed, except such as may be found in the coal bed itself.~~

~~§ 8.1. For mine ventilation holes drilled on the valley floor, for protection of fresh water supplies the necessary amount of surface casing (normally 9 5/8 inch O.D.) shall be set and cemented back to surface. When the hole has been reduced and completed, the production casing string (normally 7 inch O.D.) shall be cemented from the packer collar above the slotted casing at the bottom back to the surface. (See figure 1)~~

~~§ 8.2. For mine ventilation holes which penetrate virgin coal or barrier, a large enough hole shall be drilled to a depth of 50 feet below the seal bed to allow placement of a liner (normally 9 5/8 inch O.D.) athrough the coal and then the hole may be reduced and completed. The liner may be welded to the production casing string and these shall be cemented from the packer collar above the slotted casing back to the surface. (See Figure 2)~~

~~§ 8.3. For mine ventilation holoes which penetrate a mined out area in an active mine, a large enough hole shall be drille3d to a depth of 50 feet below the coal bed to allow placement of a lianer through the bed, and then the hole may be reduced and completed. The liner may be welded to the production casing string and a cement basket placed directly above the loiner. The casing shll be cemented from the packer collar above the slotted casing or the bottom of the production string back up the the mined out area and from the cement basket to the surface. (see Figure 3)~~

~~§ 8.4. For mine ventilation holes which penetrate a mined out area in an abandoned mine, the large hole shall be drilled to a depth of 50 feet below the coal bed and then the hole may be reduced and completed. The liner will not be required through the mined out area. The production casing string shall be set and cemented in from the packer collar above the slotted casing at the bottom back up to the mained out area and from the cement basket above the mined out area to the surface. (See Figure 4)~~

PART IX.
CASING REQUIREMENTS FOR VERTICAL VENTILATION HOLES.

§ 9.1. Each application for a vertical ventilation hole permit shall contain a plan for casing the hole. Each such casing plan shall provide the following information:

1. The depth, type and size of the casing extending from the surface to 300 feet below the surface, or from the surface to 50 feet below the lowest groundwater supply source, whichever is deeper;

2. The depth, type and size of the coal-protection string, including an indication of whether the coal-protection string also will be used to protect freshwater-bearing strata located above the lowest coal seam penetrated;

3. The proposed method of completion, whether cased hole, open hole or cased/open hole;

4. The names and locations of coal seams to be left uncased;

5. The names and locations of coal seams to be protected by the coal-protection string;

6. When a vertical ventilation hole is drilled through a mined-out coal seam, the nature of the protection that will be provided to prevent the escape of gases from the vertical ventilation hole into the mined-out coal seam.

§ 9.2. The water-protection and coal-protection strings both shall be cemented back to the surface. The water-protection string, coal-protection string and cement used in both of these casings shall be designed to withstand 300 psig surface pressure. The casing cement must be allowed to set for at least 12 hours prior to drilling from under the casing, unless the chief gives prior approval for a shorter period of time.

§ 9.3. Within 30 days after the date that casing is completed on a vertical ventilation hole, the operator of the hole shall file with the chief a diagram indicating the nature of the casing actually installed in the hole. The diagram shall indicate the depth, type and size of the casing; the names and locations of mineable coal seams encountered; and the surface location of the hole indicated on an accurate plat or map meeting the specifications prescribed in Part II of these regulations.

§ 9.4. When an operator intends to convert a vertical ventilation hole drilled after July 1, 1991, to a coalbed methane well or gob well, the casing must be installed according the requirements set forth for such wells under Chapter 22.1 of Title 45.1 of the Code of Virginia.

PART ~~IX~~ *X* .
MINE VENTILATION HOLE PENETRATING MINE OTHER THAN COAL MINE.

§ ~~9.1.~~ *§ 10.1.* In the event that a permit is requested to drill a mine ventilation hole in such a location that it would penetrate any active or abandoned mine other than a coal mine, the chief may by regulation establish the safety precautions to be followed by the ventilation hole operator, which shall conform to standard safety measures generally followed in the industry in such cases.

PART ~~X~~ *XI* .
DEVIATION TESTS.

§ ~~10.1.~~ *§ 11.1.* All mine ventilation holes shall be drilled with due diligence to maintain a reasonably vertical hole bore. *When a vertical ventilation hole passes through a workable coal seam, upon completion of the hole the operator shall run a directional survey* ~~Upon completion of each mine ventilation hole, a directional survey shall be run~~ to determine the exact location of the hole bore at total depth and at the points where the hole passes through all workable coal ~~beds~~ *seams* .

§ ~~10.2.~~ *§ 11.2.* A hole may be intentionally deviated from the vertical only after written permission has been granted by the chief or an authorized agent thereof, and provided further, that such permission shall not be granted without due notice and hearing, if such is required in the opinion of the chief.

§ ~~10.3.~~ *§ 11.3.* A copy of ~~the~~ *any* directional survey *required* for ~~each~~ *a* mine ventilation hole shall be filed with the chief within 30 days after completion of the hole. All mining operations affected by the ventilation hole shall be furnished a copy of the directional survey and its interpretation.

§ ~~10.4.~~ *§ 11.4.* The chief shall have the right to require the operator to make a directional survey of any hole, at any time prior to the completion of the hole at the expense of the operator, in order to ascertain that the hole has not deviated from a reasonably vertical direction.

PART ~~XI~~ *XII* .
MINING OPERATIONS NEAR ~~MINE~~ VERTICAL VENTILATION HOLES AND GAS OR OIL WELLS.

§ ~~11.1.~~ *§ 12.1.* Before removing any coal or other mineral, or extending any mine workings or mining operations within 500 feet of any *permitted vertical* ~~mine~~ ventilation hole *or any vertical ventilation projected in a permit* , the operator of such mine shall give notice by ~~registered~~ *certified* mail to the ventilation hole operator and to the chief and forward therewith an accurate map or maps on a scale, to be stated thereon, of ~~100 to~~ 400 feet to the inch showing its mine workings and projected mine workings beneath such tract of land or within 500 feet of such ventilation hole. Following the giving of such notice and the furnishing of such map or maps, the mine operator may proceed with mining operations as projected on such map or maps, but shall not remove any coal or other mineral or conduct any mining operations nearer than 200 feet *as determined by survey* to any ~~completed~~ *permitted* hole ~~or hole that is being drilled, or for the purpose of which drilling a derrick is being constructed~~ *or hole projected in a permit* , without the consent of the chief. *This provision shall not apply to mining operations in the seam which the mine ventilation hole is intended to ventilate unless the casing extends through that seam.*

§ 12.2. Before removing any coal or other mineral, or extending any mine workings or mining operations within 500 feet of any permitted gas or oil well, or gas or oil well being drilled, the operator of such mine shall give notice by certified mail to the well operator, the gas and oil inspector and the chief, and shall forward therewith an accurate map or maps on a scale, to be stated thereon, of 400 feet to the inch showing its mine workings and projected mine workings beneath such tract of land or within 500 feet of such gas or oil well. Following the giving of such notice and the furnishing of such map or maps, the mine operator may proceed with mining operations as projected on such map or maps, but shall not remove any coal or other mineral or conduct any mining operations nearer than 200 feet as determined by survey to any permitted well or well that is being drilled without the consent of the chief.

~~§ 11.2.~~ *§ 12.3.* Application may be made at any time to the chief by the mine operator for leave to conduct mining operations within 200 feet of any ~~such~~ *permitted mine ventilation* hole or ~~projected~~ hole *projected in a permit* on forms furnished by the chief and containing such information as the chief may require. Such application shall be accompanied by a map or maps as above specified showing all mining operations or workings projected within 200 feet of the hole or projected hole. Notice of such application shall be sent by ~~registered~~ *certified* mail to the mine operator whose ventilation hole may be affected. *The notice shall inform the ventilation hole operator of the right to object to the proposed mining activity. Such objections must be filed with the chief within 15 days after notice is received by the objecting person.* The chief may, prior to considering the application, make or cause to be made any inspections or surveys which he deems necessary, and may, if no objection is filed by the ventilation hole operator *within 15 days after notice is received* , grant the request of the mine operator to conduct the mining operations as projected, or with such modifications as he may deem necessary. If the ventilation hole operator files objections, a hearing will be held under the same procedures as set forth in Part ~~IV~~ *V* . ~~The chief shall be governed by the information contained in Attachments (1) and (2) in making his decision as to the location of the proposed mine ventilation hole.~~ *If the applicant for a permit to mine within 200 feet of a ventilation hole or projected hole submits proof in writing that the ventilation hole operator does not object to the projected mining activity within 200 feet of the hole, then the chief may waive the notice requirement under this section and grant the request of the mine operator to conduct the projected mining activity, provided all other conditions have been met.*

§ 12.4. Application may be made at any time to the chief by the mine operator for leave to conduct mining operations within 200 feet of any permitted gas or oil well or gas or oil well being drilled on forms furnished by the chief and containing such information as the chief may require. Such application shall be accompanied by a map or maps as above specified showing all mining operations or workings projected within 200 feet of the well. Notice of such application shall be sent by certified mail to the well operator and the gas and oil inspector. The notice shall inform the ventilation hole operator of the right to object to the proposed mining activity. Such objections must be filed with the chief within 15 days after notice is received by the objecting person. The chief may, prior to considering the application, make or cause to be made any inspections or surveys which he deems necessary, and may, if no objection is filed by the well operator or the gas and oil inspector within 15 days after the notice is received, grant the request of the mine operator to conduct the mining operations as projected, or with such modifications as he may deem necessary. If the well operator or gas and oil inspector files objections, a hearing will be held under the same procedures as set forth in Part V. If the applicant for a permit to mine within 200 feet of a gas or oil well submits proof in writing that none of the persons required to be notified under this section has any objection to the projected mining activity, then the chief may waive the notice requirement under this section and grant the request of the mine operator to conduct the projected mining activity, provided all other conditions have been met.

§ 12.5. When mining within 200 feet of a vertical ventilation hole, or within 200 feet of a gas or oil well, the mine operator shall submit a plan showing projected pillars of coal to be left unmined around each hole or well. Such pillars shall be situated so that each hole or well is centered within a pillar, and each pillar should conform to the following specifications based on the depth of cover above the are being mined. The excavated areas adjacent to any pillar may not exceed 20 feet in width without prior approval from the chief. In no circumstances may the narrowest pillar dimension be less than twice the width of the excavated area.

Cover	Req'd Solid Pillar Area	Req'd Additional Pillar Area (Solid or Split)	Total Area Bearing Surface Required
0-149 ft.	3,600 sq. ft.	-	3.600 sq. ft.
150-249 ft.	5,625 sq. ft.	-	5,625 sq. ft.
250-349 ft.	10,000 sq. ft.	-	10,000 sq. ft.
350-449 ft.	10,000 sq. ft.	5,600 sq. ft.	15,600 sq. ft.
450-549 ft	10,000 sq. ft.	13,000 sq. ft.	23,000 sq. ft.
550-649 ft.	10,000 sq. ft.	22,000 sq. ft.	32,000 sq. ft.
650 or more ft.	10,000 sq. ft.	30,000 sq. ft.	40,000 sq. ft.

§ 12.6. When a mine operator plans to mine in a seam located below a seam that is being vented by a vertical ventilation hole or produced by a coalbed methane well or gob well, such operator shall give notice by certified mail to the chief, the hole or well operator, and the gas and oil inspector. Such notice shall be accompanied by a map or maps showing all mining projections under the hole or well. The notice shall inform the hole or well operator and the gas and oil inspector of the right to object to the proposed mining activity. Such objections must be filed

with the chief within 15 days after notice is received. If the operator of the hole or well, or the gas and oil inspector, objects to such mining, then a hearing will be held according to the procedures set forth in Part V of these regulations. If the applicant for a permit to mine in a seam located below a seam that is being so vented or produced submits proof in writing that none of the persons required to be notified under this section has any objection to the projected mining activity, then the chief may waive the notice requirement under this section and grant the request of the mine operator to conduct the project mining activity, provided all other conditions have been met.

§ 12.7. Application may be made at any time to the chief by the mine operator for leave to mine through a plugged vertical ventilation hole or plugged gas or oil well on forms furnished by the chief and containing such information as the chief may require. Such application shall be accompanied by a map or maps as above specified showing all mining operations or workings projected through the area of the hole or well. Notice of such application shall be sent by certified mail to the hole or well operator and, in the case of mining through a well, to the gas and oil inspector. The notice shall inform the hole or well operator and the gas and oil inspector of the right to object to the proposed mining activity. Such objections must be filed with the chief within 15 days after notice is received. The application also shall contain information necessary to establish that (i) the hole or well has been adequately plugged for the purpose of safely mining through, and (ii) no oil, gas or fluids can migrate into the mine workings. The chief may, prior to considering the application, make or cause to be made any inspections or surveys which he deems necessary, and may, if no objection is filed by the well operator or the gas and oil inspector within 15 days after notice is received, grant the request of the mine operator to conduct the mining operations as projected, or with such modifications as he may deem necessary. If the well operator or gas and oil inspector files objections, a hearing will be held under the same procedures as set forth in Part V. If the applicant for a permit to mine through a ventilation hole or gas or oil well submits proof in writing that none of the persons required to be notified under this section has any objection to the projected mining activity, then the chief may waive the notice requirement under this section and grant the request of the mine operator to conduct the project mining activity, provided all other conditions have been met.

PART ~~XII~~ *XIII* .
NOTIFICATION OF INTERESTED PERSONS.

~~§12.1~~ *§ 13.1.* When an application to drill a vertical mine ventilation hole has been made and all interested persons notified as required in Part II, all such interested persons who are owners, lessees, or operators of any coal seams which are located above the seam from which methane gas is to be removed shall furnish information to the Division of Mines regarding the elevations and thicknesses of these seams, if known, so that a decision can be made by the chief prior to the drilling of the hole as to which seams will require protection by use of a liner as described in Part ~~VIII~~ *IX* .

PART ~~XIII~~ *XIX* .
PROCEDURE FOR ABANDONMENT.

§ ~~13.1.~~ *§ 14.1.* When it is determined by the chief that a vertical mine ventilation hole is no longer useful for venting methane gas from a gob area or relieving gas pressure from an abandoned area of a mine, and for any other useful and safe purpose as approved by the chief, such holes shall be plugged and abandoned according to methods and procedures which shall be approved by the chief.

~~ATTACHMENT NO. 1~~
~~SPECIFICATIONS FOR PILLAR PLANS AROUND~~
~~VERTICAL MINE VENTILATION HOLES~~

~~1. The pillar or pillars comprising the required pillar plan should be the~~ form of a square.
2. The hole should be centrally located within the required pillar plan.
3. The required pillar plan should conform to the following specifications, wherein the greatest depth of cover shall be used in each range to determine the total bearing area.

Cover	Req'd Solid Pillar Area	Req'd Additional Pillar Area (Solid or Split)	Total Area Bearing Surface Required
0- 99 ft.	1,600 sq. ft.	-	1,600 sq. ft.
100-149 ft.	3,600 sq. ft.	-	3,600 sq. ft.
150-249 ft.	5,625 sq. ft.	-	5,625 sq. ft.
250-349 ft.	10,000 sq. ft.	-	10,000 sq. ft.
350-449 ft.	10,000 sq. ft.	5,600 sq. ft.	15,600 sq. ft.
450-549 ft.	10,000 sq. ft.	13,000 sq. ft.	23,000 sq. ft.
550-649 ft.	10,000 sq. ft.	22,000 sq. ft.	32,000 sq. ft.
650- ft. (plus)	10,000 sq. ft.	30,000 sq. ft.	40,000 sq. ft.

Note 1. 40,000 square feet is the maximum bearing area except under unusual conditions.

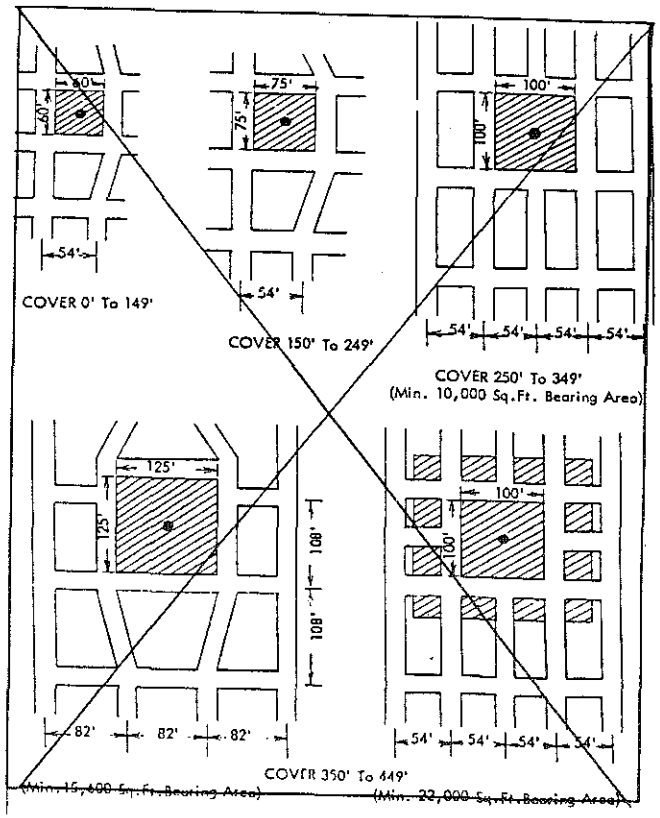
Note 2. As to the additional pillar area required, the following specifications must be adhered to:

a. The excavated area shall not exceed 15 feet in width, or a width wide enough to accommodate the type of equipment being used in the mine together with the law requirements on clearance. If more than 18 feet in width is required, then additional pillar support shall be provided.

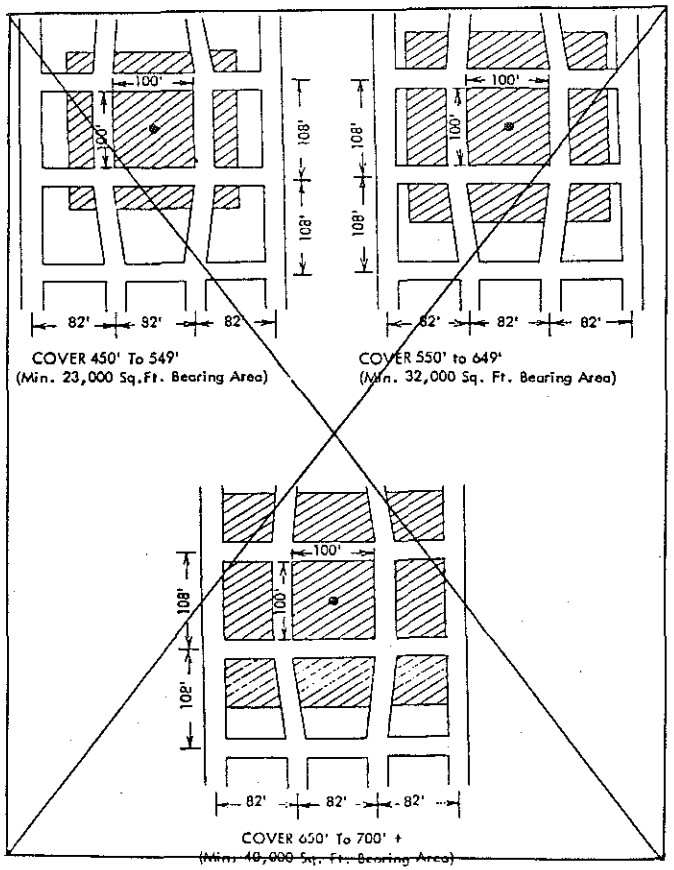
b. The shortest pillar dimension shall not be less than twice the width of the excavated area.

Note 3. The split pillar plan is intended to facilitate mining operations, haulage, ventilation, drainage, etc., without destroying the value of the pillar plan.

~~VERTICAL MINE VENTILATION HOLES~~
~~EXAMPLES OF PILLAR PLANS FOR VARIOUS DEPTHS OF COVER~~
~~ATTACHMENT NO. 2 (PAGE 1)~~

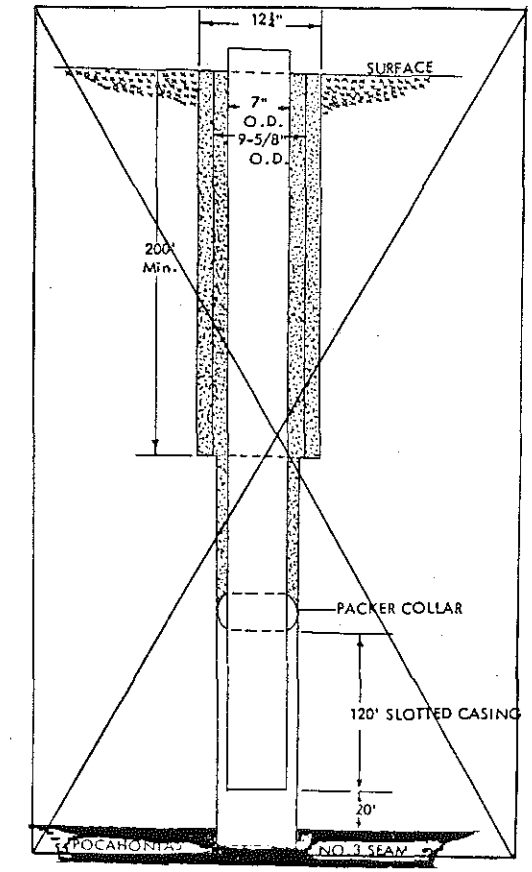


~~ATTACHMENT NO. 2 (PAGE 2)~~



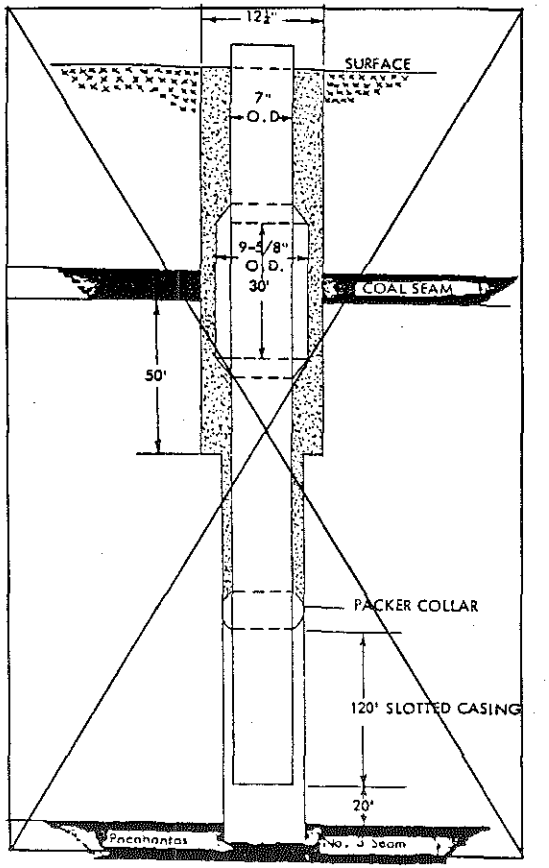
~~FIGURE NO. 1~~

~~VERTICAL MINE VENTILATION HOLE CASING PROGRAM - VALLEY FLOOR~~



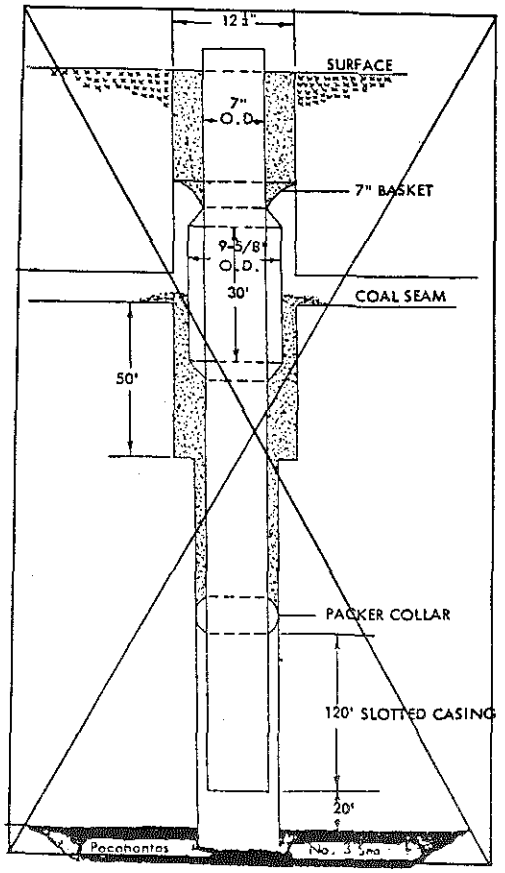
~~FIGURE NO. 2~~

~~VERTICAL MINE VENTILATION HOLE CASING PROGRAM - SOLID COAL SEAM PENETRATED~~

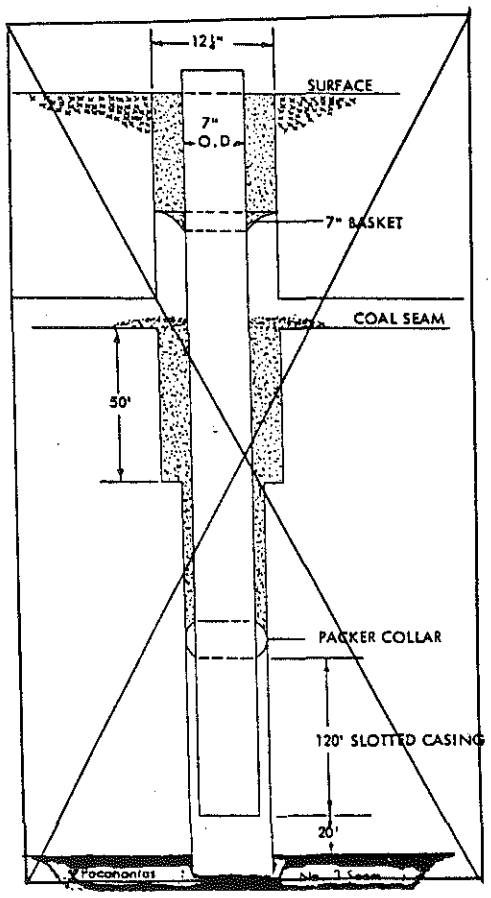


~~FIGURE NO. 2. VERTICAL MINE VENTILATION HOLE CASING PROGRAM~~

~~MINED AREA PENETRATED - ACTIVE MINE~~



~~FIGURE NO. 1, VERTICAL MINE VENTILATION HOLE CASING PROGRAM~~
~~MINED AREA PENETRATED ABANDONED MINE~~



COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MINES, MINERALS AND ENERGY
DIVISION OF MINES
BIG STONE GAP, VIRGINIA, 24219
703-523-8100

NOTICE AND APPLICATION FOR A PERMIT TO DRILL VERTICAL VENTILATION HOLE

One copy of this form and one copy of a plat or map on a scale of 400 feet to the inch, and showing information required by REGULATIONS GOVERNING VERTICAL VENTILATION HOLES AND MINING NEAR GAS AND OIL WELLS (480-05-96), must be submitted to the Division of Mines prior to obtaining a permit to drill. Copies of the application must be sent by certified mail to all persons identified below in accordance with Part II of the regulations.

TO: Division of Mines
219 Wood Avenue
Big Stone Gap, Virginia 24219

_____
Date

The undersigned hereby makes application for a permit to drill a vertical ventilation hole on the _____ property, comprising _____ acres in the _____ District of _____ County, Virginia, having the fee title therto, or as the case may be, under grant or lease dated _____, made by _____ to _____ and recorded on the _____ day of _____, 19____, in the office of the County Clerk for said County in Book _____ Page _____. The hole proposed in this application will be known as Hole No. _____ of _____(company, etc.). The proposed location of the hole, as shown on the attached plat or map, is approximately _____(feet/miles) _____ of _____. The proposed depth of the hole is approximately _____ feet. The proposed location of the hole is approximately _____ feet from the nearest property or lease line; approximately _____ feet from the nearest mine opening or quarry (strike words not applicable); and/or approximately _____ feet from the nearest permitted, abandoned or applied for (strike words not applicable) oil or gas (strike words not applicable) well.

A plat or map on a scale of 400 feet to the inch, showing the proposed location of the hole and other information required in REGULATIONS GOVERNING VERTICAL VENTILATION HOLES AND MINING NEAR GAS OR OIL WELLS, 480-05-96, is attached hereto. Copies of the plat or map and application have been sent to persons listed below (attach list if needed). In accordance with Part II of the regulations, any person so notified has the right to object to the proposed location of the vertical ventilation hole, provided the objecting person states the nature of the objection and files the objection with the Chief of the Division of Mines within 15 days from the receipt of this notice.

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

Signature of officer or certifying party: _____
Operator

_____ _____
Name Street Address

_____ _____
Title City or Town and State

Correspondence regarding this hole should be addressed to _____

_____

For Office Use Only

PERMIT APPROVAL

File _____ Date Received _____ Hole No. _____

Date Approved _____ Date Denied _____

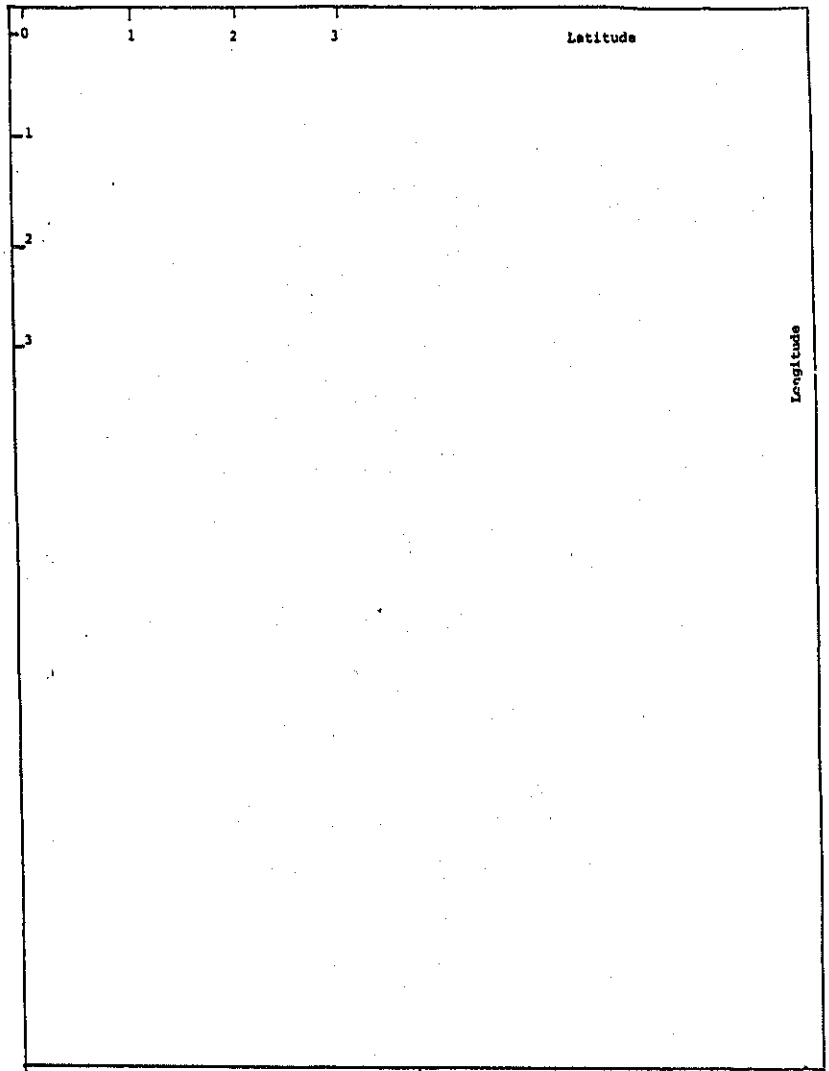
Reason for Denial _____

_____

_____

_____

_____
Chief



Company_____
Address_____
Property_____

Tract_____Acres_____Lease NO._____
VVH No._____
Elevation_____
Quadrangle_____

County_____District_____
Engineer_____
Engineer's Registration No._____
File_____
Date_____
Scale_____
Longitude_____
Latitude_____

DM-VVH-2
Rev. 7/91

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MINES, MINERALS AND ENERGY
Division of Mines

VERTICAL VENTILATION HOLE
LOCATION MAP

+ Denotes location of VVH on United States topographic maps, scale 1 to 24,000 latitude and longitude lines being represented by border lines as shown.

-Denotes one inch spaces on border line of original tracing.

API Number: _____

Well or Hole: _____

Mine Name: _____

Date: _____

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MINES, MINERALS AND ENERGY
DIVISION OF MINES
219 WOOD AVENUE
BIG STONE GAP, VA 24219
703-523-8100

NOTICE AND PETITION
TO MINE WITHIN 200 FEET OF OR THROUGH A GAS OR OIL WELL
OR VERTICAL VENTILATION HOLE

One copy of this form and one copy of a plat or map on a scale of 400 feet to the inch, and showing information required by REGULATIONS GOVERNING VERTICAL VENTILATION HOLES AND MINING NEAR GAS OR OIL WELLS (480-05-96), shall be submitted to the Division of Mines prior to obtaining a permit to conduct the proposed mining activity. Copies of this petition must be sent by certified mail to persons identified below in accordance with Part XII of the regulations.

TO: Division of Mines _____
Date

The undersigned hereby makes application for a permit to:

_____ Extend mine workings to within 200 feet of the referenced well or vertical ventilation hole; or

_____ Mine through the referenced well or vertical ventilation hole which has been plugged.

Attached are maps, plat and plans showing 1) the location of the well or vertical ventilation hole; 2) mine workings located within 500 feet of the well or vertical ventilation hole as it passes through the coal seam or seams involved; and 3) the projected mining operations within 200 feet of the well or vertical ventilation hole, or through the well or vertical ventilation hole. The maps, plats and plans have been certified by a licensed professional engineer or licensed land surveyor.

If the well or vertical ventilation hole will not be mined through, then attached are pillar plans prepared in accordance with Part XII of the REGULATIONS GOVERNING VERTICAL VENTILATION HOLES AND MINING NEAR GAS OR OIL WELLS (480-05-96), indicating details of the pillar to be left intact for the protection of the hole and the mine, and noting any unusual conditions that exist.

If the well or vertical ventilation hole will be mined through, then attached is information necessary to establish that the subject well or hole has been adequately plugged for the purpose of mining through, and that no gas, oil or fluids are able to migrate into the workings of the mine.

The undersigned requests approval by the Chief of the Division of Mines of this petition and avows that copies of the petition and all attachments have been sent by certified mail to the Virginia Gas and Oil Inspector at his official address and to the operator of the subject well or vertical ventilation hole, as indicated below:

Well or Hole Operator _____

Address _____

_____

In accordance with Section 45.1-92.1 of the Code of Virginia, and Part XII of the REGULATIONS GOVERNING VERTICAL VENTILATION HOLES AND MINING NEAR GAS OR OIL WELLS, 480-05-96, the Gas and Oil Inspector and the well or hole operator may file objections to the mining activity proposed in this petition. Such objections must be filed with the Chief of the Division of Mines within 15 days from the receipt of notice.

Submitted by: Mine Operator _____

Address _____

_____ Telephone _____

_____ _____
Signature Title

For Office Use Only

PERMIT APPROVAL

Date Approved _____ Date Denied _____

Reason for Denial _____

_____

_____

_____

_____
Chief

API Number: _____
Well or Hole: _____
Mine Name: _____
Date: _____

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MINES, MINERALS AND ENERGY
DIVISION OF MINES
219 WOOD AVENUE
BIG STONE GAP, VA 24219
703-523-8100

NOTICE OF MINING WITHIN 500 FEET OF A GAS OR OIL WELL
OR VERTICAL VENTILATION HOLE

Take notice that pursuant to Section 45.1-92.1 of the Code of Virginia, the undersigned mine operator proposes to extend mine workings to within 500 feet of the referenced well or vertical ventilation hole either permitted or projected under an approve permit, located in the _____ District, City/County, Virginia. Attached are maps, plats and plans sufficient to show the undersigned's mine workings and projected mine workings beneath the tract where the well or hole is located and within 500 feet of the well or hole.

The undersigned hereby avows to the Chief that copies of this notice and attachments have been sent by certified mail to the Virginia Gas and Oil Inspector at his official address and to the operator of the subject well or hole, as indicated below:

Well or Hole Operator _____

Address _____

_____

Submitted by: Mine Operator _____

Address _____

_____ Telephone _____

_____ _____
Signature Title

DM-VVH-4
Rev. 7/91

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.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Regulation: **VR 320-01-03. Regulations for Preneed Funeral Planning.**

Statutory Authority: §§ 54.1-2400 and 54.1-2803(10) of the Code of Virginia.

Effective Date: March 1, 1991.

Summary:

The regulations establish requirements for the sale of preneed funeral arrangements, funerals, contracts, and investment of consideration paid.

VR 320-01-03. Regulations for Preneed Funeral Planning.

PART I.
GENERAL INFORMATION.

§ 1.1. Definitions.

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

"At need" means at the time of death or while death is imminent.

"Board" means the Board of Funeral Directors and Embalmers.

"Capper" means a person who serves as a lure or decoy to entice another to purchase a product. A shill.

"Cash advance item" means any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the behalf of the contract buyer. Cash advance items may include, but are not limited to, the following items: cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities, and death certificates.

"Consideration" means money, property, or any other thing of value provided to be compensation to a contract seller or contract provider for the funeral services and funeral goods to be performed or furnished under a preneed funeral contract. Consideration does not include [~~finance charges,~~] late payment penalties, [and] payments required to be made to a governmental agency at the time the contract is entered into [; ~~and income earned on the funds~~] .

"Contract" means a written, preneed funeral contract and all documents pertinent to the terms of the contract under which, for consideration paid to a contract seller or a contract provider by or on behalf of a contract buyer prior to the death of the contract beneficiary, a person promises to furnish, make available, or provide funeral services or funeral goods after the death of a contract beneficiary.

"Contract beneficiary" means the individual for whom the funeral services and supplies are being arranged.

"Contract buyer" means the purchaser of the preneed contract.

"Contract provider" means the funeral establishment designated by the contract buyer and contracting with the contract buyer to provide for funeral services and supplies in the preneed funeral contract.

"Contract seller" means the funeral service licensee who makes the preneed arrangements with the contract buyer for the funeral service and who makes the financial arrangements for the service and the goods and supplies to be provided.

"Contract price" means the same as consideration.

"Department" means the Department of Health Professions.

"Designee" means the individual selected by the contract beneficiary to arrange a preneed funeral plan on behalf of the contract beneficiary.

"Executive director" means the administrator of the Board of Funeral Directors and Embalmers.

"Funding source" means the trust agreement, insurance policy, annuity, personal property, or real estate used to fund the preneed plan.

"Funds" means the same as "consideration."

"Funeral supplies and services" means the items of merchandise sold or offered for sale or lease to consumers which will be used in connection with a funeral or an alternative to a funeral or final disposition of human remains including caskets, combination units, and

catafalques. Funeral goods does not mean land or interests in land, crypts, lawn crypts, mausoleum crypts, or niches that are sold by a cemetery which complies with § 57-35.11 et seq. of the Code of Virginia. In addition, "funeral supplies and services" does not mean cemetery burial vaults or other outside containers, markers, monuments, urns, and merchandise items used for the purpose of memorializing a decedent and placed on or in proximity to a place of interment or entombment of a casket, catafalque, or vault or to a place of inurnment which are sold by a cemetery operating in accordance with § 57-35.11 et seq. of the Code of Virginia.

"Funeral service establishment" means any main establishment, branch, or chapel where any part of the profession of funeral directing or the act of embalming is performed.

"General advertising" means advertisement directed to a mass market including, but not limited to, direct mailings; advertisements in magazines, flyers, trade journals, newspapers; advertisements on television and radio; bulk mailings; and direct mailing to a mass population.

"Guaranteed contract price" means [(i)] the amount paid by the contract buyer [on a preneed funeral contract] , and income derived from that amount, [~~on a preneed funeral contract~~ or (ii) the amount paid by a contract buyer for a life insurance policy or annuity as the funding source and its increasing death benefit. These amounts shall be accepted as payment in full] for [~~specified~~ the preselected] funeral goods and services [~~selected~~] .

"Income" means the amount of gain received in a period of time from investment of consideration paid for a preneed contract.

"In-person communication" means face-to-face communication and telephonic communication.

"Nonguaranteed contract price" means the costs of items on a preneed funeral contract that are not fixed for the specified funeral goods or funeral services selected and nonguaranteed costs may increase from the date of the contract to the death of the contract beneficiary and the family or estate will be responsible for paying at the time of need for the services and supplies that were nonguaranteed. Cash advance items are not guaranteed.

"Preneed" means at any time other than at-need.

"Preneed funeral contract" means any agreement where payment is made by the contract buyer prior to the receipt of services or supplies contracted for, which evidences arrangements prior to death for: (i) the providing of funeral services or (ii) the sale of funeral supplies.

"Preneed funeral planning" means the making of arrangements prior to death for: (i) the providing of funeral services or (ii) the sale of funeral supplies.

"Solicitation" means initiating contact with consumers with the intent of influencing their selection of a funeral plan or a funeral service provider.

"Steerer" means an individual used to direct the course of action and choice of the buyer in a preneed funeral contract sale.

§ 1.2. Legal base.

The following legal base describes the responsibility of the Board of Funeral Directors and Embalmers to promulgate regulations governing preneed funeral planning and plans in the Commonwealth of Virginia:

Title 54.1, Chapter 28, Article 1, 54.1-2803 and Article 5, § 54.1-2820 et seq. of the Code of Virginia.

§ 1.3. Purpose.

These regulations establish the standards to regulate preneed funeral contracts and preneed funeral trust accounts as prescribed in Chapter 28 of Title 54.1 of the Code of Virginia.

§ 1.4. Applicability.

Subject to these regulations are (i) funeral service licensees, (ii) funeral establishments, and (iii) resident trainees assisting the licensee in the preneed arrangement. All of the above shall be operating in the Commonwealth of Virginia [in order to qualify to sell preneed] .

Exemptions: These regulations do not apply to the preneed sale of cemetery services or supplies regulated under Article 3.2, Chapter 3, Title 57, § 57-35.11 et seq., of the Code of Virginia.

PART II.
SALE OF PRENEED PLANS.

§ 2.1. Qualifications of seller.

A. A person shall not engage in or hold himself out as engaging in the business of preneed funeral planning unless he is licensed for funeral service by the Board of Funeral Directors and Embalmers.

B. All individuals selling preneed funeral plans shall comply also with the Rules and Regulations for Funeral Directors and Embalmers promulgated by the board.

§ 2.2. Solicitation.

A. A licensee shall not initiate any preneed solicitation using in-person communication by the licensee, his agents, assistants, or employees.

Exception: General advertising and solicitation other than in-person communication is acceptable.

B. After a request to discuss preneed planning is initiated by the contract buyer or interested consumer, any contact and in-person communication shall take place only with a funeral service licensee.

C. A licensee shall not employ persons known as "cappers" or "steerers," or "solicitors," or other such persons to participate in preneed sales.

D. A licensee shall not employ directly or indirectly any agent, employee, or other person, part or full time, or on a commission, for the purpose of calling upon individuals to influence, secure, or otherwise promote preneed sales.

E. Direct or indirect payment or offer of payment of a commission to others by the licensee, his agents, or employees for the purpose of securing preneed sales is prohibited.

F. No licensee engaged in the business of preneed funeral planning or any of his agents shall accept, advertise, or offer enticements, bonuses, rebates, discounts, restrictions to, or otherwise interfere with the freedom of choice of the general public in making preneed funeral plans.

PART III.
OPERATIONAL RESPONSIBILITIES.

§ 3.1. Records: general.

A. A licensee shall keep accurate accounts, books, and records of all transactions required by these regulations.

B. Preneed contracts shall be retained on the premises of the establishment for three years after the death of the contract beneficiary.

C. Required preneed reporting documents shall be retained on the premises of the establishment for three years. (See §§ 3.2A and 6.1D)

D. All preneed records shall be available for inspection by the department.

§ 3.2. Record reporting.

A. A contract provider shall keep a chronological listing of all preneed contracts. The listing shall include the following:

1. Name of contract buyer;

2. Date of contract;

3. How contract was funded;

4. Whether up to 10% of funds are retained by the contract provider for contracts funded through trust; and

5. Whether funeral goods and supplies are stored for the contract buyer.

B. A contract provider who discontinues its business operations shall notify the board and each existing contract buyer in writing.

PART IV.
CONTRACT.

§ 4.1. Content and format.

A. A person residing or doing business within the Commonwealth shall not make, either directly or indirectly by any means, a preneed contract unless the contract:

1. Is made on forms prescribed by the board (see Appendix I); or

2. Is made on forms approved by the board prior to use (see subsection B of this section).

B. Prior to use, contracts or disclosures which are not identical in format, wording, and content to that prescribed in Appendices I and II shall be approved by the board.

C. Contracts and disclosure forms prescribed in Appendices I and II shall be received in the board office no later than 10 days prior to a regularly scheduled meeting of the board to be considered for approval by the board at that meeting.

D. All preneed contracts shall be in writing.

E. All information on a preneed contract and disclosure statement shall be printed in a clear and easy-to-read type, style, and in a type size not smaller than 10 points.

F. Preneed contracts and disclosure statements shall be written in clear, understandable language.

G. The contract shall identify the following:

1. The contract seller;

2. Funeral license number of the contract seller;

3. The contract buyer;

4. The contract beneficiary;

5. The date of the contract;

6. The contract number;

7. A complete description of the supplies or services purchased;

8. Whether the price of the supplies and services purchased is guaranteed;

9. Whether the price of the supplies and services purchased is not guaranteed;

10. Any penalties or restrictions:

a. Geographic restrictions including maximum number of miles traveled without charging an extra fee;

b. Geographic restrictions including maximum number of miles the establishment is willing to travel;

c. The inability of the provider to perform the request of the buyer on merchandise, services, or prearrangement guarantees;

11. All disclosure requirements imposed by the board (see Appendix II); and

12. The designee agreement when applicable.

H. The contract or the disclosure statement as a part of the contract shall contain the name, address, and telephone number of the board and list the board as the regulatory agency which handles consumer complaints.

I. All preneed contracts shall be signed by the contract seller and the contract buyer.

PART V.
FUNDING.

Article 1.
General.

[§ 5.1. A licensee shall not charge finance charges on a preneed arrangement.]

[§ ~~5.1.~~ § 5.2.] Cancellation of contract.

Any person who makes payment under this contract may terminate the agreement at any time prior to the time for which the services or supplies are furnished.

A. Cancellation within 30 days of contract date.

If the contract buyer terminates the contract within 30 days of the execution of the contract, the contract buyer shall be refunded:

1. All consideration paid or delivered; and

2. Any interest or income accrued thereon.

B. Cancellation after 30 days of contract date.

If the purchaser uses a funding source other than an insurance or annuity policy and terminates the contract after 30 days of the execution of the contract, the contract buyer shall be refunded:

1. All consideration paid or delivered on nonguaranteed items;

2. At least 90% of all consideration paid for guaranteed items; and

3. All interest or income accrued thereon.

[§ ~~5.2.~~ § 5.3.] Escrow account.

Within two banking days after the day of receipt of any money from the contract buyer and until the time the money is invested in a trust, life insurance, or annuity policy, the contract seller or the contract provider shall deposit the money into an escrow account in a bank or savings institution approved to do business in the Commonwealth.

[§ ~~5.3.~~ § 5.4.] Real estate.

When the consideration consists in whole or in part of any real estate, the following shall occur:

1. The preneed contract shall be recorded as an attachment to the deed whereby the real estate is conveyed; and

2. The deed shall be recorded in the clerk's office in the circuit court of the city or county in which the real estate being conveyed is located.

[§ ~~5.4.~~ § 5.5.] Personal property.

When the consideration consists in whole or in part of any personal property, the following shall occur:

1. Personal property shall be transferred by:

a. Actual delivery of the personal property; or

b. Transfer of the title to the personal property.

2. Within 30 days of receiving the personal property or the title to the personal property, the licensee or person delivering the property shall:

a. Execute a written declaration of trust setting forth the terms, conditions, and considerations upon which the personal property is delivered; and

b. Record the trust agreement in the clerk's office of the circuit court of the locality in which the person delivering the property is living; or

c. Record the preneed contract in the clerk's office of the circuit court of the locality in which the person delivering the property or trust agreement is living provided that the terms, conditions, and considerations in § 5.4 2 a are included in the preneed contract.

[§ ~~5.5.~~ § 5.6.] Right to change contract provider.

The contract buyer shall have the right to change the contract provider and the trustee at any time prior to the furnishing of the services or supplies contracted for under the preneed contract.

[§ ~~5.6.~~ § 5.7.] Exemption from levy, garnishment or distress.

Any money, personal property, or real estate paid, delivered, or conveyed subject to §§ 54.1-2822 through 54.1-2823 shall be exempt from levy, garnishment, or distress.

Article 2.
Trust Accounts.

[§ ~~5.7.~~ § 5.8.] Trust accounts.

A. If funds are to be trusted, the following information shall be disclosed in writing to the contract buyer:

1. The amount to be trusted;

2. The name of the trustee;

3. The disposition of the interest;

4. The fees, expenses, and taxes which may be deducted from the interest;

5. Whether up to 10% is retained by the contract provider; and

6. A statement of the contract buyer's responsibility for taxes owed on the interest.

B. If the contract buyer chooses a trust account as the funding source, within 30 days following the date of the receipt of any money paid for a trust-funded preneed contract or interest or income accrued (see § 5.3), the licensee shall transfer the money from the escrow account and deposit the following amount in a trust account in a bank or saving institution doing business in Virginia:

1. Nonguaranteed prices. All consideration shall be deposited for a preneed funeral contract in which prices of supplies and services are not guaranteed.

2. Guaranteed prices. At least 90% of all consideration shall be deposited for a preneed contract in which the prices of goods and services are guaranteed.

C. The trust funds shall be deposited in separate, identifiable accounts setting forth:

1. Name of depositor;

2. Contract beneficiary;

3. Trustee for contract beneficiary; and

4. Name of establishment [~~who~~ which] will provide the goods and services.

Article 3.
Life Insurance or Annuity.

[§ ~~5.8.~~ § 5.9.] Life insurance or annuity.

If a life insurance or annuity policy is used to fund the preneed funeral contract, the following shall be disclosed in writing:

1. The fact that a life insurance policy or annuity contract is involved or is being used to fund the preneed contract;

2. The following information:

a. Name of the contract provider;

b. Name of contract seller;

c. Funeral license number of contract seller;

d. Place of employment of contract seller;

e. Name of insurance agent;

f. Identification as to whether [the] insurance agent is [a] funeral service licensee, [and] if so, license number;

g. Insurance agent's insurance license number;

h. Insurance agent's employer;

i. Insurance company represented by insurance agent.

3. The relationship of the life insurance policy or annuity contract to the funding of the preneed contract;

4. The nature and existence of any guarantees relating to the preneed contract from the policy or annuity;

5. The impact on the preneed contract of:

a. Any changes in the life insurance policy or annuity contract including changes in the assignment, contract provider, or use of the proceeds;

b. Any penalties to be incurred by the policy holder as a result of failure to make premium payments;

c. Any penalties to be incurred or moneys to be received as a result of cancellation or surrender of the life insurance policy or annuity contract; and

d. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy or annuity contract and the amount actually needed to fund the preneed contract.

PART VI.
BONDING.

§ 6.1. Bonding.

A. A performance bond shall be required on the following:

1. The contract provider which retains up to 10% of the consideration invested in a trust account; [~~and~~ or]

2. The retail price of funeral goods and supplies which are stored by the contract provider for the contract beneficiary prior to the death of the contract beneficiary.

B. The establishments described in subsection A of this section shall arrange for their own bonding [~~and shall contract with a performance bond company which is registered with the State Corporation Commission~~] .

C. The amount of bond required shall be based upon the risk of loss determined by the bonding company.

D. The following information concerning the bond shall be maintained at the funeral establishment: (See § 3.1 A, C and D)

1. Amount of the bond;

2. Company holding the bond;

3. Documentation that company holding the bond is [~~registered with the State Corporation Commission~~ duly authorized to issue such bond in the Commonwealth] ; and

4. Renewal requirements of the bond.

PART VII.
SUPPLIES AND SERVICES.

§ 7.1. General.

A. If the contract seller will not be responsible for furnishing the supplies and services to the contract buyer, the contract seller shall attach to the preneed funeral contract a copy of the contract seller's agreement with the contract provider.

B. If any funeral supplies are sold and delivered prior to the death of the contract beneficiary, and the contract seller, contract provider, or any legal entity in which [~~he~~ the contract provider] or a member of his family has an interest thereafter stores these supplies, the risk of loss or damage shall be upon the contract seller or contract provider during such period of storage.

C. If the particular supplies and services specified in the contract are unavailable at the time of delivery, the contract provider shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship.

D. The representative of the deceased shall have the right to choose the supplies or services to be substituted in subsection C of this section.

PART VIII.
DESIGNEE AGREEMENT.

§ 8.1. Designee.

A. A designee agreement shall be used only when the contract beneficiary is mentally alert and capable of appointing his own designee.

B. Any person may designate through the use of the designee agreement a designee who shall make arrangements for the contract beneficiary's burial or the disposition of his body for burial.

C. The designee agreement shall be:

1. In writing;

2. Accepted in writing by designee and the designee's signature [~~is~~] notarized; and

3. Attached to the preneed contract as a valid part of the contract.

APPENDIX I.

PRENEED FUNERAL CONTRACT PRESCRIBED BY THE BOARD.

PRENEED FUNERAL CONTRACT
for

(Name of Recipient of Services)

—(Zip) —

I. SUPPLIES AND SERVICES PURCHASED

The prices of goods and services below MAY BE GUARANTEED provided the total is paid in full and all interest earned is allowed to accumulate in your account. If any of the prices are guaranteed, no additional cost will incur for your family or estate even though the actual prices of goods and services may increase between the date of this contract and the time of need. (Please see the disclosure document).

Services Purchased

Minimum services of staff $.....

Optional staff services $.....

Basic facilities $.....

Facilities for viewing $.....

Facilities for ceremony $.....

Other facilities/equipment $.....

Embalming $.....

Other preparation of body $.....

Alternate care $.....

Transfer of remains $.....

Funeral coach $.....

Flower car $.....

Lead/service car $.....

Mileage @ $..... (Outside service area)

Other $.....

Sub-Total Cost of (Guaranteed) Services Purchased: $.....

Supplies Purchased

Casket (Describe) $.....

Outer burial container (Describe) $.....

Alternative container $.....

Cremation urn $.....

Shipping container $.....

Clothing $.....

Temporary marker $.....

Acknowledgment cards @ ..... $.....

Register/attendance books @ ..... $.....

Memorial folders @ ..... $.....

Other $.....

Sub-Total Cost of (Guaranteed) Supplies Purchased: $ .....

The actual prices of goods and services below are NOT GUARANTEED. These items may include, but not be limited to, obituary notices; death certificates; cemetery fees; flowers; sales tax; etc. The prices are estimated and the estimates will be included in the Grand Total Contract Price. The differences between the estimated prices below and the actual cost will be settled with your family or estate at the time of need:

..... $.....
..... $.....
..... $.....
..... $.....
..... $.....
..... $.....
..... $.....
..... $.....
..... $.....
..... $.....

Sub-Total estimated cost of Non-guaranteed items

$ .....

GRAND TOTAL FOR PRENEED ARRANGEMENTS

1. Total cost of (Guaranteed) Services Purchased (Total taken from p 1) $.....

2. Total cost of (Guaranteed) Supplies Purchased (Total taken from p 2) $.....

3. Total Estimated cost of non-guaranteed Items (Total taken from p 2) $.....

GRAND TOTAL $.....

The only warranties, express or implied, granted in connection with the goods sold in this preneed funeral contract, are the express written warranties, if any, extended by the manufacturers thereof. No other warranties and no warranties of MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE are extended by the (funeral home) .....

II. GENERAL INFORMATION

In order that the Buyer may understand the relationship of all parties involved in this preneed arrangement and contract, the following is provided:

A. Buyer: .....

B. Funeral Home Providing Services: .....

C. Preneed Arranger:.....

Employed by: (Funeral Home).....

Licensed Funeral Director in Virginia:
.....yes .....no

Funeral Director License Number: # .....

The following information will be given if an insurance policy or annuity contract is used to fund this agreement:

A. Buyer: .....

B. Insurance Company: .....

C. Insurance Agent: .....

Employed by: (Insurance Company).....

Licensed Funeral Director in Virginia:
....yes ..... no

Funeral Director License Number
(If Applicable): # .....

Employed by (If Applicable):
(Funeral Home) .....

Method of Funding

A. Insurance .....

B. Trust .....

1. Amount to be trusted: .....

2. Name of trustee: .....

3. Disposition of Interest: .....

4. Fees, expenses, taxes deducted from earned interest:.....

5. Buyer's responsibility for taxes owned on interest: .

III. CONSUMER INFORMATION

The Board of Funeral Directors and Embalmers is authorized by § 54.1-2800 et. seq. of the Code of Virginia to regulate the practice of preneed funeral planning. Consumer complaints should be directed to:

The Board of Funeral Directors and Embalmers
1601 Rolling Hills Drive
Suite 200
Richmond, Virginia 23229-5005
Telephone Number 804-662-9907
Toll Free Number 1-800-533-1560

IV. DISCLOSURES

The Disclosure statements will be available for your review. The General Price List shall be furnished to you by the preneed arranger. These contain information that you must receive by law and/or the authority of the Board of Funeral Directors and Embalmers. You are entitled to receive all information in clear and simple language including the language of the funding agreement for this preneed arrangement.

If any law, cemetery, or crematory requires the purchase of any of those items listed in Part I, the requirements will be explained in writing.

By signing this contract, buyer acknowledges availability of and opportunity to read a copy of all of the required documents.

V. TERMINATION OF CONTRACT

This person who funds this contract through a trust agreement may terminate this preneed contract at any time prior to the furnishing of the services or supplies contracted for:

Within 30 days

If you terminate this preneed contract within thirty days of the date of this contract, you will be refunded all payments of whatever type you have made, plus any interest or income you may have earned.

More than 30 days

If you terminate this preneed contract more than thirty days after the date on this contract, you will be refunded whatever amount was required to be placed in a revocable trust fund, plus any interest or income it has earned.

Any person who funds this contract through a trust fund which is irrevocable or through an insurance/annuity policy or through the transfer of real estate/personal property may not be eligible for a refund.

VI. STATEMENT OF GUARANTEE

By signing this contract, (Funeral Home) ..... agrees to the statement checked below (check one):

..... Pre-financing guarantees that no additional payment will be required from the family or estate for guaranteed services and supplies provided the Grand Total of these arrangements is paid in full and the interest is allowed to accumulate in your account (see page 4 for Grand Total amount). Payment of the difference will be required for the non-guaranteed estimated items if they increase in price.

..... *The prices for items under supplies and services are not guaranteed.*

VII. AGREEMENT

In witness whereof, the Buyer and the Funeral Home have executed this contract, intending its terms to be in accordance with the Code of Virginia and any regulations implementing the Code. By signing this contract you acknowlege that you have been provided access to and the opportunity to read the Disclosure Statements.

....
(Designee of Funeral Home) (Buyer)

....
(Funeral Home) (Contract Date)

VIII. PENALTIES OR RESTRICTIONS

The (funeral home) ....., has the following penalties or restrictions on the provisions of this contract.

1. (Insert geographic restrictions);

2. (Insert an explanation of the Funeral Home's inability to perform the request(s) of the Buyer);

3. (Insert a description of any other circumstances which apply).

4. (Insert information that if particular goods and services specified in the contract are unavailable at the time of need):

A. The funeral home shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship and

B. The representative of the deceased shall have the right to choose the supplies or services to be substituted.

Addendum to Preneed Contract

DESIGNEE AGREEMENT

I designate ..... of (address) ..... to assist with the preneed arrangements in my behalf. This individual is also authorized to work with the funeral home after my death to ensure that these arrangements are fulfilled. The relationship of my designee to me is .....

Buyer: ..... Date: .....

I accept the request of (buyer) ..... to assist with his/her preneed arrangements and to work with the funeral home after his/her death to ensure that these arrangements are fulfilled.

Designee: ..... Date: .....

The foregoing was acknowledged before me this ..... day of ....., 19....

Notary: .....

Date Commission Expires: .....

APPENDIX II.

DISCLOSURE STATEMENTS PRESCRIBED BY THE BOARD.

DISCLOSURES

We are required by law and/or the Virginia Board of Funeral Directors and Embalmers to provide access to and the opportunity for you to read the following information to assist you in preplanning. A question and answer format is used for clarity and includes the most commonly asked questions.

PRENEED CONTRACTS

– Is there more than one type of preneed agreement?

Yes.

Guaranteed contracts mean that the costs of certain individual items or the cost of the total package will never be more to your family or estate. Non-guaranteed means just the opposite. (See the section entitled "General Funding Information" for more information on guaranteed and non-guaranteed costs.)

Contracts may be funded by insurance/annuity policies, trusts, or transfer of real estate/personal property.

– What are my protections?

You should take your completed preneed contract home before you sign it and review it with your family or your legal advisor. You have a right to this review before you sign the contract or pay any money.

You should also read carefully the information in this disclosure statement. If you have any questions, contact the seller for more information or contact your legal advisor.

CANCELLATION

– Can I cancel my preneed agreement if I change my mind? Will I get my money back?

You may cancel payment for supplies or services within 30 days after signing the agreement. If you funded your preneed arrangement through a trust, the preneed arranger will refund all the money you have paid plus any interest or income you have earned.

If you funded your preneed arrangement through a revocable trust and you cancel the preneed contract AFTER the 30 day deadline, you will be refunded all of your money on the items that are not guaranteed and 90% of all your money on the items that are guaranteed. You will also receive any interest or income on that amount. A revocable trust is a trust that you can cancel.

There may be a penalty to withdraw money from a revocable trust account which has already been established in your name. If there is, your contract will give you this information. (See the first question under the section entitled "Payment" below.)

If you have funded your preneed arrangement through an irrevocable trust you will not be able to cancel the trust agreement or receive a refund. An irrevocable trust is one that cannot be cancelled.

If you funded your preneed arrangement through an insurance policy/annuity contract which will be used at the time of your death to purchase the supplies and services you have selected, you will need to pay careful attention to the cancellation terms and conditions of the policy. You may not be eligible for a refund.

PAYMENT

– What happens to my money after the contract is signed?

Your money will be handled in one of several ways. It may be deposited in a separate trust account in your name. The trust account will list a trustee who will be responsible for handling your account. The funeral home you have selected as your beneficiary will also be listed. You have the right to change the funeral home and the trustee of your account prior to receiving the supplies and services under the preneed contract.

Your money may be used to purchase a preneed life insurance policy which may be used to pay for your arrangements upon your death. The proceeds of the policy will be assigned to the funeral home of your choice. You may change the funeral home assignment at any time prior to receiving the supplies and services under the preneed contract.

You may decide to choose a life insurance policy or a trust account that requires regular premium payments and not have to make an up-front, lump sum payment.

– May I pay for goods and services with real estate or personal property?

Yes. When you pay for these supplies and services in whole or in part with any real estate you may own, the preneed contract that you sign will be attached to the deed on the real estate and the deed will be recorded in the clerk's office of the circuit court in the city or county where the real estate is located.

If you pay for goods and services with personal property other than cash or real estate, the preneed arranger, will declare in writing that the property will be placed in a trust until the time of your death and will give you written information on all the terms, conditions, and considerations surrounding the trust. The preneed arranger will confirm in writing that he has received property.

You may decide not to transfer the title of the personal property to the preneed arranger of your preneed contract. In this situation, you will have to submit information to the preneed arranger in writing that you are giving him the property without a title, and describe the property and where it will be kept until the time of your death.

In either case, the written statements will be recorded in the clerk's office of the circuit court of the city or county in which you live. The written statement does not have to be separate document.

GENERAL FUNDING INFORMATION

– If the prices of the goods and services are affected by inflation between now and my death, will the funding I choose be adjusted accordingly?

There is a possibility that the funding may fail to keep up with inflation. This could mean that the funding you choose could have insufficient value to cover all expenses.

– What happens if my funding is not enough to cover the full cost of these arrangements?

If the entire funeral or specific items in the agreement are guaranteed by the preneed arranger, you family or estate will not have to pay any more for those items provided that you have paid the Grand Total in full and all interest earned is allowed to accumulate in your account. However, if you have not paid the account in full and have not allowed the interest to accumulate in the account, and any items increase in price, your family or estate would be responsible for the extra amount if the funds are not sufficient. In some situations where you pay toward your funding with regular premiums rather than in one lump sum, your account may not be enough at the time of your death to cover everything.

– What happens to the extra money if my funding is more than what is needed to pay for these arrangements?

Sometimes, as explained in the answer above, your funding account may not have had the time to grow sufficiently before your death to cover items which are guaranteed in price to you, yet have increased in price for the funeral home.

Sometimes after funeral expenses are paid, there may be money left over. Because of the on-going risk that a funeral home takes in guaranteeing prices for you, the

funeral home may not be required to return this excess money.

Some funding agreements and funeral homes, however, require that extra money be returned to the estate or family. Others do not. You should obtain information concerning this in writing before signing the preneed contract.

The answers to the following questions will depend upon the terms and conditions of the individual's funding and preneed agreements. Please review your preneed contract and/or funding agreement for answers to these questions.

– What happens to my preneed contract if I change my assignment from one funeral home to another?
(Place answer here)

– What happens to my preneed contract if I change the beneficiary of my funding or the use of my proceeds from the funding.

If you make such changes, it could void your contract. You should request specific information from the preneed arranger and the funding arrangement.

– What will happen to may preneed contract if I fail to make agreed to premium payments to my funding source?
(Place ansewer here)

– Do I get any money back if I surrender or cancel my funding arrangements?
(Place answer here)

TRUST ACCOUNT

– If my money goes into a trust account, what information will I receive about that account?

If you want your money to go into a trust fund, the trust agreement must furnish you with information about the amount to be deposited into the account; the name of the trustee; information about what happens to the interest your trust account will earn; and information about your responsibility to file and pay taxes on that interest.

If there are filing expenses connected with your trust account, you will be notified as to what the expenses are and whether you or the preneed arranger is the responsible party for paying those.

– What happens to the interest earned by the trust?

You should be aware that the interest earned by the trust may be handled in different ways by different trust arrangements. The interest may have to go back into your account if items on your contract are guaranteed. You may be responsible for reporting that interest to the Internal Revenue Serice and paying taxes on it. You will be responsible to pay any taxes on the interest earned even if you cancel your trust account. Some trust accounts cannot be cancelled.

There may be special fees deducted from your interest. However, you may still be responsible for paying taxes on the entire amount of interest earned before the fees were deducted. Please ask your preneed arranger for a written list of any fees so you will have a clear understanding about them before you sign the contract.

– If I pay my trust in premium payments, what happens if I die before the Grand Total of the funeral has been placed in trust?
(Place answer here)

LIFE INSURANCE POLICY OR ANNUITY CONTRACT

The following question applicable to your policy will be answered in writing. The answer will depend upon the terms and conditions of the individual's policy and/or preneed contract.

– If I die during the period of time when my insurance policy only guarantees to pay back my premiums plus the interest, will that amount be considered payment in full for my preneed contract?
(Place answer here)

CLAIMS AGAINST THIS CONTRACT

– Can someone to whom I owe money make a claim against the money, personal property, or real estate that I have used to pay for this contract?

No. This money or property cannot be used to settle a debt, a bankruptcy, or resolve a claim. These funds cannot be garnished.

– Can the money or property be taxed?

No. Currently, interest earned on the money you deposit in a trust, savings account, or the value of the property you used for payment can be taxed but not the original amount which you invested. Interest earned on annuities is generally deferred until withdrawal.

GENERAL GOODS AND SERVICES

– If I choose goods and services that might not be available at the time of my death, what is the provider required to do?

The funeral home which you selected is required to furnish supplies and services that are similar in style and equal in value and quality if what you choose is no longer made or is not available at the time of your death. Your representative or next-of-kin will have the right to choose the supplies or services to be substituted. However, if the substitute is more expensive than the item originally selected by you, your designee or

next-of-kin would be responsible for paying the difference. Under no circumstances will the funeral establishment be allowed to substitute lesser goods and services than the ones you chose.

If, before your death, the funeral home were to go out of business or were otherwise unable to fulfill their obligation to you under the preneed contract, you have the right to use the proceeds at the funeral home of your choice.

If the inability to provide services does not become apparent until the time of your death, the individual that you named as your designee could use the funds for services at another funeral home.

– May I choose the exact item I want now and have the funeral home store it until my death?

If the funeral home or supplier has a storage policy you may ask for this service. If the funeral home or preneed arranger agrees to store these items, the risk of loss or damage shall be upon the funeral home during the storage period.

For example, what would happen if you select a casket which is in-stock at the time you make these arrangements and the funeral home or supplier agrees to store it for you in their warehouse and: (1) damage occurs, (2) the funeral home or supplier goes out of business (3) the funeral home or supplier is sold, etc? You need to be assured in writing of protection in these types of situations.

– What happens if I choose to have a unique service that is not customary or routine in my community? Must the funeral home comply with my wishes?

The funeral home which you have chosen to conduct your service may be able to only provide certain types of services. They may not be able to fulfill your request. If there is a restriction on what they can provide, you will be notified in writing before you sign the preneed contract.

If the funeral home agrees in writing before you sign the contract to perform such services, the funeral home shall provide you a written, itemized statement of penalties (fees) which you will be charged.

– Will the funeral home agree to transport my body to another area for burial?

Again, the funeral home may have restrictions on the distance they are willing to travel to conduct a burial. If restictions apply, you will be notified in writing.

If the funeral home agrees in writing before you sign the contract to honor your wishes, the funeral home shall provide you a written, itemized statement of any penalties (fees) which you will be charged.

– I may die and be buried in a city other than one where the funeral home that I select for my goods and services is located. Will the funeral home that I select under this contract deliver my merchandise to the city where I die and am to be buried?

This is entirely up to the funeral home to decide. If the funeral home has restrictions on this, they will notify you in writing. If they agree to ship merchandise to another area for your funeral, you will be notified before signing this contract of the penalties (fees) involved if they can be determined and guaranteed at this time.

However, the preneed contract arrangements and funding may be considered portable. This means that they are usually available for transfer from one locality to another. It is unusual for actual goods and merchandise to be transferred.

PRICING

– How will I know that the prices of items which I select are the same for everyone?

The funeral home maintains a general price list and a casket and outer burial container price list. Your preneed arranger will give this to you before you begin talking about arrangements. After your discussion is finished, you will be given a copy of your preneed contract on which charges will be listed. Charges will only be made for the items you select. If there are any legal or other requirements that mandate that you must buy any items you did not specifically ask for, the preneed arranger will explain the reason for the charges to you in writing.

You may ask a funeral home to purchase certain items or make special arrangements for you. If the funeral home charges you for these services, you will receive an explanation in writing. The charges to you for these services may be higher than if you or your family purchased them directly.

At the time of your death, you family or estate will be given an itemized statement which will list all of the specific charges. This is a requirement of the Federal Trade Commission. Although not required to do so, some funeral homes may also choose to give you an itemized statement when you make these arrangements.

– What is meant by guaranteed and non-guaranteed prices?

Some preneed arrangers may agree that certain prices are guaranteed. Some may guarantee the price of the total package. Other funeral homes may not guarantee any prices.

Guaranteed prices are those that will not increase for your family or estate at the time of your death. Basically, this means that your funeral arrangement for those items will be covered by and will not exceed your funding and

the interest it earns. Non-guarnateed prices are those which might increase or decrease. The non-guaranteed prices may be written in at the time of this contract with you understanding that the price is an estimate only and may increase or decrease. A settlement to that effect may have to be made with your family or representative after your death.

– Can the preneed arranger and I negotiate a projected charge for the non-guaranteed items based on the rate of inflation?

It is entirely up to the preneed arranger to inform you of the funeral home policy in that regard.

CASKETS AND CONTAINERS

– Do I have to buy a vault or a container to surround the casket in the grave?

In most areas of the country, state and local laws do not require that you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container to support the earth above the grave. Either a burial vault or a grave liner will satisfy if such requirements exist.

– Is a casket required?

A casket is not required for direct cremation. If you want to arrange a direct cremation, you may use an unfinished wood box or an alternative container made of heavy cardboard or composition materials. You may choose a canvas pouch.

– Do certain cemeteries and crematoriums have special requirements?

Particular cemeteries and crematoriums may have policies requiring that certain goods and services be purchased. If you decide not to purchase goods and services required by a particular cemetery or crematorium, you have the right to select another location that has no such policy.

EMBLAMING

– Is emblaming always required?

Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arangements such as viewing or visitation with an open casket. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If the funeral home must charge to conduct an embalming, your designee will be notified of the reasons in writing.

ASSISTANCE

– This is all very confusing to me. May I pick someone close to me to help with all of this? May this person also work with the funeral home to ensure that my wishes as written in the preneed contract are carried out?

You may designate in writing a person of your choice to work with the funeral home and preneed arranger either before or after your death to ensure that your wishes are fulfilled. You must sign the statement and have it notarized. The person that you designate must agree to this in writing. Under the laws governing preneed contracts, the individual whom you designate has final authority at the time of your death.

- Where can I complain if I have a problem concerning my preneed contract, the preneed arranger, or the funeral home?

You may direct your complaints or concerns to:

The Board of Funeral Directors and Embalmers
Department of Health Professions
1601 Rolling Hills Drive, Suite 200
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DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

REGISTRAR'S 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 Departmet 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 Regulations: **State Plan for Medical Assistance Relating to Federally Qualified Health Care Centers.**
VR 460-01-19. Services: General Provisions.
VR 460-01-58. Payment for Services.
VR 460-02-3.1100. Amount, Duration and Scope of Medical and Remedial Care and Services Provided to the Categorically Needy.
VR 460-02-3.1200. Amount, Duration, and Scope of Services Provided Medically Needy Group(s): All.
VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates - Other Types of Care.
VR 460-03-3.1100. Amount, Duration and Scope of Services.

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

Effective Date: April 1, 1991.

Summary:

This regulatory action conforms the State Plan for Medical Assistance to OBRA 89 § 6404 which required medical assistance programs to provide cost based reimbursement, effective April 1, 1991, to federally qualified health centers which receive grants under §§ 329, 330, 340 of the Public Health Services Act (PHS). OBRA expanded the Social Security Act's definition (§ 1861(aa)(1)) (the Act) of rural health clinics to include federally qualified health centers receiving these PHS grants.

The effect of this OBRA 89 requirement in Virginia will be to shift approximately 30 community health centers from the fee-for-service reimbursement methodology to the cost based methodology. The Department of Medical Assistance Services (DMAS) will require these providers to submit annual cost reports for analysis and final cost settlement as is currently required for inpatient hospitals and nursing facilities.

Medicaid law (the Act § 1902(a)(13)(E)), provides for reimbursement of rural health clinic services on the basis of costs which are reasonable and related to the costs of furnishing such services or which are based on such other tests of reasonableness as the Secretary of Health and Human Services prescribes by regulation. OBRA 89 § 6404 expanded this law to include the definition of federally qualified health centers.

Regulations governing reimbursement on the basis of the reasonable cost principles for rural health clinic services provide for reimbursement of clinics which are integral and subordinate parts of a Medicaid-participating hospital, skilled nursing facility or home health agency. All other rural health clinics, called independent clinics, are paid an all-inclusive rate for each beneficiary visit for covered services. Medicare carrier rate adjustments are significant to DMAS because of its reliance on these rates for its own rate setting. The Medicare carriers determine the all-inclusive rate which DMAS applies to certified rural health clinics, at the beginning of each reporting period. The rate is determined by dividing the estimated total allowable costs by the number of estimated total visits for rural health clinic services. Rates are subject to reasonableness tests, and are reviewed periodically during each reporting period to ensure that payments approximate actual allowable costs and visits.

Medicare carriers adjust rates in the following circumstances: (i) there is a significant change in the utilization of clinic services; (ii) actual allowable costs vary materially from the clinic's estimated allowable costs; or (iii) other circumstances arise which warrant an adjustment. Payments are also subject to reconciliation to ensure that they do not exceed or fall short of allowable costs for covered services delivered to covered beneficiaries.

COMMONWEALTH of VIRGINIA

JOAN W SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

December 13, 1990

Mr. Bruce U. Kozlowski, Commissioner
Department of Medical Assistance Services
600 East Broad Street, Suite 1300
Richmond, Virginia 23219

Re: VR 460-01-19, 460-01-58, 460-02-3.1100, 460-02-3.1200, 460-03-3.1100 and 460-02-4.1920
Federally Qualified Health Care Centers

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
Registrar of Regulations

JWS:jbc

VR 460-01-19. Services: General Provisions.

VR 460-01-19 19

Revision: HCFA-PM-90- S (BPD) OMB No: 0938-0193
APRIL 1990

State/~~Territory~~: VIRGINIA

SECTION 3 - SERVICES: GENERAL PROVISIONS

Citation	3.1 Amount, Duration, and Scope of Services
Part 440, Subpart B and 1902(e)(5), 1905(a)(18) through (20), and 1920 of the Act, P.L. 99-272 (Sections 9501, 9505 and 9526) and 1902(a), 1902 (a)(47), 1902(e)(7) through (9), and 1920 of the Act, P.L. 99-509 (Secs. 9401(d), 9403, 9406 through 9408) and P.L. 99-514 (Sec. 1895(c)(3)), and 1905(a)(2) of the Act, P.L. 101-239 (Sec. 6404)	(a) Medicaid is provided in accordance with the requirements of 42 CFR Part 440, Subpart B and sections 1902(a), 1902(a)(47), 1902(e)(5), (7), (8) and (9), 1905(a)(18) through (20), 1905(p), 1915(g)(2), and 1920 of the Act. (1) (i) Each item or service listed in section 1905(a)(1) through (5) of the Act, as defined in 42 CFR Part 440, Subpart A is provided for the categorically needy. (ii) Nurse-midwife services listed in section 1905(a)(17) of the Act, as defined in 42 CFR 440.165 are provided for the categorically needy to the extent that nurse-midwives are authorized to practice under State law or regulation. Nurse-midwives are permitted to enter into independent provider agreements with the Medicaid agency without regard to whether the nurse-midwife is under the supervision of, or associated with, a physician or other health care provider. /_/ Not applicable. Nurse-midwives are not authorized to practice in this State.
1902(e)(5) of the Act, P.L. 99-272 (Section 9501)	(iii) For any women who, while pregnant, were eligible for, applied for, and received medical assistance under the approved State plan, all pregnancy-related and postpartum services will continue to be provided, as though the women were pregnant, for 60 days after the pregnancy ends, beginning on the last date of pregnancy. /_/ (iv) For pregnant women, services for any other medical condition that may complicate the pregnancy are provided.

TN No. 90-07
Supersedes TN No. ____

Approval Date ____ Effective Date 4/1/90

HCFA ID: 4301C/

VR 460-01-58. Payment for Services.

VR 460-01-58 58

Revision: HCFA-PM-90- 5 (BPD) OMB No.: 0938-0193
APRIL 1990

State/Territory: VIRGINIA

Citation	
42 CFR 447.201 42 CFR 447.302 AT-78-90 AT-80-34 1903(a)(1) and (n) and 1920 of the Act, P.L. 99-509 (Section 9403, and 9407) 52 FR 28648 1902(a)(13)(E) of the Act, and P.L. 101-239 (Sec. 6404(c))	4.19 (b) In addition to the services specified in paragraphs 4.19(a), (d), (k), (l), and (m), the Medicaid agency meets the following requirements: (1) Section 1902(a)(13)(E) of the Act regarding payment for services furnished by Federally qualified health centers (FQHCs) under section 1905(a)(2)(C) of the Act. The agency meets the requirements of section 6303 of the State Medicaid Manual (HCFA-Pub. 45-6) regarding payment for FQHC services. ATTACHMENT 4.19-B describes the method of payment and how the agency determines the reasonable costs of the services (for example, cost-reports, cost or budget reviews, or sample surveys). (2) 42 CFR Part 447, Subpart D, with respect to payment for all other types of services furnished under the plan. ATTACHMENT 4.19-B describes the methods and standards used for the payment of each of these services except for inpatient hospital, skilled nursing and intermediate care facility services that are described in other attachments.

TN No. 92-07
Supersedes
TN No. ____

Approval Date ____ Effective Date ____

HCFA ID: 4301C/

VR 460-02-3.1100. Amount, Duration and Scope of Medical and Remedial Care and Services Provided to the Categorically Needy.

1. Inpatient hospital services other than those provided in an institution for mental diseases.

Provided: / / No limitations /XX/ With limitations*

2.a. Outpatient hospital services.

Provided: / / No limitations /XX/ With limitations*

b. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

/XX/ Provided: / / No limitations /XX/ With limitations* / / Not provided..

c. Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with § 4231 of the State Medicaid Manual (HCFA Pub. 45-4).

Provided: / / No limitations /XX/ With limitations*

3. Other laboratory and x-ray services.

Provided: /XX/ No limitations / / With limitations*

4.a. Skilled nursing facility services (other than services in an institution for mental diseases for individuals 21 years of age or older.

Provided: /XX/ No limitations / / With limitations*

b. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

Provided: / / Limited to Federal requirements /XX/ In excess of Federal requirements*

*Description provided on attachment.

VR 460-02-3.1200. Amount, Duration and Scope of Services Provided Medically Needy Groups: All.

1. Inpatient hospital services other than those provided in an institution for mental diseases.

/XX/ Provided: / / No limitations /XX/ With limitations*

2.a. Outpatient hospital services.

/XX/ Provided: / / No limitations /XX/ With limitations*

b. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

/XX/ Provided: / / No limitations /XX/ With limitations*

c. Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with § 4231 of the State Medicaid Manual (HCFA Pub. 45-4).

/XX/ Provided: / / No limitations /XX/ With limitations*

3. Other laboratory and x-ray services.

/XX/ Provided: / / No limitations /XX/ With limitations*

4.a. Skilled nursing facility services (other than services in an institution for mental diseases for individuals 21 years of age or older.

/XX/ Provided: /XX/ No limitations / / With limitations*

b. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

/XX/ Provided: /XX/ No limitations / / With limitations*

c. Family planning services and supplies for individuals of childbearing age.

/XX/ Provided: /XX/ No limitations / / With limitations*

5. Physicians' services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere.

/XX/ Provided: /XX/ No limitations / / With limitations*

*Description provided on attachment.

VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates - Other Types of Care.

The policy and the method to be used in establishing payment rates for each type of care or service (other than inpatient hospitalization, skilled nursing and intermediate care facilities) listed in § 1905(a) of the Social Security Act and included in this State Plan for Medical Assistance are described in the following

paragraphs:

a. Reimbursement and payment criteria will be established which are designed to enlist participation of a sufficient number of providers of services in the program so that eligible persons can receive the medical care and services included in the Plan at least to the extent these are available to the general population.

b. Participation in the program will be limited to providers of services who accept, as payment in full, the state's payment plus any copayment required under the State Plan.

c. Payment for care or service will not exceed the amounts indicated to be reimbursed in accord with the policy and methods described in this Plan and payments will not be made in excess of the upper limits described in 42 CFR 447.304(a). The state agency has continuing access to data identifying the maximum charges allowed: such data will be made available to the Secretary, HHS, upon request.

d. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);

2. The provider's trial balance showing adjusting journal entries;

3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;

4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;

5. Depreciation schedule or summary;

6. Home office cost report, if applicable; and

7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

The services that are cost reimbursed are:

(1) Inpatient hospital services to persons over 65 years of age in tuberculosis and mental disease hospitals

(2) Home health care services

(3) Outpatient hospital services excluding laboratory

(4) Rural health clinic services *provided by rural health clinics or other federally qualified health centers defined as eligible to receive grants under the Public Health Services Act §§ 329, 330, and 340.*

(5) Rehabilitation agencies

(6) Comprehensive outpatient rehabilitation facilities

(7) Rehabilitation hospital outpatient services.

e. Payment for the following services shall be the lowest of: State agency fee schedule, actual charge (charge to the general public), or Medicare (Title XVIII) allowances:

(1) Physicians' services

(2) Dentists' services

(3) Mental health services including:

Community mental health services

Services of a licensed clinical psychologist

Mental health services provided by a physician

(4) Podiatry

(5) Nurse-midwife services

(6) Durable medical equipment

(7) Local health services

(8) Laboratory services (Other than inpatient hospital)

(9) Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis

(limited to payment for handling)

(10) X-Ray services

(11) Optometry services

(12) Medical supplies and equipment.

f. Payment for pharmacy services shall be the lowest of items (1) through (5) (except that items (1) and (2) will not apply when presciptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in 42 CFR 447.331 (c) if the brand cost is higher than the HCFA upper limit of VMAC cost) subject to the conditions, where applicable, set forth in items (6) and (7) below:

(1) The upper limit established by the Health Care Financing Adminstration (HCFA) for multiple source drugs which are included both on HCFA's list of mutiple source drugs and on the Virginia Voluntary Formulary (VVF), unless specified otherwise by the agency;

(2) The Virginia Maximum Allowable Cost (VMAC) established by the agency plus a dispensing fee, if a legend drug, for multiple source drugs listed on the VVF;

(3) The estimated acquisition cost established by the agency for legend drugs except oral contraceptives; plus the dispensing fee established by the state agency, or

(4) A mark-up allowance determined by the agency for covered nonlegend drugs and oral contraceptives; or

(5) The provider's usual and customary charge to the public, as identified by the claim charge.

(6) Payment for pharmacy services will be as described above; however, payments for legend drugs (except oral contraceptives) will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. Payments will be reduced by the amount of the established copayment per prescription by noninstitutionalized clients with exceptions as provided in federal law and regulation.

(7) The Program recognizes the unit dose delivery system of dispensing drugs only for patients residing in skilled or intermediate care facilities. Reimbursements are based on the allowed payments described above plus the unit dose add on fee and an allowance for the cost of unit dose packaging established by the state agency. The maximum allowed drug cost for specific multiple source drugs will be the lesser of: either the VMAC based on the 60th percentile cost level identified by the state agency or HCFA's upper limits. All other drugs will be reimbursed at drug costs not to exceed the estimated acquisition cost determined by the state agency.

g. All reasonable measures will be taken to ascertain the legal liability of third parties to pay for authorized care and services provided to eligible recipients including those measures specified under 42 USC 1396(a)(25).

h. The single state agency will take whatever measures are necessary to assure appropriate audit of records whenever reimbursement is based on costs of providing care and services, or on a fee-for-service plus cost of materials.

i. Payment for transportation services shall be according to the following table:

TYPE OF SERVICE	PAYMENT METHODOLOGY
Taxi services	Rate set by the single state agency
Wheelchair van	Rate set by the single state agency
Nonemergency ambulance	Rate set by the single state agency
Emergency ambulance	Rate set by the single state agency
Volunteer drivers	Rate set by the single state agency
Air ambulance	Rate set by the single state agency
Mass transit	Rate charged to the public
Transportation agreements	Rate set by the single state agency
Special Emergency transportation	Rate set by the single state agency

j. Payments for Medicare coinsurance and deductibles for noninstitutional services shall not exceed the allowed charges determined by Medicare in accordance with 42 CFR 447.304(b) less the portion paid by Medicare, other third party payors, and recipient copayment requirements of this Plan.

k. Payment for eyeglasses shall be the actual cost of the frames and lenses not to exceed limits set by the single state agency, plus a dispensing fee not to exceed limits set by the single state agency.

l. Expanded prenatal care services to include patient education, homemaker, and nutritional services shall be reimbursed at the lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.

m. Targeted case management for high-risk pregnant women and infants up to age 1 shall be reimbursed at the

lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.

n. Reimbursement for all other nonenrolled institutional and noninstitutional providers.

(1) All other nonenrolled providers shall be reimbursed the lesser of the charges submitted, the DMAS cost to charge ratio, or the Medicare limits for the services provided.

(2) Outpatient hospitals that are not enrolled as providers with the Department of Medical Assistance Services (DMAS) which submit claims shall be paid based on the DMAS average reimbursable outpatient cost-to-charge ratio, updated annually, for enrolled outpatient hospitals less five percent. The five percent is for the cost of the additional manual processing of the claims. Outpatient hospitals that are nonenrolled shall submit claims on DMAS invoices.

(3) Nonenrolled providers of noninstitutional services shall be paid on the same basis as enrolled in-state providers of noninstitutional services. Nonenrolled providers of physician, dental, podiatry, optometry, and clinical psychology services, etc., shall be reimbursed the lesser of the charges submitted, or the DMAS rates for the services.

(4) All nonenrolled noninstitutional providers shall be reviewed every two years for the number of Medicaid recipients they have served. Those providers who have had no claims submitted in the past twelve months shall be declared inactive.

(5) Nothing in this regulation is intended to preclude DMAS from reimbursing for special services, such as rehabilitation, ventilator, and transplantation, on an exception basis and reimbursing for these services on an individually, negotiated rate basis.

o. Refund of overpayments.

(1) Providers reimbursed on the basis of a fee plus cost of materials.

(a) When DMAS determines an overpayment has been made to a provider, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

(b) If the provider cannot refund the total amount of the overpayment within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services (the "director") may approve a repayment schedule of up to 36 months.

A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program, the outstanding balance shall become immediately due and payable.

When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

(c) In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

(d) Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

The director's determination shall be deemed to be final on (i) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (ii) the issue date of any administrative decision issued by DMAS after an informal factfinding conference, if the provider does not file an appeal, or (iii) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in

which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

(2) Providers reimbursed on the basis of reasonable costs.

(a) When the provider files a cost report indicating that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where DMAS discovers an overpayment during desk review, field audit, or final settlement, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

(b) If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, any underpayments discovered by subsequent review or audit shall also be used to reduce the remaining amount of the overpayment.

(c) If the provider cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the provider shall request an extended repayment schedule at the time of filing, or (ii) within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services (the "director") may approve a repayment schedule of up to 36 months.

A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

(d) In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

(e) Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal factfinding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

VR 460-03-3.1100. Amount, Duration and Scope of 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 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 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 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 their ongoing hospital utilization review peformance 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 sterlization,

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 utilzation 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.~~ *The same service limitations apply to rural health clinics as to all other services.*

2c. Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with § 4231 of the State Medicaid Manual (HCFA Pub. 45-4).

The same service limitations apply to FQHCs as to all other services.

§ 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 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 ophthamologists, 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.

2. Legend drugs, with the exception of anorexiant 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 sanitoria.

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 critieria 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.

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM (VASAP)

Title of Regulation: **VR 647-01-02. Policy and Procedure Manual.**

Statutory Authority: §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Effective Date: February 28, 1991.

Summary:

The Commission on VASAP Policy and Procedure Manual is promulgated under §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia. The manual establishes records, and oversees the operation of the 26 local alcohol safety action programs.

The manual as promulgated specifies policies controlling program administrative, personnel, fiscal, and training operations as well as procedures for processing offenders. Offender procedures include methods for evaluation and processing the offender, assignment to treatment and process for inter and intra state transfers of offenders, and reporting and monitoring of the offender.

The policy and procedure manual also provides specific information regarding the process for program certification.

Revision to regulations as proposed include:

1. Improvements in language, grammar and clarity, as suggested by the Department of Planning and Budget but not adopted when the original regulations were promulgated.

2. Revisions of the process for local program certification.

3. Clarification of definitions provided and addition of six new definitions.

Required forms and standards for implementation are considered to be standards. These standards are not substantive in nature but merely prescribe the forms and procedures to be used when complying with substantive standards.

VR 647-01-02. Policy and Procedure Manual.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

The terms used in this regulation shall have the following meaning unless the context indicates otherwise.

"ASAP" means Alcohol Safety Action Program formed by political subdivisions or by the commission as a criminal justice program that uses community and state services to address the problem of driving under the influence of ~~either~~ alcohol *and* ~~or~~ *other* drugs. ASAPs receive referrals from local courts or the commission. ASAPs deliver intervention services within locally-administered programs to specific municipal jurisdictions within the Commonwealth of Virginia pursuant to §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

[*"ASAP components" means the separation of actions into specifically defined areas which the VASAP system uses to offset and deter the actions of Driving Under the Influence (DUI) and potential DUI offenders. They comprise a systemic approach to educate the general public, reduce the incidence of impaired driving and to prevent drunk driving. There are five specific components defined and utilized by the VASAP system.*

"ASAP Regional Council" means one of the three geographical areas of the Commonwealth of Virginia in which the ASAPs have been organized (Colonial, Blue Ridge, and Battlefield ASAP Councils).]

"BAC" means blood alcohol concentration[,] which is determined by law-enforcement [~~personnel~~] or other licensed [~~organizations~~ *personnel*] in accordance with procedures established in § 18.2-268.

"Budget" means a [~~*statement in financial terms of a projected or expected operations of a program or accounting entity for a given period.*~~ *written financial plan for expenditures of a program or accounting entity for a given period.*

~~*"CCRE"*~~ ~~means a central criminal records exchange.~~]

"Certification" ~~is~~ *means* the process whereby the commission evaluates an ASAP for its organization, management, fiscal standing, and overall operation. Certification also [~~hinges~~ *includes*] on the ASAP's ability to receive referrals from courts of persons convicted of DUI.

"Classification" means a process involving the assessment of an offender's personal involvement with alcohol or other drugs ~~and~~ *which* ~~resulting~~ *results* in referral to an appropriate intervention service ([~~educational~~ *education or*] treatment).

"Commission" means the state agency established as the Commission on the Virginia Alcohol Safety Action Program serving under the auspices of and reporting directly to the Secretary of Transportation ~~and Public Safety~~ . It is composed of two members from the House Committee for Courts of Justice, two members from the Senate Committee for Courts of Justice, two sitting or retired district court judges who regularly hear or heard cases involving DUI and who are familiar with local ASAPs, two directors of ASAPs, one representatives from the law-enforcement profession, one citizen at large, one representative from the Department of Motor Vehicles and one representative from the Department of Mental Health, Mental Retardation and Substance Abuse Services.

The commission [~~shall establish and certify~~ *establishes and certifies*] ASAPs and [~~require~~ *requires*] them to be operated in accordance with commission standards § 18.2-271.1 *of the Code of Virginia* .

[~~*"Countermeasures" means the separation of actions into specifically defined areas which the VASAP system uses to offset and deter the actions of driving under the influence (DUI) and potential DUI offenders; a system to educate the general public, reduce the incidence of impaired driving and to provide a systematic approach to preventing drunk driving. There are six specific countermeasures defined and utilized by the VASAP system.*~~

~~*"DAT"*~~ ~~means driver awareness training. *Providing information on defensive driving and accident prevention.*~~]

"Deficit" means that the ASAP, in order to conduct its program, expects to or projects that it will expend more funds than it will receive from offenders or other sources in a fiscal year. Deficit means an excess of expenditures

over revenue.

"Director of ASAP" means the person who is in charge of and accountable for the operation of an ASAP. The ASAP director reports to the ASAP policy board.

"DMV" means the *Commonwealth of Virginia* Department of Motor Vehicles.

"DUI" means operating or driving a motor vehicle *or boat* under the influence of alcohol or drugs (§ *§* 18.2-266 [~~and~~ ,] *29.1-738* [*and 46.2-341.24*] of the Code of Virginia.)

"Education" means commission-approved classes provided to some offenders following classification. [~~The~~ *This*] intervention [~~services~~ *service may*] include alcoholic or drug education, young offenders education, and intensive education.

"Enrollment" means [~~that~~ *the process by which*] *the offender* [~~has to report~~ *reports*] *to the ASAP,* [~~obtain~~ *obtains*] *an intake appointment,* [~~make arrangements~~ *arranges*] *to pay the ASAP fee, and [~~sign~~ signs] an* [*enrollment*] *agreement* [~~to participate~~] *as provided in §§ 18.2-266 through 18.2-273.*

"Executive director" means the executive director of the commission. This person is appointed by the Governor, confirmed by the General Assembly, and carries out the purposes of §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

"Finance committee" means a ~~budget~~ *fiscal* review committee composed of the executive director, two committee members, and such other persons as the ~~Executive Director~~ *commission* designates.

[~~*"Intake"* means the process wherein offenders, either individually or in groups, provide objective and subjective information to ease managers for use in their classification.~~]

"Intervention services" means direct service activities to offenders entering [~~through~~] *a program which provides direct services. Such activities include assessment services, crisis intervention, case management services and exit activities.*

"Joint exercise of powers" means [~~*ASAPs* the process~~ *by which ASAPs can be] organized as provided in §§ 15.1-20 and 15.1-21 of the Code of Virginia.*

"Policy board" means a group established by the ASAP which controls and gives direction to the ASAP's activities and provides input of local needs. This board may also be established *in accordance with §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia* by the commission.

"Program fiscal agent" means a unit of local government or a combination of units of local government which possess the legal authority to receive funds and to transact business throughout its jurisdiction, and the administrative capability to perform these services for an ASAP.

[~~*"Regional ASAP" means one of the three groups in the Commonwealth of Virginia in which the ASAPs have been organized:*~~

~~REGION I~~	~~REGION II~~	~~REGION III~~
~~Colonial~~	~~Blue Ridge Mountain~~	
~~Battlefield~~		
~~Capital Area~~	~~Central Va.~~	~~Alexandria~~
~~Eastern Shore~~	~~Dan River~~	~~Arlington~~
~~John Tyler~~	~~Mount Rogers~~	~~Bull Run~~
~~Peninsula~~	~~New River Valley~~	~~District~~
~~Nine~~		
~~Piedmont~~	~~Roanoke Valley~~	~~Fairfax~~
~~Southeastern Va.~~	~~Rockbridge~~	~~James~~
~~River~~		
~~Southside Va.~~	~~Southwest Va.~~	~~Old~~
~~Dominion~~		
~~Tidewater Va.~~	~~Valley~~	
~~Rappahannock Area~~		
~~Tri-River~~		~~Rockingham/~~
~~Harrisonburg~~		

"Regular board meeting" means those meetings of the policy board which are held quarterly. These meetings shall be open to the public.]

"Treatment" means intervention services provided to offenders subsequent to a recommendation for referral by an ASAP to outpatient, inpatient or residential service treatment and provided by a certified agent or licensed program.

[~~*"VADD"* means the Virginia *an* automated Drunk Driving *management information* system. A computer network which provides offender profiles to the ASAPs *and a mechanism for the transfer of cases and information between the ASAPs and the VASAP office* .~~]

"VASAPDA" means the Virginia Alcohol Safety Action Program Directors' Association, a group composed of the directors of the various ASAPs established and operating in the Commonwealth.

"VASAP" means the Virginia Alcohol Safety Action Program, a probation intervention system providing services to offenders referred to the program by the courts. VASAP consists of the Commission on VASAP, the

Advisory Board to the Commission on VASAP, *local ASAP policy boards* and local Alcohol Safety Action Programs established in §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

[*"VMIS" means VASAP Management Information System, and automated management information system; a computer network which provides offender profiles to the ASAPs and mechanism for the transfer of cases and information between the ASAPs and the VASAP office.*]

§ 1.2. [~~Introduction.~~ *Virginia Alcohol Safety Action Program System.*

~~The Commission on VASAP shall establish and ensure compliance with minimum standards and criteria for ASAP performance and operations, accounting, auditing, public information and administration for the local alcohol safety action programs. The commission shall also oversee ASAP plans, operations and performance and a system for allocating funds to cover any deficits in ASAP budgets.~~

VASP is a criminal justice program that uses community and state services to reduce the problem of driving under the influence of alcohol or other drugs. VASAP identifies and provides appropriate services to offenders convicted of driving under the influence. Services may consist of driver awareness training (DAT), alcohol and other drug education, and referral to treatment pursuant to a court order or upon leave of the court. Such programs serve a probation, intervention function through offender monitoring and follow-up.]

§ 1.3. Purpose of manual.

This manual, promulgated under the authority of §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia, establishes [,] records [~~and~~ ,] maintains [,] and updates policies and procedures for the Virginia Alcohol Safety Action Program (VASAP) and for local Alcohol Safety Action Programs (ASAPs).

§ 1.4. [~~Virginia's Alcohol Safety Action Program systems~~ *Introduction* .

~~VASAP is a criminal justice program that uses community and state services to reduce the problem of driving under the influence of alcohol or other drugs. VASAP identifies and provides offenders convicted of driving under the influence appropriate services, consisting of driver awareness training (DAT), alcohol and other drug education, and referral to treatment pursuant to a court order or leave of the court. Such programs serve a probation intervention through offender monitoring and follow-up.~~

~~The term "ASAP" as used in this manual includes all programs described in §§ 18.2-271.1 and 18.1-271.2 of the Code of Virginia.~~

The Commission on VASAP shall establish and ensure compliance with minimum standards and criteria for ASAP performance and operations, accounting, auditing, public information and administration for the local alcohol safety action programs. The commission shall also oversee ASAP plans, operations and performance and a system for allocating funds to cover any deficits in ASAP budgets.]

§ 1.5. VASAP [~~countermeasures~~ *components*].

ASAP responds to the problems of alcohol or other drug-related transportation incidents through [~~six countermeasure~~ *five component*] areas [: .]

1. [~~Enforcement~~ *Case management and offender intervention*]

2. [~~Adjudication~~ *Enforcement*]

3. [~~Case management~~ *Adjudication*]

[~~4. Education or treatment~~

~~5. Prevention,~~ *4.*] Public information [~~; and public education~~

~~6~~ *5*]. Evaluation [*and certification*]

Each [~~countermeasure~~ *component*] is oriented specifically to the problem of ~~drinking and driving~~ *driving under the influence* and attempts to prevent DUI behavior or reeducate those who are convicted of DUI.

The specific ~~directives of each countermeasure~~ *components and their directives*] are as follows:

[~~1. Enforcement: To deter incidents of impaired driving, increase the number of arrests and convictions of motorists driving under the influence, reduce the blood alcohol concentration (BAC) and improve the accuracy of reporting of alcohol and other drug involvement in transportation cases.~~

~~2. Adjudication: To enhance raise the conviction rate of DUI offenders and maintain a consistent rate of DUI referrals; to decrease recidivism among offenders previously involved in VASAP.~~

~~3. Case management: To establish and maintain a standard classification procedure for offenders; establish standard methods of reporting offender status to referring courts and the executive director of the Commission on VASAP hereinafter referred to as the Executive Director) ; and implement and maintain an offender tracking system (VADD) (see Case Management Manual VR 647-01-03).~~

~~4. Education or treatment: To implement and maintain a standard curriculum to educate offenders as well as resources for *offender* referral to properly licensed facilities or properly licensed private practitioners for evaluation~~ .

~~5. Public information, public education and prevention: To prevent and reduce incidents of DUI and to increase public knowledge of VASAP and transportation dangers caused by alcohol and or other drugs.~~

~~6. Evaluation: To utilize the VASAP Commission certification manual to conduct evaluations of ASAP operations every three years; to develop a system for evaluating the impact of the VASAP system on DUI problems.~~

1. Enforcement.

a. Deter incidents of impaired driving.

b. Increase the number of arrests and convictions of motorists driving under the influence.

c. Reduce the blood alcohol concentration (BAC).

d. Improve the accuracy of reporting of alcohol and other drug involvement in transportation crashes.

2. Adjudication.

a. Raise the conviction rate of DUI offenders.

b. Maintain a consistent rate of DUI referrals.

c. Decrease recidivism among offenders previously involved in VASAP.

3. Case management and offender intervention.

a. Establish and maintain a standard classification procedure for offenders.

b. Establish standard methods of reporting offender status to referring courts and the Executive Director of the Commission on VASAP.

c. Implement and maintain an offender tracking system (VADD) (see Case Management Manual VR 647-01-03).

d. Implement and maintain a standard curriculum to education offenders.

e. Identify resources for offender referral to properly licensed facilities or properly licensed private practitioners.

4. Public information.

a. Prevent and reduce incidents of DUI.

b. Increase public knowledge of VASAP and transportation dangers caused by alcohol or other drugs.

5. Evaluation and certification.

a. Utilize the VASAP Commission certification manual to conduct evaluations of ASAP operations every three years.

b. Develop a system for evaluating the impact of the VASAP system on DUI problems.]

§ 1.6. Goal and Objectives.

A. VASAP goal.

Improve transportation safety by decreasing the incidence of driving under the influence of alcohol or other drugs and thereby reducing the number of alcohol and other drug-related crashes.

B. VASAP objectives.

1. [~~To~~] Deter the motoring public from driving under the influence.

2. [~~To~~] Deter those arrested and convicted of DUI from again driving under the influence.

3. [~~To~~] Increase awareness to facilitate the identification, apprehension and conviction of offenders driving under the influence of alcohol and other drugs.

4. [~~To~~] Raise the conviction rate for offenders and the number of appropriate referrals to Alcohol Safety Action Programs.

5. [~~To~~] Ensure appropriate probationary control of offenders.

6. [~~To~~] Ensure the delivery of appropriate education or treatment services for offenders.

7. [~~To~~] Provide statewide offender tracking services for all ASAPs.

8. [~~To~~] Increase public awareness of [:] the civil and legal consequences of DUI arrest; public perception of transportation crash risks; and public activities [~~for and *public* interest in, reduction of~~ *to reduce*] DUI incidents.

9. [~~To~~] Assess and maintain the effectiveness and self-supporting status of both the commission and local Alcohol Safety Action Programs.

PART II.
ORGANIZATION AND ADMINISTRATION.

[§ ~~2.1. Legislative authority.~~

~~The Virginia Alcohol Safety Action Program, authorized under §§ 18.2-271.1 and 18.1-271.2 of the Code of Virginia,~~

~~provides services to persons convicted of a violation of § 18.2-266 or of similar offenses. Driving under the influence is a criminal offense categorized as a Class 1 misdemeanor and subject to fine, loss of driving privilege, jail sentence, or all three. Sections 18.2-266 through 18.2-273 of the Code of Virginia cover various aspects of this offense, including presumptive levels , per se levels, chemical testing and reporting systems.~~

~~Sections 18.2-271.1 and 18.2-271.2 of the Code of Virginia authorize the commission to establish and ensure maintenance of minimum standards and criteria for ASAP performance and operations, accounting, auditing, public information and administration, in connection with highway safety. The commission oversees ASAP plans, operations and performance, and a system for allocating funds to cover any ASAP deficits.~~]

§ [~~2.2.~~ *2.1. VASAP*] Organizational structure.

[~~The commission certifies Alcohol Safety Action Programs (ASAPs) in accordance with procedures set forth in the Commission on VASAP Certification Manual (VR 647-01-04). See § 18.2-271.2 B of the Code of Virginia .~~]

Professional staff shall include a full-time executive director, who is responsible to the commission a ~~police education and training coordinator, public information and education coordinator, data production supervisor, and case management coordinator. Sufficient clerical staff and others shall be hired.~~ *and such other staff designated by the commission to carry out the mandates of §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia as well as policies established by the commission* . Each employee ~~has~~ *shall have* responsibilities for areas of ASAP operations and [~~countermeasures~~ *components*] as assigned by the executive director. Each [~~and is full time and directly~~ *shall be*] accountable to the executive director.

[§ ~~2.3. Local organization.~~

~~Each ASAP is organized under the administration of political subdivisions or the joint exercise of powers statutes §§ 15.1-20 and 15.1-21 of the Code of Virginia .~~

~~ASAPs shall consist of at least a director, one or more case managers and clerical support and such staff deemed necessary by the Commission on VASAP and the local policy board . The staff should shall be available to cover administrative, clerical, and countermeasure activities of the ASAP.~~

~~ASAP staff shall conform to equal opportunity minimum hiring standards established by the Commonwealth of Virginia.~~]

PART III.
CERTIFICATION.

§ 3.1. Certification.

[~~All ASAPs operating under §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia are required to be certified by the commission in conjunction with standards set out in the Commission Certification Requirements Manual (VR 647-01-04).~~

~~All ASAPs operating on the initial effective date of these regulations and holding a current certification shall continue under that certification until scheduled for review. All noncertified ASAPs and new ASAPs established after the initial effective date shall obtain certification.~~

Certification of Alcohol Safety Action Programs within the Commonwealth of Virginia was established to ensure administrative consistency within the system and the quality of services provided to DUI offenders, the courts and the community. [*One-third of the ASAPs shall be certified each year by region. The regions are Battlefield, Blue Ridge and Colonial ASAP Councils.*

All ASAPs operating under §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia are required to be certified by the commission in conjunction with standards set out in the Commission Certification Requirements Manual (VR 647-01-04).

All ASAPs operating on the initial effective date of these regulations and holding a current certification shall continue under that certification until scheduled for review. All noncertified ASAPs and new ASAPs established after the initial effective date shall obtain certification. The commission certifies Alcohol Safety Action Programs (ASAPs) in accordance with procedures set forth in the Commission on VASAP Certification Manual (VR 647-01-04). See § 18.2-271.2 B Code of Virginia.

~~*The Commonwealth of Virginia is geographically organized into three VASAP regions; Colonial, Battlefield and the Blue Ridge Mountains ASAP council. A certification team is assigned to each of the regions.*~~

~~*Team compositions: Each regional team consists of one commission member, one local ASAP director and one case management representative from the VASAP system. Each team member is appointed by the commission. The membership of each regional team shall be rotated among available representatives on an annual basis. The executive director of the Commission on VASAP shall serve as ex-officio member of each regional team. Team II will serve as the certification team in Region III, Team III will serve as the certification team for Region I and Team I will serve as the certification team for Region II.*~~

~~*Training: The executive director of the Commission on VASAP shall be responsible for training provided to each certification review team.*~~

~~ASAPs may seek review of decertification, revocation or denial of certification through appeal to the commission.~~]

~~Certification reviews are conducted by certification~~

teams. Each certification team shall consist of the Executive Director or his designee, two ASAP directors, and a case management representative appointed by the Executive Director. The Commission, at its discretion, may appoint a Commission member to serve on the certification team. The team's composition will change to allow for participation by all VASAPDA member directors.

[§ 3.2. Standards of certification.

Certification shall be carried out in accordance with the Certification Requirements Manual (VR 647-01-04).

The standards of certification are:

1. Compliance with the commission's policies and procedures as set forth in this manual.

2. Operation of an ASAP consistent with the statewide system.

3. Compliance with all applicable state and federal laws.]

§ [3.3 *3.2*]. Period of certification.

Beginning in 1989, one [*One* third of the ASAPs shall be certified each year by region ; the . *The* three regions are (II) Battlefield *ASAP Council* ; (I) Colonial *ASAP Council* ; and (III) Blue Ridge *Mountains ASAP Council* Regions.] All certifications shall be for a period of three years and shall expire on the date the ASAP's fiscal year ends *June 30 in the last year of the certification period* .

§ [3.4 *3.3*]. Action on certification.

Certification may be revoked, granted with conditions, or denied by the Commission for failure of an ASAP to comply with the standards of certification as established by the Commission.

Before any certification is revoked, a 30 day written notice shall be given by the Commission or its designee to the ASAP specifying the cause, the date, time and place of a hearing on the proposed action. *An ASAP shall be certified* [*or not certified*] *by the Commission on VASAP. When an ASAP is found out of compliance in a review area by the certification team, the ASAP will complete a plan of action setting out the procedures to be followed [remediating the discrepancy to attain compliance] . This submission must be within 10 days of notification by the review team. A follow-up team representing the commission* [*must shall*] *then make an additional visit to validate that corrective action has been taken and make a recommendation for certification* [*at the completion of the follow-up visit. if the program is found to be compliant,*] *a program may seek a waiver from a certification standard as provided* [*on page 27, in*] *Category 8 of the Certification Manual (VR 647-01-04).*

Certification [*may shall*] *be revoked if an ASAP fails to continue to meet any standard for certification.*

[Should an ASAP] 's certification be revoked, [*be denied certification,* the ASAP shall submit to a full audit by the commission, and control of all assets and liabilities of such ASAP shall be jointly assumed by the commission and the local political subdivision(s) responsible for the ASAP, so that such assets can be expressly used to establish and operate a certified ASAP within the area previously served by the revoked ASAP. All local referring courts, the commission, VASAPDA and all certified ASAPs shall be notified of any revocation and of the establishment of any new ASAP.

If an area of the Commonwealth loses the services of a certified ASAP because] of decertification [*certification is revoked or denied,* the commission or a newly-established ASAP will ensure that services to that area are made available by a certified ASAP.]

[*§ 3.4. Revocation of certification.*

The commission on its own motion, upon receipt of information that indicates an ASAP may no longer meet certification requirements or that other irregularities may exist within the ASAP, may send a certification review team to investigate the ASAP. Notice of the intended investigation by the certification review team shall be given to the ASAP director and the chairperson of the policy board. Upon completion of the investigation, the certification review team shall submit a report to the executive director, who may call a special meeting of the commission to review the report, giving notice to the local ASAP director.

The commission may vote to revoke the certification of the ASAP based on the report. The revocation shall become effective on the date of the vote. If revocation is voted, the executive director shall notify the ASAP director, chairperson of the policy board, political subdivisions, and the courts the ASAP serves within 10 days.

If the ASAP corrects its deficiencies within 30 days, its certification may be reinstated by the commission. If the deficiencies are not corrected, the commission may establish a new ASAP.

§ 3.5. Final certification decision.

A report shall be filed with the commission 30 days prior to the next regularly scheduled meeting of the commission which details all programs reviewed since the last commission meeting. The commission shall review the document presented and make a certification decision. The executive director shall notify in writing the director of each ASAP as well as the chairperson of that ASAP's policy board.

The commission may certify, revoke certification or

decline to certify an ASAP.

If the commission fails to certify or revokes an ASAP's certification, the commission may establish a new ASAP.

The commission's certification decision shall be sent to the ASAP director, the ASAP policy board chairperson, political subdivisions, and the courts the ASAP serves or would serve.

In the event of certification disputes with the certification review team, or the denial of a request for waiver of certification requirements by the executive director, the ASAP director may request a hearing before the commission. The request for the hearing must be in written form from the ASAP director and submitted to the commission 30 days prior to the next regularly scheduled meeting of the commission. Upon receipt of a written request, the commission or its designee shall schedule a hearing.

Failure to file such a request or to appear as scheduled shall be deemed a settlement of the certification dispute or acceptance of the executive director's waiver decision.

PART IV.
OFFENDER TRACKING SYSTEM.

The commission, or its designee, shall operate an offender tracking system capable of providing records to the ASAP of participation by offenders. This system shall be capable of responding to record checks within five working days of receipt of the request.

The commission, or its designee, shall submit statistical reports to ASAPs on a quarterly basis detailing the volume and characteristics of offenders arrested, classified, referred and disposed of during the reporting quarter. These reports shall be provided within 15 calendar days of the close of the report quarter.

The commission, or its designee, shall submit to each ASAP statistical reports on a monthly basis detailing the specific offenders referred and classified for the reporting month. These reports shall be provided within six working days of the close of the report month.

The commission, or its designee, shall conduct or support research necessary to ensure the operations of the local and state system and ensure that objectives are being met.

ASAPs shall secure written approval of the commission prior to dissemination of research using offender records. Approval shall be based on compliance with current applicable privacy and security regulations.]

PART [~~4.~~ *V.*]
LOCAL ADMINISTRATIVE STRUCTURE.

§ [~~4.1.~~ *5.1.*] Local [~~structure~~ *staff*].

[~~Each ASAP shall provide direct services to a specific set of political subdivisions as defined in the planning study~~ .] ~~and~~ [~~*These subdivisions* shall be approved by the Commission.~~

~~Any anticipated changes of political subdivisions falling within the service area of an ASAP shall be reported by that ASAP to the *commission through the* executive director at least 60 days prior to the initiation for approval.~~

~~Changes in the included political subdivisions of an ASAP or, in the absence of a planning study, the initial establishment of political subdivisions, shall be made in a written agreement with the ASAP *policy board*] its fiscal agent,~~ [~~and the commission.~~

ASAPs shall consist of at least a director and such staff deemed necessary by the Commission on VASAP and the local policy board. The staff shall be available to cover administrative, clerical, and component activities of the ASAP.

ASAP staff shall conform to equal opportunity minimum hiring standards established by the Commonwealth of Virginia.]

§ [~~4.2. Administrative agent~~ *5.2. Local organization*].

[~~The commission or any county, city or town or any combination thereof may establish, and if established, shall operate in accordance with the standards and criteria required under § 18.2-271.1 of the Code of Virginia *an* Alcohol Safety Action Program.~~] ~~The Administrative Agent may also serve as the fiscal agent of the ASAP.~~ [*Each ASAP is organized under the administration of political subdivisions or the Joint Exercise of Powers Statutes §§ 15.1-20 and 15.1-21 of the Code of Virginia.*

[*§ 5.3. Administrative agent.*]

Each ASAP shall be administered by a policy board that complies with ~~Section 4.3.~~ [~~*§ 4.4. §* 5.5.~~] ; ~~Policy Board,~~ of this manual *to serve as its administrative agent. The administrative agent may also serve as the fiscal agent of the ASAP.*

[~~Any changes to the administrative or organizational structure of an ASAP, or any operational component subject to certification review, must be reported to the commission, through the executive director,~~] ~~within 30~~ [~~*for review and approval at least 60* days~~] ~~from the date of adoption and implementation~~ [~~*prior to initiation* ~~ .

The commission, or any county, city, town or any combination thereof may establish, and if established, shall operate in accordance with the standards and criteria required under § 18.2-271 of the Code of Virginia an Alcohol Safety Action Program.

Each ASAP shall provide direct services to a specific set

of political subdivisions as defined in the planning study or designated by the Commission on VASAP. These subdivisions shall be approved by the commission.

Any anticipated changes of political subdivisions falling within the service area of an ASAP shall be reported by that ASAP to the commission through the executive director for review and approval at least 60 days prior to the initiation.

Changes in the included political subdivisions of an ASAP or, in the absence of a planning study, the initial establishment of political subdivisions, shall be made in a written agreement with the ASAP policy board and the commission.

Any changes to the administrative or organizational structure of an ASAP, or any operational component subject to certification review, must be reported to the commission, through the executive director, for review and approval at least 60 days prior to initiation.]

§ [~~4.3.~~ *5.4.*] Fiscal agent.

Each ASAP may use a local political subdivision as a fiscal agent unless the commission approves an alternative.

Any anticipated changes in the fiscal agent shall be reported by the ASAP to the commission , *through the executive director,* for review and approval at least 60 days prior to initiation.

§ [~~4.4.~~ *5.5.*] Policy board.

Each ASAP shall have a policy board which will control and give direction to the ASAP's activities [*and shall develop policies for the operation of the ASAP*]. These boards shall convey ASAP needs and direction to the ASAP, and board members shall be chosen to serve as set out [~~herein~~ *below*]. The board of any ASAP operated by the commission under § 18.2-271.1 H of the Code of Virginia may be selected by the commission if the locality cannot agree on the selections. [~~All persons~~ *Persons*] serving on any policy board shall serve without compensation.

A. *Policy board composition.*

The policy board shall consist of five to 15 members [~~*appointed by the governing bodies of participating jurisdictions*~~ ~~and shall develop policies for the operation of the ASAP~~]. [~~One~~ *The governing bodies of each participating jurisdiction shall appoint one*] member [~~shall be selected by the governing board of each participating locality~~] for a term of three years. The remaining members shall be elected [*for a term of three years*] by majority vote of those members selected by each represented locality [~~for terms of three years~~ *unless these are the first appointments to the policy board*] ~~except that when~~ . *When* a local policy board is first appointed, one third *of the members* shall be appointed for one year, one third for two years, and one third for three years. In addition to the members so selected, the director of the ASAP shall also be an ex-officio member without voting power. The membership ~~in~~ *not appointed by* the *governing bodies of represented jurisdictions, at the* discretion of the board, shall be selected or elected from *but not limited to,* the judiciary, *the* Bar, [~~*the*~~] law enforcement, education *and* treatment *professionals* , and other interested groups such as local transportation safety commissions. The designated terms of office may, with commission approval, be modified ~~in the discretion of the policy board~~ . [*Vacancies which occur on the board shall be filled by majority vote of the remaining board members from nomination of other board members and the participating governing bodies of the jurisdiction.*]

B. *Policy board responsibilities.*

The board shall perform these duties:

1. [~~Oversee operation~~ *Oversight of operations*] of the ASAP within the participating localities, [~~and hire and~~] ~~supervising~~ *supervise* ~~an executive~~ *a* director [~~who shall be responsible for implementing operational policies for the ASAP, hiring and supervising the ASAP staff, and controlling all ASAP revenues and expenditures~~].

2. [~~Approve~~ *Approval of*] a fiscal year operational budget prepared by the ~~Executive~~ director.

3. [~~Approve~~ *Approval of*] the ~~Executive~~ director's annual report, which shall include ASAP activities and financial status.

4. [~~Require~~ *Completion of*] *an* annual independent audit *which* shall be conducted at the end of each fiscal year.

5. [~~Adopt~~ *Adoption of*] written guidelines and bylaws structured *similarly* as set out in subsection C of this section.

[*6. Establishment of operational policies and procedures for the ASAP.*]

C. *Policy board guidelines and bylaws.*

1. Officers. The officers of the policy board shall consist of a [~~chairman~~ *chairperson*] ~~a vice chairman, a secretary~~ treasurer ~~(if needed)~~ , and such subordinate officers as the board may elect or appoint. The secretary-treasurer *(* [~~*when*~~ *If*] *elected)* shall not be the ~~Executive~~ director of the ASAP. Each [~~of these officers~~ *officer*] shall serve without compensation. The offices of [~~chairman~~ *chairperson*] and [~~vice-chairman~~ *vice-chairperson* ~~*when*~~ *if*] *elected* shall be held by members from different participating jurisdictions.

2. Terms of office. Except for the original officers, [

(who shall be elected at the second meeting after the formation of the board)] each officer shall be elected at the annual meeting of the board to serve ~~such~~ *a* term ~~as the board may designate unless sooner removed by the board, or until a successor is elected and qualifies~~ *of three years. Deviation except as provided in § [~~4.4~~ A 5.5 A] of these regulations must be approved by the Commission on VASAP.* Any vacancy occurring in any office shall be filled [*by the board*] for the unexpired term [~~by the board~~].

3. Election of officers. A majority of the members shall be present and voting in order to constitute an election. Members who are unable to attend may vote in any election by letter directed to the chairman and delivered prior to or at the meeting. At the regular meeting of the policy board immediately preceding the annual meeting, the chairman shall appoint a nominating committee. This committee shall present to the board at its annual meeting a slate of nominees for election as officers and a slate of nominees to fill any vacancies on the board. All board members and officers shall take office on the first day of the month following their election and shall serve until their successors take office. No officer shall serve more than two consecutive terms in the same office.

~~4. Duties of Chairman:~~

~~a. Preside at all meetings of the board and executive committee, and to vote as any other member.~~

~~b. Implement the policies established and the actions taken by the board.~~

~~c. Appoint all committees deemed necessary for the operation of the board and the effective implementation of the ASAP.~~

~~d. Work closely and meet regularly with the Executive Director of the ASAP.~~

~~e. Perform any other duties as determined by the board.~~

~~f. Exercise all other powers and duties customarily pertaining to the office of chairman.~~

~~5. Duties of Vice Chairman - The vice chairman shall, in the event of the death, disability or absence of the chairman, perform such duties and possess such powers as are conferred upon the chairman, and shall perform such other duties as may be assigned to the vice chairman by the chairman of the board.~~

~~6. Duties of Secretary Treasurer - The secretary treasurer shall attend all board and standing committee meetings, and keep a record of their proceedings. The secretary treasurer shall:~~

~~a. Serve as custodian of all records of the ASAP.~~

~~b. Keep accurate records of all receipts and disbursements.~~

~~c. Make a brief financial report at each regular meeting of the board.~~

~~d. Submit an annual report as soon as practicable after the end of each fiscal year.~~

~~e. Perform all other duties incident to the office or that may be required of him by the board.~~

~~The secretary treasurer, with the permission of the board, may delegate certain of his duties and responsibilities to the staff of the ASAP.~~

~~7.~~ *4.* [*Annual meetings. The annual meeting of the board is that meeting so designated in the bylaws for the purpose of electing officers, filling expired terms of member and shall be open to the public.*]

Regular meetings. Regular meetings of the board shall be held quarterly and shall be open to the public ~~however, the~~ . *The* board or its executive committee may, where legally appropriate, go into executive session.

~~A.~~ Time and place. The board may change the date and time of any regular meeting at any prior meeting and may adjourn any meeting ~~from time to time~~ to another place *if notice of the change is provided to interested parties* .

~~B. Order of business: The order of business at all regular meetings shall be:~~

~~1. call to order~~

~~2. roll call~~

~~3. approval of minutes~~

~~4. unfinished business~~

~~5. new business~~

~~6. adjournment~~

~~C. Special Meetings - Special meetings may be called at the chairman's discretion or by any four board members upon five days notice to all members in writing or by telephone of the time, place, and purpose of the special meeting.~~

~~D. Quorum - A majority of members of the board shall constitute a quorum for the transaction of business.~~

~~E. Voting procedures - Each board member shall be entitled to one vote on official matters before the board.~~

~~All actions of the board, except for election of members of the board, may be taken by a simple majority vote of all members present and voting. No vote by any board member shall constitute or be construed as an official or unofficial commitment of the participating jurisdictions within which that member resides or which the member has been duly chosen to represent.~~

~~F. Board committees - Each board may establish:~~

~~1. an executive committee~~

~~2. a personnel committee~~

~~3. a finance committee~~

[*5. Each policy board shall adopt Robert's Rule of Order (or similarly acceptable) as operational guidelines for actions not specifically defined in the board's bylaws.*]

§ [~~4.5.~~ *5.6.*] Personnel policy guidelines.

Personnel of each ASAP are subject to the conflict of interests law (§ 2.1-639.1 et seq. of the Code of Virginia). Each ASAP shall establish personnel policy guidelines no less stringent than those set forth [~~here~~ *in this section*].

ASAP employees may not engage in any activity deemed to be in conflict with the interests of the ASAP [*as provided in the Code of Virginia*].

[~~Conflict~~ *Conflicts*] of interests include [~~situations in which ASAP employees~~ *but are not limited to the following*]:

1. [*ASAP employees shall not*] disclose to any person, not entitled thereto, information gained through their office or employment, or otherwise use such information for their personal gain or benefit.

2. [*ASAP employees shall not*] accept any gifts, gratuities, favors or services from ~~contractors, consultants, suppliers, those~~ [*clients or*] *any individual or agency* who may seek to supply goods or services to the commission or the ASAP ~~or those doing any other kind of business with the Commission of the ASAP~~ . The terms "gifts, gratuities, favors or services" include but are not limited to: moneys, credits, discounts, seasonal or special occasion presents, eatables, drinks, household appliances, furnishings, clothes, loans of goods or money, tickets to sporting or cultural events, transportation, vacations, travel or hotel expenses or any form of entertainment.

3. [*ASAP employees shall not*] contract for[,] or provide supplemental services to an ASAP for which they are employed on a full-time basis.

In the event of a violation of the personnel policy guidelines, the ASAP director or ~~administrator~~ [~~*chair*~~ *chairperson*] of the ASAP policy board shall execute a review procedure.

ASAP directors shall initiate, conduct and complete a thorough review of any alleged breach of personnel policy guidelines by an employee of the ASAP they administer. Such review shall be initiated within 10 working days from the date of receipt of the allegation. Upon both initiation and termination of the review the ASAP director shall notify the ~~Commission~~ *executive director* and the policy board in writing. A complete report of the review shall be filed no later than 30 days after the date of the initiation of the review.

Employees of an ASAP found in violation of these personnel policy guidelines shall be dealt with by the ASAP director in accordance with ASAP personnel policy or state law as applicable. [~~All personnel actions ; resulting from conflict situations, shall be reported to the executive director.~~]

If an ASAP director is subject to review for a breach of [*any conflict of interest*] personnel policy guidelines, the executive director shall execute the review procedure unless such review is undertaken by the policy board. The executive director shall inform the commission of any such review initiated ~~by the policy board~~ within 30 days of initiation of the review.

When conducting a review the policy board shall adhere to the same time parameters established for reviews conducted by the ASAP director. The policy board ~~of the ASAP reviewing the ASAP director~~ shall ~~inform~~ *file a completed report within 30 days of initiation with* the executive director of the results of that review. *A director found in violation of these personnel policy guidelines shall be dealt with in accordance with ASAP policy or state law where applicable.*

§ [~~4.6.~~ *5.7.*] Travel.

All work-related travel by ASAP personnel shall comply with the local policy board's travel regulations. *In the absence of local policy regulations, travel must be in accordance with the Commonwealth of Virginia* [~~*regulations*~~ *travel policies*] .

§ [~~4.7.~~ *5.8.*] Training.

Each ASAP shall send appropriate representatives to training sessions conducted or directed by the commission unless prior written exemption is secured from the executive director.

All locally conducted training, other than staff in-service, shall be reported to the executive director. [*ASAPS are encouraged to implement local in-service staff training. To make such training cost effective, such training may be done on a regional basis.*]

§ [~~4.8.~~ *5.9.*] Security [~~clearance~~ *and confidentiality* .

~~Each ASAP shall conduct security checks as required by state and federal law~~] ~~to~~ [*before*] ~~authorize~~ [~~*authorizing* personnel access to offender records.~~ *Each ASAP shall have written policy for maintaining the security and confidentiality of offenders' records. Such policies should include, at a minimum, research projects, release of information to the courts and law enforcement and policies for protecting, communicating and acquiring offender information.*]

PART [~~V.~~ *VI.*]
ASAP FISCAL POLICY.

§ [~~5.1.~~ *6.1.*] ASAP finance.

[*On or before June 1,*] *all ASAPs shall submit before review,* [*and approval*] *a budget to the commission office through the executive director following approval* [*/ and*] *review by its policy board and administrative or fiscal agent, where applicable* [~~*30* days prior to the beginning of each fiscal year~~] ~~July 1, all ASAPs shall submit a budget to the Commission for review~~ . If deficit funding is sought, the commission shall [~~both~~] review and [*shall*] approve the budget.

~~Each ASAP shall submit a board approved budget to the Executive Director following reviewed by its policy board and administrative or fiscal agent.~~

Budgets utilizing federal or state funds shall be submitted to the commission for approval at least 60 days prior to their effective date.

Revisions *within appropriated authority* establishing new line items require policy board approval *and notification shall be submitted to the commission to update budget status* .

§ [~~5.2.~~ *6.2.*] Offender fee distribution.

All ASAPs, on a monthly *basis* ~~or quarterly basis,~~ shall forward 10% of each collected offender fee to the Treasurer of Virginia in accordance with § 18.2-271.1 of the Code of Virginia. Money not expended from year to year after deficit funding has been satisfied shall be expended for the direct benefit of the ASAP or be refunded to such ASAPs in accordance with commission directive.

§ [~~5.3.~~ *6.3.*] Deficit funds.

Twenty percent of the fee paid to the Commonwealth by the ASAP shall be set aside for deficit funding.

The executive director shall submit a quarterly account and report of these funds ~~submitted by the Executive Director~~ to the commission ~~and~~ finance committee members.

~~The Commission will fund an ASAP's audit, after deficit funding has been determined, up to $1500 or 1/2 of one percent of the ASAP's total offender fees, whichever is greater.~~

§ [~~5.4.~~ *6.4.*] Deficit eligibility.

In order to be declared eligible for deficit funding an ASAP must meet the following criteria:

1. The ASAP is operating on an approved budget which has been reviewed by the commission and approved by the policy board.

2. The ASAP will expend all available funds, including such funds as savings, ~~CDs~~ *certificates of deposit* and any other savings program, during the budget year.

3. The ASAP is operating within all standards established by the commission.

4. The ASAP is willing to revise its budget consistent with the recommendations for the commission's finance committee or the commission.

5. The ASAP has filed a request ~~form~~ and submitted all data requested by the finance committee and commission within the time frame allotted.

6. The ASAP is in compliance with state fee policy and report requirements.

§ ~~5.6~~ [~~*5.5.*~~ *6.5.*] Budgetary deficits.

A. All ASAPs requesting deficit funding shall complete a request for deficit funding ~~form~~ and submit it to the executive director.

B. ASAPs must submit current budget and finance reports to the executive director with the request ~~form~~ .

C. Budget reviews shall be conducted by the finance committee. The finance committee will meet regarding the ASAP request within 30 days of [*receipt of*] request to review information submitted and formulate a plan of action.

D. The ASAP director will meet with the finance committee to present the ASAP's situation and to answer questions. No ASAP director will be allowed to participate in deliberations of the finance committee regarding ~~his~~ *the* ASAP he [~~is director of~~ *directs*].

E. An on-site review of the ASAP shall be made by the finance committee, commission, or their designee.

F. Upon final review the finance committee shall determine the amount to be funded via commission funds. Funds up to $10,000 may be authoriszed by the finance committee. Larger *amounts* shall require a review by the full commission.

G. Not more than 10 working days after the review, the

director and board [~~chairman~~ *chairperson*] of the ASAP shall be notified of the ASAP's eligibility. ASAPs that meet the requirements shall receive funding. Those not qualified shall receive recommended changes for eligibility.

H. For the remainder of the fiscal year, the ASAP director shall submit to the commission monthly reports of expenditures with comments on any significant change in the fiscal status of the ASAP.

§ ~~5.5~~ [~~5.6~~ *6.6.*] Audits and financial reports.

Each ASAP's financial reocrds and accounts shall be subject to local, state and, when applicable, federal audits.

All financial records shall be maintained in an orderly fashion using generally-accepted accounting procedures. The finanical records shall be retained for three years after aduit unless specifically authorized by the commission for a shorter period of time.

Within 60 days after the close of the reporting period, all ASAPs shall submit to the commission an annual income statement outlining the ASAP's expenditures and revenues for the reporting period. The report periods shall run from July 1 to June 30 of each year.

The commission shall retain the authority to review and approve the accounting methods used by ASAPs. Each ASAP shall [~~annually~~] submit [*annually*] to the commission the results of a private audit by a CPA or the results of an audit performed under the unified standards in connection with a local governmental unit. *The commission in its discretion may perform audits of local program in addition to or in lieu of this annual audit.*

[~~*Where audits are performed by private CPA firms, the commission will fund an ASAP's audit costs, after deficit funding has been determined, up to $1500 or 1/2 of 1.0% of the ASAP's total offender fees, whichever is greater.*~~]

§ [~~5.7.~~ *6.7.*] Grant applications.

[~~Each~~ ~~ASAP~~ *ASAPs*] with political subdivisions as fiscal agents may apply for [*state or federal funding for*] grants and special projects [~~in accordance with~~ *focusing on*] the commission [~~countermeasures for federal funds relating~~ *components*] to [*improve*] transportation safety.

§ [~~5.8.~~ *6.8.*] Offender fee collection.

All offenders ; ~~except those the court determines indigent,~~ referred to the ASAP , *except those the court determines [to be*] indigent, are required to pay the fee as required by § 18.2-271.1 of the Code of Virginia. Collection of offender fees in cash is discouraged. [~~ASAPs shall collect only those fees which are authorized by statute.~~

~~Unless otherwise directed by the court, offender~~] Fees shall be collected at the initial contact or enrollment unless the offender is declared to be indigent, or extreme hardship indicates that payment must be made over a period of time[; , *or unless otherwise directed by the court*].

~~Offender indigence is to be determined in accordance with the policy of the referring court.~~

~~A receipt notice sign must be posted in a conspicuous location within the ASAP office where receipts are issued for offender fees.~~

All fees deposited locally shall be in a local account approved by the fiscal agent, administrative agent, or the policy board and deposited in accordance with board procedures. Fees collected by the ASAP shall be deposited daily. [*Each ASAP shall strive to maintain a separation of duties, ensuring that persons writing receipts are not solely responsible for making daily deposits or reconciling bank records.*]

No ASAP shall retain over $300 in cash from offender fees in its office beyond the daily close of business.

Each ASAP shall designate specific staff members to be responsible for collection of offender fees. Those individuals and their designees shall be bonded ~~if involved in the direct handling of monies~~ .

All fees collected by the ASAP shall be [~~receipted~~ *documented*] with prenumbered receipts. All receipts shall be posted in a general ledger that shall be kept in a manner consistent with generally accepted accounting procedures. The receipts, payment cards and receipt books shall be maintained for three years after audit by the ASAP, unless specifically authorized by the commission for a shorter period of time.

Except for those ASAPs whose bookkeeping is provided by their fiscal or administrative agent, each ASAP shall have an appropriate staff member trained to conduct bookkeeping duties. [~~This person should be trained consistent with this responsibility.~~] ASAPs are authorized to contract with a recognized bookkeeping service in lieu of having a staff member perform bookkeeping duties. [*As recognized by the Auditor of Public Accounts and in generally accepted accounting procedures, the person who authorizes disbursements or executes checks shall not be the same person who conducts bookkeeping duties.*]

§ [~~5.9.~~ *6.9.*] Transfers and fees.

For those offenders who seek to transfer to an out-of-state facility, each ASAP shall inform the offenders in writing (with a copy to remain in their file) of their responsibility for costs incurred out-of-state, unless otherwise directed by the court.

Fees assessed to offenders being transferred intrastate will be collected by the ASAP receiving the transfer.

When an intrastate transfer decision is made following the collection of fees, the originating ASAP shall forward to the receiving ASAP the full fee collected less the portion sent to the Commonwealth. If partial service has been rendered the full fee shall be forwarded unless otherwise agreed upon by the originating and receiving ASAP.

PART [~~VI.~~ *VII.*]
COMMUNICATIONS.

§ [~~6.1.~~ *7.1.*] Correspondence.

State level correspondence from the commission to administrative agents, fiscal agents and policy boards of ASAPs concerning ASAP operation shall also be copied to the ASAP director simultaneously with the issuance of the original correspondence.

Correspondence originating in the ASAP office regarding financial and administrative problems shall be directed to the executive director.

§ [~~6.2.~~ *7.2.*] Reports.

An annual report of ASAP activities and financial data shall be completed by the ASAP. Fifteen copies shall be submitted to the executive director within [~~60~~ *90*] days of the close of the fiscal year, unless prior exception is secured from the executive director. The executive director will [~~handle appropriate dissemination~~ *disseminate reports to members of the commission, the advisory committee, and other interested persons*]. These reports shall follow the standard annual report format as established by the commission.

PART [~~VII.~~ *VIII.*]
REVIEWS OF ASAPs.

§ [~~7.1.~~ *8.1.*] Reviews.

In addition to certification review, ASAP reviews shall be periodically directed by the commission in response to ASAP requests, upon identification of substantial ASAP problems, or to update information on ASAP operations. The review may be conducted by the executive director, a representative from [~~the ASAP~~ *VASAPDA*] and any other persons designated by the executive director or commission. [*The results of this special review shall be reported by the reviewer to the commission within 30 days of the completion of the review.*] ~~An ASAP review shall be conducted within 60 days of the completion of review.~~ Upon approval of the report, a copy shall be submitted to the ASAP.

An ASAP may challenge any portion of the review report through communication to the commission with 30 days of receipt of the report. This will become a part of the official report by the commission.

An ASAP review shall be conducted within 90 days of any change in the ASAP's administrative agent.

~~An ASAP review must be conducted during the period when an ASAP is operating under provisional certification.~~

PART [~~VIII.~~ *IX.*]
~~CONTRACTS~~ *SERVICE AGREEMENTS.*

§ [~~8.1.~~ *9.1.*] ~~Contracts~~ *Service agreements* .

All ASAPs, as referral agencies, shall explicitly outline relationships with vendors for education or treatment services for offenders through formal [~~contracts or~~ *service*] agreements. *All ASAPs shall utilize the standard service agreement format provided by the commission. Local programs may attach an addendum to the standard agreement as negotiated with the service provider.* [*See Appendix*]

ASAPs shall be responsible for ensuring that all treatment ~~contracts~~ *service agreements* are awarded to vendors who are licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services or licensed or certified by the Department of Health Professions.

The ASAP shall be responsible for the negotiation and awarding of ~~contracts~~ *service agreements* within its area. When the ASAP so requests, the commission or its designee shall assist in negotiations and consultations on such ~~contracts~~ *agreements* .

[~~Contracts~~ *Service agreements*] shall not be ~~awarded to~~ *entered into with* any person or agency who is [~~not~~] known [*not*] to adhere to state and federal equal opportunity regulations, local, state and federal confidentiality and privacy regulations, or any other applicable rules, regulations or laws.

All ~~contracts issued~~ *service agreements entered into* by ASAPs shall be consistent with § [~~4.5~~ *5.6*] of these regulations.

PART [~~IX.~~ *X.*]
RECORDS MANAGEMENT.

§ [~~9.1.~~ *10.1.*] Offenders file.

Each ASAP shall maintain a file on ~~all offenders~~ *each offender* referred or transferred to it for service. This file shall contain:

1. Court documents indicating referral [;]

2. Final disposition report on those offenders who were noncompliant [;]

3. Consents(s) for release of information signed by the offender [;]

4. Agreements(s) to participate signed by the offender [:]

5. Service provider reports [:]

6. Reports to the court [:]

7. Documentation of offender's absences from class or session [:]

8. Transfer form [:]

9. Record of fee payment showing date of payment, receipt number(s) and amount paid [:]

10. Classification material [:]

11. Record of chronological contact with offender [:]

ASAPs shall not destroy the above offender records or files without a formal records management plan authorized by the Virginia State Archivist.

§ [~~9.2.~~ *10.2.*] Records retention.

Each ASAP shall retain its records in accordance with the following schedule in addition to or as part of the agency's records management plan approved by the Virginia State Archivist:

1. Consent for release of information forms - three years.

2. Final report to the court, if required by the court - three years.

3. Court documents indicating referral - three years.

All financial records of the ASAP shall be retained for three years after audit [*unless specifically authorized by the commission for a shorter period of time*].

PART [~~X.~~ *XI.*]
TRANSFER PROCEDURES.

§ [~~10.1.~~ *11.1.*] Transfer documentation and procedures.

[~~A standardized transfer procedure for cases, with inclusion of appropriate documents, shall be as established in §§ 10.2 and 10.3 of these regulations.~~

ASAPS shall not retain offenders who reside outside or are not employed in their service area. In a rare instance an offender may request not to be transferred. Such request from the offender shall be in writing and kept in the offender's case file. In order to be considered for transfer, offenders must have contact with the originating ASAP prior to transfer origination.]

§ [~~10.2.~~ *11.2.*] Intrastate transfers.

[~~A. Minimum documentation necessary for transfer of offender prior to ASAP~~] entry [*enrollment* ~~shall be as follows:~~

~~1. Transfer form letter.~~

~~2. Court order or document ordering or requiring participation.~~

~~3. Case summary information.~~

~~4. Copy of DMV driving record of offender (if available at time of transfer).~~

~~5. CCRE or any arrest information (if available).~~

~~B. Minimum procedures necessary for transfer of offender prior to ASAP entry~~ *enrollment* :]

~~1. In order to be considered for transfer, offenders must have contact with the originating ASAP prior to transfer origination.~~

~~2. No ASAP shall retain offenders who do not reside or are not employed in their service area, unless a written request from the offender is obtained. This request shall be kept in the offender's case file.~~

[~~*1. ASAPs shall not retain offenders who reside outside or are not employed in their service area. In a rare instance an offender may request not to be transferred. Such request from the offender shall be in writing and kept in the offender's case file.*~~

~~*2. In order to be considered for transfer offenders must have contact with the originating ASAP prior to transfer origination.*~~

~~3. No fee shall be collected by the originating ASAP.~~

~~4. Transfer of offender's file may be accomplished by the approved automated process.~~

~~C. Minimum documentation and procedures necessary for transfer after initial intake session or when offender is actively involved in the ASAP shall be as follows:~~

~~1. Transfer form letter.~~

~~2. Court document ordering or requiring participation.~~

~~3. Case summary information.~~

~~4. Copy of DMV driving record of offender (if available).~~

~~5. CCRE or any arrest data on offender (if available).~~

~~6. Summation of information leading to classification and copy of testing instrument used.~~

~~7. Copy of questionnaire completed by offender revealing alcohol or other drug or general information.~~

~~8. Progress report on offender, if available.~~

~~9. Entire ASAP fee (minus state portion if paid *to the state* shall be transferred, unless *a lesser amount is* agreed upon by the originating and receiving ASAPs.~~

~~10. Transfer of offender file may be accomplished by the approved automated process.~~

~~Cases~~] ~~may~~ [~~*shall* be transferred if the offender's place of residence *changes* or *may be transferred if* employment changes to another ASAP area and if the offender requests a transfer to the area of his new residence or employment.~~

[*Cases shall be transfered if the offender's place of residence changes or may be transferred if employment changes to another ASAP area. The offender may request a transfer to the area of his new residence or employment.*]

If any ASAP involved fails to transfer a client to the appropriate ASAP, such failure shall be reported to the commission for investigation or action by the commission.

No ASAP shall establish offender services in the geographic service area of another ASAP without written agreement between the ASAPs *and notification to the commission* .

§ [~~10.3.~~ *11.3.*] Interstate transfers.

A. Offender cases may be transferred to an out-of-state agency if either of the following conditions exist:

1. An offender lives or is employed in another state and requests a transfer.

2. An offender is ordered, by the court of proper jurisdiction, to participate in a program out of state.

B. ~~The~~ *Transfers to states which are members of the Southeastern compact shall be accomplished in accordance with that agreement. In other cases,* [~~minimum documents necessary for transfer from the originating ASAP to an out-of-state agency shall be as follows:~~ *treatment and education services rendered by out-of-state agencies must meet the same program requirements as determined by the ASAP.*

~~1. Letter of transmittal including specific reporting needs of the ASAP.~~

~~2. Properly completed consent for release of information.~~

~~3. Transfer form.~~

~~4. Court document ordering ASAP participation.~~

~~5. Any arrest information on offender relating to alcohol or other drug usage.~~

~~C. The entire ASAP fee shall be collected and retained by the ASAP responsible for the offender unless ordered otherwise by the committing court.~~

~~D. Treatment and education services rendered by an out-of-state agency must meet the same program requirements as determined by the ASAP. The ASAP is responsible for monitoring the out-of-state agency.~~]

§ [~~10.4.~~ *11.4.*] Responsibility of ASAP receiving transfer.

The ASAP receiving a transferred offender shall have the following responsibilities with respect to the originating ASAP:

1. Within 10 days of receipt of the transfer case, the ASAP shall complete and return Part I of the transfer form. [*See Appendix*]

[~~2. Upon classification, the ASAP shall complete and return Part II of the Transfer Form.~~

~~3. The report form shall be used to forward the report after return of Parts I and II of the Transfer Form, when such reports are requested by the originating ASAP.~~

~~4. The report form shall be used to notify the originating ASAP within 30 days of the successful completion and within five days of noncompliance by the offender.~~

~~*5. Transfer reports can be accomplished by the approved automated process.*~~]

PART [~~XI.~~ *XII.*]
[*OFFENDER*] SERVICES.

§ [~~11.1.~~ *12.1.*] ~~Treatment~~ *Offender* services.

ASAPs shall provide education, intensive education or [*referral to*] treatment [~~to~~ *for*] the offenders.

Education shall include the minimum hours of alcohol and other drug education incorporated in the standardized education curriculum.

Treatment shall include referring offenders identified as possibly requiring additional services for evaluation and intervention according to their individual needs.

§ [~~11.2.~~ *12.2.*] Financial services.

ASAPs may provide financial assistance for a ~~reasonable~~ portion of the costs for treatment as negotiated by the provider. The amount of the fee expended for treatment

services shall not exceed 15% of the assessed fee. For purposes of this section the assessed fee shall equal the amount ordered by the court, less the 10% submitted to the Commonwealth.

PART [~~XII.~~ *XIII.*]
PUBLIC INFORMATION, PUBLIC EDUCATION AND PREVENTION.

§ [~~12.1.~~ *13.1.*] ASAP commitment.

Each ASAP [~~has~~ *shall have*] a commitment to public information, public education and prevention which [~~should~~ *shall*] be developed at both the state and local level.

§ [~~12.2.~~ *13.2.*] Presentations and communication.

ASAPs shall communicate public information activity needs to the commission designee.

The commission or its designee shall develop and implement annual alcohol [~~and~~ ,] other drugs and transportation safety campaigns, and shall provide campaign materials for state and local use.

ASAPs shall communicate plans of intended public information activities to adjacent ASAPs in advance of implementation if the adjacent ASAP will be affected by this activity.

§ [~~12.3.~~ *13.3.*] Surveys.

The commission[,] or its designee[,] shall use current research, evidence, and information in the technical design of alcohol or other drug and transportation safety campaigns.

This survey information shall provide the ASAP with technical information on target groups, content areas and proper procedures for ASAP campaigns.

§ [~~12.4.~~ *13.4.*] Materials.

Following public information campaigns, the commission or its designee will survey all ASAPs for their opinions of the material content, quality and effectiveness of the campaign. This ~~public~~ information shall be distributed to all ASAPs.

~~[PART XIII.~~
~~REPORTING AND MONITORING.~~

~~§ 13.1. Offender tracking system.~~

~~The commission or its designee shall operate an offender tracking system capable of providing records to the ASAP of participation by offenders. This system shall be capable of responding to record checks within five working days of receipt of the request.~~

~~The commission or its designee shall submit statistical reports to ASAPs on a quarterly basis detailing the volume and characteristics of offenders arrested, classified, referred and disposed of during the reporting quarter. These reports shall be provided within ~~ 45 [~~15~~ calendar days of the close of the report quarter.

~~The commission or its designee shall submit to each ASAP statistical reports to each ASAP on a monthly basis detailing the specific offenders referred and classified for the reporting month. These reports shall be provided within six working days of the close of the report month.~~

~~The commission or its designee shall conduct or support research necessary to ensure the operations of the local and state system and ensure that objectives are being met.~~

~~ASAPs shall secure written approval of the commission prior to ~~ conducting [~~dissemination of~~ research using offender records.] ~~This Approval shall be based on compliance with current applicable privacy and security regulations.~~

~~§ 13.2. Evaluations.~~

~~Accurate and timely information is essential to assess overall local and state objectives and ~~ ASAP [~~countermeasures and to provide the ASAPs and the commission with information to evaluate its ~~] ~~the~~ [~~effectiveness in reducing alcohol-related transportation crashes.~~

~~The commission or its designee is responsible for the evaluation countermeasure.~~

PART XIV.
EVALUATIONS.

Evaluation provides for the assessment of VASAP's deterrent effort. This is accomplished through the assessment of DUI recidivism of persons completing VASAP, assessment of the prevalence and incidence of DUI-related transportation crashes and the arrest rate of DUI offenders. ASAPs shall maintain accurate offender information and submit rquested information in a timely manner.]

§ [~~13.3.~~ *14.1.*] Data flow.

ASAPs shall participate in the commission operated management information system. Data shall be submitted in accordance with standards established by the commission. Any situation which prevents compliance with such standards shall be reported by the ASAP to the commission. The commission may give written approval for exemption if the situation is beyond the control of the ASAP.

PART [~~XIV.~~ *XV.*]
PRIVACY AND SECURITY.

§ [~~14.1.~~ *15.1.*] Privacy and security procedures.

All ASAPs and the commission shall process offender records and any other confidential information in a manner consistent with federal, state and local guidelines and regulations.

ASAPs shall not include individual offender names, social security numbers or addresses in correspondence unless that correspondence is marked confidential and includes a statement [~~of the proper~~ *for*] handling [~~of~~] the information.

PLEASE SEE FORMS AT THE END OF THESE THREE VASAP REGULATIONS

* * * * * * * * *

Title of Regulation: **VR 647-01-03. VASAP Case Management Policy and Procedure Manual.**

Statutory Authority: §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Effective Date: February 28, 1991.

Summary:

The Commission on VASAP Case Management Policy and Procedure Manual is promulgated under §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia. This manual establishes, records and provides oversight responsibility for the operation of the case management countermeasure of VASAP.

The manual as promulgated specifies policies controlling the probationary function of each local ASAP. This function includes enrollment, intake, classification, referral, monitoring, and reporting. The case management function links the judicial, probationary and treatment systems.

Revisions to the regulation include:

1. Improvements in language, grammar and clarity suggested by the Department of Planning and Budget but not adopted when the original regulations were promulgated.

2. Revisions and the addition of definitions.

3. Clarification of the process utilized when entering an agreement to provide treatment.

VR 647-01-03. VASAP Case Management Policy and Procedure Manual.

PART I.
CASE MANAGEMENT.

§ 1.1. Introduction.

[~~VASAP Case Management is a probationary function of the court comprised of enrollment, intake, classification, referral, monitoring and reporting. Case management is vital to facilitate court operations relating to DUI offenders. The case manager links the judicial and education or treatment systems, a function that ensures continuity of services and compliance with ASAP policies for all offenders referred.~~

~~VASAP offenders contract with the ASAP regarding conditions of participation.~~

~~The ASAP director is responsible for the case management countermeasure. This case management manual (VR 647-01-03) is for use by the local ASAPs.~~

VASAP Case Management is a probationary function of the courts, comprised of referral enrollment, intake, classification, offender intervention, case supervision/monitoring and court reporting. The Case Manager serves the court in coordinating the referral of the offender into appropriate community-based services pursuant to VASAP policy and procedure.

Offenders referred to VASAP by the courts are required to adhere to program guidelines as specified in a signed agreement outlining their VASAP conditions and expectations.

§ 1.2. Administration.

The ASAP director shall be responsible for the implementation and supervision of the case management component as necessary to ensure that the needs of the court are met pursuant to the Commission on VASAP policy and procedure.]

PART II.
GENERAL PROVISIONS.

§ 2.1. Definitions.

The terms used in this regulation shall have the following meaning unless the context indicates otherwise.

"ASAP" means Alcohol Safety Action Program formed by political subdivisions or by the commission as a criminal justice program that uses community and state services to address the problem of driving under the influence of ~~either~~ alcohol *and* ~~or~~ *other* drugs. ASAPs receive referrals from local courts or the commission. ASAPs deliver intervention services within locally-administered programs to specific municipal jurisdictions within the Commonwealth of Virginia pursuant to §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

"BAC" means blood alcohol concentration which is determined by law-enforcement personnel or other licensed organizations in accordance with procedures established in § 18.2-268.

[~~"Budget" means a statement in financial terms of projected or expected operations of a program or accounting entity for a given period.~~]

"CCRE" means central criminal records exchange.

[~~"Certification" is means the process whereby the commission evaluates an ASAP for its organization, management, fiscal standing, and overall operation. Certification also hinges on the ASAP's ability to receive referrals from courts of persons convicted of DUI.~~]

"Classification" means a process involving the assessment of an offender's personal involvement with alcohol or other drugs ~~and~~ *which* ~~resulting~~ *results* in referral to an appropriate intervention service (educational treatment).

"Commission" means the state agency established as the Commission on the Virginia Alcohol Safety Action Program serving under the auspices of and reporting directly to the Secretary of Transportation ~~and Public Safety~~ . It is composed of two members from the House Committee for Courts of Justice, two members from the Senate Committee for Courts of Justice, two sitting or retired district court judges who regularly hear or heard cases involving DUI and who are familiar with local ASAPs, two directors of ASAPs, one representative from the law-enforcement profession, one citizen at large, one representative from the Department of Motor Vehicles and one representative from the Department of Mental Health, Mental Retardation and Substance Abuse Services.

The commission shall establish and certify ASAPs and require them to be operated in accordance with commission standards *pursuant to* § 18.2-271.2 *of the Code of Virginia* .

[~~"Countermeasures" means the separation of actions into specifically defined areas which the VASAP system uses to offset and deter the actions of driving under the influence (DUI) and potential DUI offenders; a system to educate the general public, reduce the incidence of impaired driving and to provide a systematic approach to preventing drunk driving. There are six specific countermeasures defined and utilized by the VASAP system.~~]

"DAT" means driver awareness training. *Providing information on defensive driving and accident prevention.*

[~~"Deficit" means that the ASAP, in order to conduct its program, expects to or projects that it will expend more funds than it will receive from offenders or other sources in a fiscal year. Deficit means an excess of expenditures over revenue.~~]

"Director of ASAP" means the person who is in charge of and accountable for the operation of an ASAP. The ASAP director reports to the ASAP policy board.

"DMV" means the *Commonwealth of Virginia* Department of Motor Vehicles.

"DUI" means operating or driving a motor vehicle *or boat* under the influence of alcohol or drugs (§§ 18.2-266 *and 29.1-738* of the Code of Virginia).

"Education" means commission-approved classes provided to some offenders following classification. The intervention services include alcohol or drug education, young offender education, and intensive education.

"Enrollment" means that the offender has to report to the ASAP, obtain an intake appointment, make arrangements to pay the ASAP fee, and sign an agreement to participate as provided in §§ 18.2-266 through 18.2-273.

[~~"Executive director" means the executive director of the commission. This person is appointed by the Governor, confirmed by the General Assembly, and carries out the purposes of §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.~~

~~"Finance committee" means a budget fiscal review committee composed of the executive director, two commission members, and such other persons as the Executive Director commission designates.~~]

"Intake" means the process wherein offenders, either individually or in groups, provide objective and subjective information to case managers for use in their classification.

"Intervention services" means direct service activities to offenders entering through a program which provides direct services. Such activities include assessment services, crisis intervention, case management services and exit activities.

[~~"Joint exercise of powers" means ASAPs organized as provided in §§ 15.1-20 and 15.1-21 of the Code of Virginia.~~]

"Policy board" means a group established by the ASAP which controls and gives direction to the ASAP's activities and provides input of local needs. This board may also be established *in accordance with §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia* by the commission.

[~~"Program fiscal agent" means a unit of local government or a combination of units of local government which possess the legal authority to receive funds and to transact business throughout its jurisdiction, and the administrative capability to perform these services for an ASAP.~~

~~"Regional ASAP" means one of the three groups in the Commonwealth of Virginia in which the ASAPs have been organized:~~

REGION I	REGION II	REGION III
Colonial	Blue Ridge Mountain	Battlefield
Capital Area	Central Va.	Alexandria
Eastern Shore	Dan River	Arlington
John Tyler	Mount Rogers	Bull Run
Peninsula	New River Valley	District Nine
Piedmont	Roanoke Valley	Fairfax
Southeastern Va.	Rockbridge	James River
Southside Va.	Southwest Va.	Old Dominion
Tidewater Va.	Valley	Rappahannock Area
Tri-River		Rockingham/ Harrisonburg

]

"Treatment" means intervention services provided to offenders subsequent to a recommendation for referral by an ASAP to outpatient, in-patient or residential services treatment and provided by a certified agent or licensed program.

[~~*"VADD"* means the Virginia *an* automated Drunk Driving *management information* system. A computer network which provides offender profiles to the the ASAPs *and a mechanism for the transfer of cases and information between the ASAPs and the VASAP office.*~~

~~*"VASAPDA"* means the Virginia Alcohol Safety Action Program Directors' Association, a group composed of the directors of the various ASAPs established and operating in the Commonwealth.~~]

"VASAP" means the Virginia Alcohol Safety Action Program, a probation intervention system providing services to offenders referred to the program by the courts. VASAP consists of the Commission on VASAP, the Advisory Board to the Commission on VASAP, *local ASAP policy boards* and local Alcohol Safety Action Programs as established in §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

[*"VMIS" means an Automated Management Information System, a computer network which provides offender profiles to the ASAPs and a mechanism for the transfer of cases and information between the ASAPs and the VASAP office.*]

~~Section 3~~ *§ 2.2* . Assignment of case manager.

All offenders referred to an ASAP ~~and classified~~ will be assigned a case manager.

The case manager shall inform the court if an offender is not in full compliance with court orders and ASAP directives.

All case managers shall provide services in accordance with the case management policies contained herein.

~~Section 4~~ *§ 2.3* . Referral contact.

Upon receipt of referral, the ASAP shall determine if the case needs to be transferred (refer to Transfer Policy, § ~~10~~ *Part X* of the VASAP Policy and Procedure Manual (VR 647-01-02) for specific requirements).

§ 2.4. Enrollment.

Persons referred to the VASAP system must enroll with a local ASAP before they can obtain a restricted driver's license. Enrollment as defined includes but is not limited to the following:

1. The offender must report to an ASAP representative. (This contact can be in court or at the place designated by the ASAP director.)

2. The offender must sign the [*enrollment*] *agreement* [~~*to participate in ASAP*~~] .

3. The offender must pay the ASAP participation fee or make satisfactory arrangements for payment with the ASAP.

4. The offender must obtain an appointment specifying when intake will be held.

5. The offender must return to the clerk of court with a release from the ASAP which will allow the court to issue a restricted license.

~~Section 5~~ *§ 2.5* . Intake.

Intake is *to* be the initial procedure following ~~court referral~~ *enrollment* . Information is gathered for classification use and the following documents are completed for the offender's case file:

1. Court order or referral documents.

2. Receipts or payment plan.

3. Consent form for release of information signed by the offender.

4. Participant contact record.

5. Agreement to participate which shall require the offender to:

a. Meet with case manager as required.

b. ~~Paying~~ *Pay* the *ASAP* fee.

c. ~~Paying~~ *Pay the* cost of any treatment program, if applicable.

d. Comply with any necessary education or treatment requirements.

e. Attend all education or treatment sessions free from alcohol and drugs.

f. Submit to a breath test when requested by an ASAP representative.

g. Attend education or treatment sessions and comply with attendance policy.

h. Advise case manager of all changes of address or any other change which might affect ASAP participation.

i. Actively ~~participating~~ *participate* in *the* program.

j. ~~Understand consequences of~~ *Submit to reclassification or return to court for* any additional alcohol *or drug* related ~~or drug~~ arrests or convictions while in ASAP.

6. Other reports as required.

~~Section 6~~ *§ 2.6* . Required procedures during intake.

1. Offenders displaying medical, emotional or behavioral problems shall be screened for interference with ASAP participation. [*When a determination is made that the offender cannot participate in ASAP because of medical, emotional or behavioral reasons, beyond his control, the case manager shall return the offender to the court of referral with a recommendation for placement.*]

2. The case manager shall explain the following to offenders and have forms executed:

[~~1.~~ *a.*] Fee payment or payment plan;

[~~2.~~ *b.*] Agreement to participate;

[~~3.~~ *c.*] Overview of ASAP and expected activities for offender; and

[~~4.~~ *d.*] Consent to release information form.

~~Section 7~~ [*§ 2.7* : ~~Classification guidelines.~~

~~A. More than one criterion shall be indicated to designate classification to education or intensive education; however, any one of the treatment criteria is sufficient for treatment referral. Referral to a level when any criterion for that level is exceeded requires written explanation placed in the probationer's file with the supervisor's approval:~~

~~1. Education.~~

~~a. No prior legal consequences as a result of alcohol or other drug use.~~

~~b. BAC usually not to exceed 0.10%.~~

~~c. No detrimental social, financial, or health consequences as a result of alcohol or other drug use.~~

~~d. A score on an *commission* approved alcohol or other drug screening test of *indicating* "no problem."~~

~~e. Positive correlation between interview data and objective data.~~

~~Note: Identifiable psychological or psychiatric problems may preclude offender involvement in group intervention.~~

~~2. Intensive education.~~

~~a. No prior DUI offense.~~

~~b. No prior alcohol or other drug-related education or treatment.~~

~~c. BAC usually not to exceed 0.20%.~~

~~d. No more than one prior alcohol or other drug-related offense, not including DUI (for example, drunk or drinking in public).~~

~~e. A score on an *commission* approved alcohol or other drug screening test of *indicating* "potential problem."~~

~~f. A family history of alcohol or other drug abuse.~~

~~3. Treatment.~~

~~a. Self-admission of an alcohol or other drug problem.~~

~~b. Prior DUI offense.~~

~~c. Prior alcohol or other drug-related treatment or education.~~

~~d. Positive reading from a breath alcohol screening device during any ASAP meeting or group.~~

~~e. Subsequent alcohol or other drug-related offense during the probationary period.~~

~~f. A score on an *commission* approved alcohol or other drug screening test of *indicating* "problem."~~

~~B. Referral to residential, inpatient, or intensive outpatient treatment services shall be substantiated by a non-ASAP professional assessment.~~

~~The ASAP case manager shall classify the offender using interviews, record checks and screening instruments. Offenders shall be classified in both group and individual formats.~~

~~ASAPs use three classification categories: education, intensive education, and treatment.~~

~~1. Education. The offender shall be characterized as having an alcohol or other drug pattern which does not result in tolerance to the substance nor does the offender exhibit any substantial problems with the substance use. Probationers in this group are usually assigned to ASAP education classes.~~

~~2. Intensive education. The offender shall be characterized as using quantities of alcohol or drugs resulting in limited tolerance and exhibits substantial problems with alcohol or other drugs without appearing addicted or exhibiting addictive use patterns. Probationers in this group are usually assigned to ASAP intensive education classes.~~

~~3. Treatment. The offender shall be characterized as exhibiting serious problems with alcohol or other drugs, significant tolerance and possibly having addiction to alcohol or other drugs and an abusive pattern of use. Probationers in this group are referred to a licensed treatment agency or individual.~~]

~~Section 8~~ [~~§ 2.8~~ *§ 2.7*]. File documentation [*for classification*].

The following documents shall be required for the classification and included in the file of the offender:

1. DMV driving record.

2. Arrest information including blood alcohol ~~content~~ *concentration* at last DUI arrest.

[~~3. Central Criminal Records Exchange (CCRE) check (if available).~~

~~4.~~ *3.*] Results of approved alcohol or other drug screening instrument.

[~~5.~~ *4.*] Classification summary sheet.

[~~6.~~ *5.*] Personal data.

[*§ 2.8. Required procedures during classification.*]

The following required classification procedure shall be [~~followed~~ *used*] by each case manager:

1. Review all available data pertaining to offender's use of alcohol or other drugs.

2. Administer approved alcohol or other drug screening instrument [*and review results*].

3. Conduct personal interview with offender.

4. Determine classification of offender in accordance with approved criteria as needing education, intensive education, or treatment.

[*§ 2.9. Classification categories.*

ASAPs use three classification categories: education, intensive education and treatment.

1. Education - offender shall be characterized as having an alcohol or other drug pattern which does not result in tolerance to the substance nor does the offender exhibit any substantial problems with the substance abuse. Probationers in this group are usually assigned to the ASAP education classes.

2. Intensive education - the offender shall be characterized as using quantities of alcohol or drugs resulting in increased tolerance and exhibits substantial problems with alcohol or other drugs without appearing addicted or exhibiting addictive use patterns. Probationers in this group are usually assisgned to ASAP intensive education classes.

3. Treatment - the offender shall be characterized as exhibiting serious problems with alcohol or other drugs, significant tolerance and possibly having addiction to alcohol or other drugs, an abusive pattern of use. Probationers in this group are referred to a licensed treatment agency or individual.

§ 2.10. Classification guidelines.

A. More than one criterion shall be indicated to designate classification to education or intensive education; however, any one of the treatment criteria is sufficient for treatmet referral. Referral to a level when any criterion for that level is exceeded requires written explanation placed in the probationer's file with the supervisor's approval:

1. Education.

a. No prior legal consequences as a result of alcohol or other drug use.

b. BAC usually not to exceed 19%.

c. No detrimental social, financial, or health consequences as a result of alcohol or other drug use.

d. A score on a commission approved alcohol or other drug screening test indicating "no problem."

e. Positive correlation between interview data and objective data.

2. Intensive education.

a. No prior DUI offense.

b. No prior alcohol- or other drug-related education or treatment.

c. BAC usually not to exceed .23%.

d. No more than one prior alcohol - or other drug-related offense, not including DUI (for example, drunk or drinking in public).

e. A score on a commission approved alcohol or other drug screening test indicating "potential problem."

f. A family history of alcohol or other drug abuse.

3. Treatment.

a. Self-admission of an alcohol or other drug problem.

b. Prior DUI offense.

c. Prior alcohol- or other drug-related treatment or education.

d. Positive reading from a breath alcohol screening device during any ASAP meeting or group.

e. Subsequent alcohol- or other drug-related offense during the probationary period.

f. A score on a commission approved alcohol or other drug screening test indicating "problem."

B. Identifiable psychological or psychiatric problems may preclude offender involvement in group intervention.

C. The ASAP case manager shall classify the offender using interviews, record checks and screening instruments. Offenders shall be classified in both group and individual formats.]

~~Section 9~~ [~~§ 2.9 . Education or treatment referral.~~ *§ 2.11. Offender intervention .*]

Case managers are responsible for the referral of the offender to a service provider. Treatment referrals shall be to a service provider licensed or certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services or the Department of Health ~~Services~~ *Professions* . Education referral shall be to a service provider that utilizes the commission's education curriculum. Selection of the education service provider shall be at the discretion of the local ASAP.

Referrals shall be based on standardized criteria and the documented classification of the offender and shall be [~~documented~~ *maintained*] in the offender's case file. After referral to treatment, the assignment to a specific treatment modality shall be based on an independent non-ASAP professional assessment in collaboration with VASAP case managers, e.g., inpatient, outpatient, or residential.

Case managers shall make referrals only to service providers who follow approved reporting guidelines.

Case managers shall furnish service providers with a written notice of referral on each participant and a summary of pertinent information regarding the offender's history with alcohol or other drug abuse.

Case managers shall maintain authority over all offenders referred and receiving services to ensure proper compliance with court directions and ASAP policies. Offenders testing positive for the presence of alcohol or other drugs during education, intensive education, or probation may be referred to the appropriate agency for evaluation of treatment needs.

~~Section 10~~ [~~§ 2.10~~ *§ 2.11*]. Monitoring.

Case managers monitor offenders during their participation to ensure compliance with court orders and ASAP policies. Each case manager is responsible for a specific number of cases identified as a case load.

A case load is the number of cases assigned at any one time to a specific case manager for the purpose of monitoring compliance. Monitoring begins when the offender is assigned, and ends when the individual has completed the conditions of probation. A case is considered inactive 30 days after completion of [*education or treatment*] services pending the end of the probationary period.

Case managers shall review reports daily on attendance, participation and services delivered to verify offender compliance.

Each case manager shall maintain a case load of at least 20 and no more than 300 active cases at one time, unless authorized by the commission.

~~Section 11~~ [~~§ 2.11~~ *§ 2.13*]. Reporting.

ASAPs shall work with the courts and service providers to establish reports essential to the probationary function of the case manager. *Service providers shall utilize the standard report format adopted by the commission and provided by the ASAP.*

A. Noncompliance reporting.

When the offender has been deemed noncompliant by the case manager, that case manager, within five working days, shall notify in writing the referring court or agency and the offender. In the absence of court direction to the contrary, the offender shall be deemed noncompliant if:

1. The offender does not appear for the initial appointment; ~~or~~

2. The offender receives a subsequent DUI, felony, traffic or any other type of conviction which may be pertinent or relevant to the individual's probationary status; ~~or~~

3. The offender appears at a class, session or appointment while, or immediately after, using alcohol or other drugs; ~~or~~

4. The offender is absent from a class, session or appointment without approval ~~by~~ *of* the case manager; ~~or~~

5. The offender refuses to attend or actively participate in assigned sessions; ~~or~~

6. The offender fails or refuses to pay appropriate fees, unless declared indigent by the court.

B. Absences.

Unless otherwise directed by the court, absences from class or sessions shall be excused by the case manager under the following conditions:

1. Death in the immediate family. Immediate family includes spouse, parents (including in-laws), children, guardians and siblings.

2. Medical absence with written statement from *a* doctor.

3. Any emergency which is either verified or approved by the local case manager, such as *a* medical absence where there is no written statement from *a* doctor.

All excused absences shall be approved in advance except where time or circumstances make it impractical. The case manager shall document all offender absences ~~and approval~~ from class or sessions, including specific reasons for the absence. The documentation shall be a part of the offender's case file. ASAPs shall make available a written copy of policies on absences to all contract service providers and offenders.

C. Reports from service providers.

ASAPs shall require at least the following reports *in the adopted format* from service providers:

1. Written notice of receipt of referred offender within five working days of initial contact with offender.

2. A tentative outline of the treatment plan within 15 days of the intake session in those instances where offender was placed in treatment.

3. Written notice within 10 working days of any change in the offender's treatment plan.

4. Verbal notice by the next working day, and written notice within five working days, when the offender is in violation of any section of ASAP's or the service provider's agreement to participate.

5. Upon written request for specific reports to a service provider, the case manager shall receive a written response within ~~ten~~ *10* days.

6. ASAPs shall require written reports according to the following schedule for each offender:

a. Education - a final report.

b. Intensive education - interim and final report.

c. Treatment - initial treatment plan *within 15 days of intake, a progress report within 60 days of intake and* ~~,~~ ~~report~~ every 90 days ~~,~~ *thereafter,* and final report *within 15 days of discharge* .

These reports shall become a part of the offender's case file; other reports may be included.

D. Reports to service provider.

The local ASAP shall submit at least the following reports to service providers:

1. Written notice of referral.

2. Summary of offender's alcohol or other drug history to service provider.

3. Written notice of all terminations for noncompliance, transfer and, when excused, absence prior to next scheduled class.

In the event of a written request for offender information from a service provider, the case manager shall respond in writing within 10 days of request.

E. Progress and final reports.

Progress and final reports shall be submitted by the case manager in keeping with the following:

1. As directed by the court or referring agency, a progress report shall be furnished within [~~a reasonable amount of time~~ *five working days*].

2. Final reports for court shall be due according to court requirements and specifications. Copies of court or final reports submitted on each offender shall be placed in the appropriate offender's case file for retention according to the approved Records Management Plan.

F. Improper service provider activity.

Case managers shall make a written report to the ASAP director within two working days of any improper activity regarding the service provider. Improper activity shall include reports which do not conform to the agreed format and required time schedule.

[*§ 2.14. Transfer procedures and documentation.*

ASAPs shall not retain offenders who reside outside of or not employed in their service area. In a rare instance, an offender may request not to be transferred. Such request shall be in writing and kept in the offender file. When transfers occur prior to enrollment, no fee shall be collected by the originating ASAP unless otherwise directed by the court of referral.

When transfers occur after enrollment, the entire ASAP fee (minus state portion, if paid to the state) shall be transferred. A lesser amount may be agreed upon by the originating and receiving ASAPs.

Interstate or intrastate transfers of offenders shall be accomplished as provided below.

Receipt of Interstate Transfers. Offenders transferred into the VASAP system will be referred through one of three procedures; (i) petitioning the general district court within the jurisdiction where they reside; (ii) direct referral under the authority of the Interstate Compact Agreement; or (iii) other procedures approved by the Commission on VASAP.

1. Petition. Offenders convicted in another state and requiring VASAP to stop revocation of their operator's license in Virginia, must request VASAP probation through the petition process. This is of special importance to those offenders convicted in states which are members of the Interstate Violator Compact.

2. Direct referral. Offenders who have been convicted in another state and whose operator's license is not subject to revocation or suspension action, or whose license status will not be affected by VASAP involvement, may be referred directly into the VASAP system under the Interstate Compact Agreement. Each referral must be supported by formal documents from the sending state verifying the action taken by the sentencing court.

The following case management procedures and documents shall be used in conjunction with the transfer requirements referred to in Transfer Policy, Part X of the VASAP Policy and Procedure Manual (VR 647-01-01):

1. File Documentation for transfers.

a. Interstate transfer (transfer to agencies outside of Virginia).

(1) Minimum file documentation necessary for transfer of offender prior to ASAP intake shall be as follows:

(a) Transfer form.

(b) Court document ordering or requiring participation.

(c) Case summary information.

(d) Arrest information (if available).

(2) Minimum file documentation necessary for transfer after initial session of when offender is actively involved in ASAP shall be as follows:

(a) Transfer form.

(b) Court document ordering or requiring participation.

(c) Case summary information.

(d) Arrest information (if available).

(e) Classification summary information and results of testing instrument used.

(f) Copy of questionnaire completed by offender revealing alcohol or other drug use or general information.

(g) Progress report on offender (if available).

b. Interstate transfers (transfer from agencies outside of Virginia).

(1) Minimum documentation necessary for transfer from the originating ASAP to other out-of-state agencies shall be as follows:

(a) Letter of transmittal including specific reporting needs of the ASAP.

(b) Interstate DUI Transfer Form.

(c) Properly-completed consent for release of information.

(d) Court document ordering ASAP participation.

(e) Arrest information and other alcohol or drug use information (as available).

(2) Procedures for ASAP receiving transfers. The ASAP receiving a transferred offender shall have the following responsibilities with respect to the originating ASAP and other states or agencies:

(a) Intrastate transfers.

(1) Within 10 days of receipt of transfer case, the ASAP shall complete and return Part I of the transfer form.

(2) Upon classification, the ASAP shall complete and return Part II of the transfer form.

(3) The report form shall be used to forward the report, after return of Parts I and II of the Transfer Form, when such reports are requested by the originating ASAP.

(4) The report form shall be used to notify the originating ASAP within 30 days of the successful completion and within five days of noncompliance by the offender.

(b) Interstate transfers.

(1) After receipt of the transfer case, the ASAP shall return notification of enrollment if requested by the originating state or agency.

(2) Upon classification, the ASAP shall return notification of the education or treatment assignment.

(3) The report form shall be used to forward reports, unless other forms are provided by the out-of-state agency, when such reports are requested by the originating state or agency.

(4) The originating state or agency shall be notified within 30 days of the successful completion by the offender.]

* * * * * * * *

Title of Regulation: **VR 647-01-04. Certification Requirements Manual.**

Statutory Authority: §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Effective Date: February 28, 1991.

Summary:

All programs established and operating under § 18.2-271.1 of the Code of Virginia are required to be certified by the Commission on VASAP. Certification is established to ensure administration consistency within the system and that quality services are provided to DUI offenders in the Commonwealth.

The manual as promulgated specifies policies and procedures to be utilized when reviewing programs as required by the Code of Virginia. Programs must adhere to regulations promulgated in the Commission on VASAP Policy and Procedure Manual VR 647-01-02.

Revisions to the promulgated regulation fall into the following areas:

1. Improvements in language, grammar, and clarity as suggested by the Department of Planning and Budget but were not adopted when the original regulations were promulgated.

2. A clarification of definitions provided and the addition of several needed but not included in the original manual.

3. A revision of the process for on-site ASAP program certification review.

4. A more detailed delineation of standards and methods for measuring compliance with standards.

5. Revision of the method for granting waivers or for appeal upon revocation of certification.

Required forms and standards for implementation are considered to be standards. These standards are not substantive in nature but merely prescribe the forms and procedures to be used when complying with substantive standards.

VR 647-01-04. Certification Requirements Manual.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

The terms used in this regulation shall have the following meaning unless the context indicates otherwise.

"ASAP" means Alcohol Safety Action Program formed by political subdivisions or by the commission as a criminal justice program that uses community and state services to address the problem of driving under the influence of ~~either~~ alcohol *and* ~~or~~ *other* drugs. ASAPs receive referrals from local courts or the commission. ASAPs deliver intervention services within locally-administered programs to specific municipal jurisdictions within the Commonwealth of Virginia pursuant to §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

"BAC" means blood alcohol concentration which is determined by law-enforcement personnel or other licensed organizations in accordance with procedures established in § 18.2-268.

[~~*"Budget" means a statement in financial terms of projected or expected operations of a program or accounting entity for a given period.*~~

~~"CCRE" means central criminal records exchange.~~]

"Certification" ~~is~~ *means* the process whereby the commission evaluates an ASAP for its organization, management, fiscal standing, and overall operation. Certification also hinges on the ASAP's ability to receive referrals from courts of persons convicted of DUI.

"Classification" means a process involving the assessment of an offender's personal involvement with alcohol or other drugs and *which* ~~resulting~~ *results* in referral to an appropriate intervention service (educational treatment).

"Commission" means the state agency established as the Commission on the Virginia Alcohol Safety Action Program serving under the auspices of and reporting directly to the Secretary of Transportation ~~and Public Safety~~ . It is composed of two members from the House Committee for Courts of Justice, two members from the Senate Committee for Courts of Justice, two sitting or retired district court judges who regularly hear or heard cases involving DUI and who are familiar with local ASAPs, two directors of ASAPs, one representative from the law-enforcement profession, one citizen at large, one representative from the Department of Motor Vehicles and one representative from the Department of Mental Health, Mental Retardation and Substance Abuse Services.

The commission shall establish and certify ASAPs and require them to be operated in accordance with commission standards *pursuant to* § 18.2-271.2 *of the Code of Virginia* .

[~~*"Countermeasures"*~~*"Components"*] *means the separation of actions into specifically defined areas which the VASAP system uses to offset and deter the actions of Driving Under the Influence (DUI) and potential DUI offenders* [*;* ~~*a system*~~ *. They comprise a systematic approach*] *to educate the general public, reduce the incidence of impaired driving and* [~~*to provide a systematic approach to preventing*~~] *drunk driving. There are* [~~*six*~~ *five*] *specific* [~~*countermeasures*~~ *components*] *defined and utilized by the VASAP system.*

[~~*"DAT"*~~ ~~means driver awareness training.~~ ~~*Providing information on defensive driving and accident prevention.*~~]

"Deficit" means [*an excess of expenditures over revenue. A planned deficit means*] that the ASAP, in order to conduct its program, expects to or projects that it will expend more funds than it will receive from offenders or other sources in a fiscal year. Deficit means an excess of expenditures over revenue.

"Director of ASAP" means the person who is in charge of and accountable for the operation of an ASAP. The ASAP director reports to the ASAP policy board.

"DMV" means the Commonwealth of Virginia Department of Motor Vehicles.

"DUI" means operating or driving a motor vehicle or boat under the influence of alcohol or drugs (§§ 18.2-266 [*, 46.2-341.28*] *and 29.1-738* of the Code of Virginia).

"Education" means commission-approved classes provided to some offenders following classification. The intervention services include alcohol or drug education, young offender education, and intensive education.

Enrollment" means that the offender has to report to the ASAP, obtain an intake appointment, make arrangements to pay the ASAP fee, and sign an agreement to participate as provided in [*§§*] *18.2-266 through 18.2-273.*

"Executive director" means the executive director of the commission. This person is appointed by the Governor, confirmed by the General Assembly, and carries out the purposes of §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

[~~*"Finance committee"*~~ ~~means a budget~~ ~~*fiscal*~~ ~~review committee composed of the executive director, two commission members, and such other persons as the~~] ~~Executive Director~~ [~~*commission*~~ ~~designates.~~]

"Intake" means the process wherein offenders, either individually or in groups, provide objective and subjective information to case managers for use in their classification.

"Intervention services" means direct service activities to offenders entering through a program which provides direct services. Such activities include assessment services, crisis intervention, case management services and exit activities.

"Joint exercise of powers" means ASAPs organized as provided in §§ 15.1-20 and 15.1-21 of the Code of Virginia.

"Policy board" means a group established by the ASAP which controls and gives direction to the ASAP's activities and provides input of local needs. This board may also be established in *accordance with §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia* by the commission.

[~~*Program fiscal agent" means a unit of local government or a combination of units of local government which possess the legal authority to receive funds and to transact business throughout its jurisdiction, and the administrative capability to perform these services for an ASAP.*~~

~~*"Regional ASAP" means one of the three groups in the Commonwealth of Virginia in which the ASAPs have been organized:*~~

~~REGION I~~	~~REGION II~~	~~REGION III~~
~~Colonial~~	~~Blue Ridge Mountain~~	~~Battlefield~~

~~Capital Area~~	~~Central Va.~~	~~Alexandria~~
~~Eastern Shore~~	~~Dan River~~	~~Arlington~~
~~John Tyler~~	~~Mount Rogers~~	~~Bull Run~~
~~Peninsula~~	~~New River Valley~~	~~District Nine~~
~~Piedmont~~	~~Roanoke Valley~~	~~Fairfax~~
~~Southeastern Va.~~	~~Rockbridge~~	~~James River~~
~~Southside Va.~~	~~Southwest Va.~~	~~Old Dominion~~
~~Tidewater Va.~~	~~Valley~~	~~Rappahannock Area~~
~~Tri-River~~		~~Rockingham/ Harrisonburg~~

]

"Treatment" means intervention services provided to offenders subsequent to a recommendation for referral by an ASAP to outpatient, inpatient or residential services treatment and provided by a certified agent or licensed program.

[~~*"VADD"* means~~] ~~the Virginia~~ [~~*an* automated~~] ~~Drunk Driving~~ [~~*management Information* system. A computer network which provides offender profiles to the ASAPs *and a mechanism for the transfer of cases and information between the ASAPs and the VASAP office.*~~]

"VASAPDA" means the Virginia Alcohol Safety Action Program Directors' Association, a group composed of the directors of the various ASAPs established and operating in the Commonwealth.

"VASAP" means the Virginia Alcohol Safety Action Program, a probation intervention system providing services to offenders referred to the program by the courts. VASAP consists of the Commission on VASAP, the Advisory Board to the Commission on VASAP, *local ASAP policy boards* and local Alcohol Safety Action Programs as established in §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

[*"VMIS" means an Automated Management Information System; a computer network which provides offender profiles to the ASAPs and a mechanism for the transfer of cases and information between the ASAPs and the VASAP office.*]

PART II.
STANDARDS FOR CERTIFICATION.

§ 2.1. Certification.

All programs established or operating under § 18.2-271.1 of the Code of Virginia are required [*by § 18.2-271.2*] to be certified by the Commission on VASAP.

~~Minimum standards for certification as established in the Requirements column in the Weighted Point Values chart in Part 2 shall include, but shall not be limited to, the following criteria:~~

Certification of Alcohol Safety Action Programs within the Commonwealth of Virginia is established to ensure administrative consistency within the system and the quality of services provided to DUI offenders, the courts and the community.

The Commonwealth of Virginia is geographically organized into 26 local ASAPs and three ASAP regions: the Coloniai Council, the Battlefield Council and the Blue Ridge Mountains Council. A certification team is assigned to each region.

§ 2.2. Methodology.

A. Team composition.

Each regional team consists of one commission member, one local ASAP director and one case management representative from the VASAP system. Each team member is appointed by the commission. The membership of each regional team shall be rotated among available representatives on an annual basis. The executive director of the Commission on VASAP shall serve as ex-officio member of each regional team. [*Team I will serve as the certification team in the Battlefield Region.*] *Team II will serve as the certification team* [~~*in Region II,*~~ *for the Blue Ridge Region and*] *Team III will serve as the certification team for* [~~*Region III and Team I will serve as the certification team for Region I*~~ *the Colonial Region*].

B. Training.

The executive director of the Commission on VASAP shall be responsible for [*providing*] *training* [~~*provided*~~] *to each certification review* [~~*teams*~~ *team*].

C. Information request.

Prior to an on-site visit, the executive director of the Commission on VASAP will direct each program to be certified to submit necessary documentation.

D. Data and program review.

Prior to [~~*start of*~~] *the certification process, each ASAP director shall submit to the executive director requested data concerning the operation of the ASAP. After compilation of the requested information, it* [~~*is*~~ *shall be*] *distributed to the respective regional certification team. Each team* [~~*reviews*~~ *shall review*] *the data and* [~~*performs*~~ *perform*] *preliminary audits. Following this review, on-site visits* [~~*are*~~ *shall be*] *scheduled. Additional data* [~~*is*~~ *shall be*] *collected and observations* [~~*are*~~] *made during the on-site visit to validate the documentation submitted. Staff interviews, review of samples of client files and financial records as well as a physical examination of the office space* [~~*is*~~ *shall be*] *performed.*

At the completion of the on-site review, the certification review team shall hold a summation conference with the director of the program. During this conference, the

certification review team shall present areas of concern for discussion and clarification, and the ASAP director shall be given full opportunity to comment when a program is found out of compliance [~~*in an area by the team*~~] *. The program must provide an action plan as required in § 3.2 of the policy and procedure manual (VR 647-01-02).*

E. Report submission.

A written report of the team's findings [~~*is*~~ *shall be*] *submitted to the executive director of the Commission on VASAP noting observations and recommendations of the review team. The chair of the reviewing team shall be responsible for submission of the report.*

F. Recommendation of certification.

The executive director shall provide the commission a report which contains recommendations for certification. The commission shall consider the recommendations of the executive director, and if necessary, review the findings, documents, documentation of compliance, as well as any other relevant material received.

G. Confidentiality.

Each certification team shall adhere to all federal, state, and local laws governing confidentiality. The certification review and findings are the sole property of the Commission on VASAP. Dissemination of any information, except as expressly provided herein, constitutes a violation of confidentiality.

The Commission on VASAP shall be the sole source responsible for dissemination of any information regarding a program's certification review.

H. Standards.

Each ASAP shall comply with these standards as indicated. Each standard shall be reviewed at the time of certification for compliance and at such time as the commission deems necessary in order to ensure continued compliance with standards.

~~Category 1. STATEMENT OF PURPOSE~~

~~SC1. Each ASAP shall have a written statement of purpose.~~

~~Category 2. AUTHORITY~~

~~SC1. Each ASAP shall have a legally constituted policy board which has due authority for the ASAP.~~

~~SC2. The policy board shall have a set of written regulations and by-laws which shall include:~~

~~1. Purpose and responsibilities of the policy board.~~

~~2. Method of appointment of policy board members.~~

~~3. Frequency of meetings of the policy board.~~

~~4. Parliamentary and legal authority of policy board.~~

~~5. Responsibility of policy board to Commission for compliance of ASAPs with statewide regulations.~~

~~Category 3. DIRECTORSHIP~~

~~SC1. Each ASAP shall have an identifiable director as defined in the Policy and Procedures Manual (VR 647-01-02).~~

~~Category 4. ORGANIZATIONAL CHART~~

~~SC1. Each ASAP shall have a written staff organizational chart which clearly delineates responsibility for ASAP operations.~~

~~Category 5. POSITION DESCRIPTIONS~~

~~SC1. Each ASAP shall have written job descriptions for all staffed positions.~~

~~SC2. Job responsibilities shall be explicit and congruent with staff qualifications.~~

~~Category 6. PERSONNEL POLICIES AND PROCEDURES~~

~~SC1. Each ASAP shall have written personnel policies that must include:~~

~~1. Personnel Records~~

~~2. Training~~

~~3. Equal Employment Opportunity Citations~~

~~4. Employment Procedures~~

~~5. Probationary Period~~

~~6. Performance Appraisal~~

~~7. Termination of Employment~~

~~8. Reduction in Staff~~

~~9. Pay Scales~~

~~10. Benefits~~

~~11. Standards of Conduct~~

~~12. Conflict of Interests~~

~~13. Confidentiality~~

~~14. Office Hours~~

~~15. Travel~~

~~16. Purchasing and Printing~~

~~17. Grievance Procedures~~

~~Category 7. BUDGETARY POLICIES~~

~~SC1. Each ASAP shall have written fiscal policies and procedures conforming to generally accepted accounting procedures.~~

~~Category 8. COUNTERMEASURES~~

~~SC1. Each ASAP shall have a written plan of action or policy statement in each of the six countermeasure areas, identified as follows:~~

~~1. Enforcement~~

~~2. Adjudication~~

~~3. Case Management~~

~~- intake~~

~~- transfer~~

~~- caseload~~

~~- classification~~

~~- referral~~

~~- monitoring~~

~~- reporting~~

~~4. Education and Treatment~~

~~- licensure and certification~~

~~- reporting~~

~~- service providers~~

~~- services~~

~~- contracts~~

~~- evaluation~~

~~- testing for the presence of alcohol or other drugs~~

~~5. Prevention, Public Information, and Education~~

~~- presentations and communications~~

~~- materials~~

~~- evaluation~~

~~6. Evaluation of programs~~

~~- data~~

~~- countermeasure~~

~~Category 9. STAFFING~~

~~SC1. Each ASAP shall employ adequate staff to ensure that the ASAP operates cost-effectively.~~

~~SC2. Each ASAP shall employ appropriate staff to ensure services are provided for each referral.~~

~~SC3. Each ASAP shall, within budgetary constraints, employ adequate staff to provide activities in each countermeasure area.~~

~~Category 10. SECURITY AND CONFIDENTIALITY~~

~~SC1. Each ASAP shall process offenders' records in a manner consistent with applicable federal, state and local confidentiality and security regulations and laws.~~

~~SC2. Each ASAP shall have written policies regarding research projects.~~

~~SC3. Each ASAP shall have written policies and procedures for protecting, communicating and acquiring offender information and providing for release of information.~~

~~Category 11. PLANNING~~

~~SC1. Each ASAP shall comply with applicable federal, state and local certification or licensing requirements.~~

§ ~~2.2.~~ *2.3.* Organization and administration.

Category 1 - Statement of Purpose

Sc. 1: Each ASAP shall have a written statement of purpose which shall include its relationship to transportation safety, the courts and the community.

Sc. 2: Each ASAP shall have written goals and objectives which reflect the overall Commission on VASAP goal.

Category 2 - Authority

Sc. 1: Each ASAP shall have an independent legally-constituted policy board which has due authority for the operation of the program.

Sc. 2: The program policy board shall have written regulations and bylaws which follow the commission on VASAP policies and procedures [*as ~~follows~~ and includes at minimum*]:

a. Purpose and responsibility.

b. Method of appointment of members (who, how, when, tenure).

c. Frequency of meetings

d. Parliamentary authority

e. Responsibility of independent policy board to the Commission on VASAP for adherence and compliance of local program with statewide regulations.

Sc. 3: Each ASAP shall have a program organizational chart which clearly delineates administrative and staff responsibility for program operations, and reflects positions identified through job descriptions.

Sc. 4: Each ASAP shall have an identifiable director as defined in the policy and procedure manual (VR647-01-02).

Category 3 - Personnel

Sc. 1: Each ASAP shall have an explicit written job description which includes [*minimum, explicit job*] qualifications for all staff positions. [*The review team will sample and review descriptions for all positions on the organizational chart.*]

[~~Sc. 2: Job qualifications shall be explicit and in accordance with job descriptions.~~]

Sc. [~~3~~ *2*]: Each ASAP shall have a written personnel policies and procedures manual which shall [~~include~~ , *at minimum comply with all applicable federal, state or local mandates. The manual, at minimum, shall include the following areas*]:

a. Benefits: Each ASAP shall have clear descriptions of personnel benefits.

b. Confidentiality: Each ASAP shall [~~comply with all state and federal regulations~~ *have policies and procedures*] regarding disclosure of defendant information [*which comply with all state and federal regulations. Included in these procedures shall be measures to ensure security, storage, access and destruction of all defendant records*].

c. Conflict of interest: Each ASAP shall [*have policy and procedures to*] avoid any activity deemed to be in conflict with the interests of the program, as defined in the VASAP Policy and Procedures Manual (VR 647-01-02).

d. Affirmative action plan: Each ASAP shall promote equal employment opportunity in [~~recruiting~~ *recruitment*] and selection processes by ensuring that qualification requirements do not limit or restrict employment opportunities because of race, color, religion, national origin, political affiliation, handicap, sex or age (except where there is a bona fide occupational requirement)[; ~~pursuant to federal and state law~~].

e. Equal employment opportunity: Each ASAP shall [*have policy and procedures to*] provide equal employment to employees and applicants for employment in all aspects of personnel management and race, color, religion, national origin, political affiliation, handicap, sex or age (except where there is a bona fide occupational requirement)[; ~~pursuant to federal and state law~~].

f. Grievance procedures: Each ASAP shall [*have policy and procedures to*] provide for resolution of employee problems and complaints wherein employees can freely discuss their concerns and ensure that employees will have an effective procedure by which various grievances can be fairly and objectively reviewed.

g. Office hours: Each ASAP shall have stated specific hours of program operation.

h. Salary scales: Each ASAP shall [*have policy and procedures to*] assign a salary grade for each job position in accordance with local pay scales approved by the local policy board.

i. Performance appraisal: Each ASAP shall [*have policy and procedures to*] provide an effective means for appraising the work performance of employees and [~~to provide~~ *for providing*] a pay for performance system [~~which rewards proficient work performance~~].

j. Personnel records: Each ASAP [~~will~~ *shall have policy and procedures to*] maintain a complete and accurate personnel record for each employee. [~~These records will be maintained in an orderly fashion and will remain in a file cabinet~~] ~~and~~/ [~~or desk under lock and key~~ *Included in these procedures shall be measures to ensure security, storage, access and destruction of all personnel records.*]

k. Probationary period: Each ASAP shall [*have policy and procedures to*] require satisfactory completion of a probationary period as a prerequisite to continued employment, unless otherwise determined by local or state directives.

l. Purchasing: Each ASAP shall [~~comply with local, state and federal purchasing requirements for public agencies where applicable~~ *have a written procurement plan*].

m. Reduction in [~~staff~~ *force (staff)*]: Each ASAP shall have a written reduction in force [~~(RIF) policy. In addition, each ASAP shall have a yearly plan to implement the said policy.~~ *(staff) policies*

and procedurs. An annual reduction in force plan shall include clear and distinct criteria and processes for personnel and positions affected, as well as, rationale for each proposed staff reduction and budgetary impact.]

n. Standard of conduct: Each ASAP shall have written standards of conduct designed to protect the well-being and rights for all employees, to [~~assure~~ *provide*] a safe efficient operation and to [~~assure~~ *maintain*] compliance with public law.

o. Termination of employment: Each ASAP shall have [~~a policy~~ *policies and procedures*] for termination of employees [~~consistent with local and state guideline criteria~~].

p. Training: Each ASAP [~~will be required~~ *shall have policy and procedure*] to ensure that all staff [~~participates~~ *participate*] in all Commission on VASAP training as well as [*to*] encourage and assist in staff development through academic study or through such other means to contribute to further service to the local ASAP program.

q. Travel: [~~All~~ *Each ASAP shall have policy and procedures for work*]related travel [~~by each ASAP shall comply with the policy board's travel regulations~~]. Where local regulations do not exist, travel must conform with the Commonwealth of Virginia travel regulations.

[*Sc. 4: The certification review team will require documentation, evidence, or statements verifying action or efforts to fulfill each policy or procedure. Examples of documentation may include the following:*

a. Job description;

b. Purchasing documents;

c. A copy of an EEO policy;

d. Staff interview; and

e. Travel reimbursement documents.

Category 4 - Staffing

Sc. 1: Each ASAP shall employ staff to ensure that required services are provided for each referral.

Sc. 2: Each ASAP shall employ staff to ensure that each [~~countermeasure~~ *component*] activity is [~~covered~~ *completed*].

Category 5 - [~~Countermeasures~~ *Components*]

Sc. 1: Each ASAP shall have written action plans, policy statements and exhibits of work for each of the [~~six countermeasures~~ *components*].

A. Enforcement.

1. [~~Required~~ *Each ASAP shall have written*] policy statements regarding:

a. Increasing the number [*of persons*] arrested and convicted of DUI.

b. Reducing the average BAC of arrested motorists.

2. The certification review team will require [~~demonstrations~~ *documentation*], evidence, or statements verifying action or efforts used to fulfill requirements.

Examples of documentation may include [~~these areas~~ *the following*]:

-local, regional, state DUI-related training

-local, regional, state DUI-related projects/programs

-enforcement contacts, formal and informal

-services provided (roll-call activities, films, materials, etc.)

-policy board representation [*; and*]

-grant funding activity

B. Adjudication.

1. [~~Required~~ *Each ASAP shall have*] policy [~~statement~~ *statements*] regarding:

a. Enhanced adjudication of DUI offenders

b. Maintaining a consistent rate of DUI referrals

2. The certification review team will require documentation, evidence, or statements verifying action or efforts to fulfill the requirements. Examples of documentation may include:

-local, regional, state DUI-related training

-local, regional, state DUI-related projects/programs

-judicial contacts, formal and informal

-availability of ASAP personnel for court hearings and testimony

-services provided (administrative/clerical, personnel, presentations, evaluations, etc.)

-policy board representation

C. Case management.

1. [*Each ASAP shall have*] policy statements requiring adherence to case management policies contained in the Commission on VASAP Policies and Procedures Manual (VR647-01-02).

2. The certification review team will examine [*up to*] 10% of the active caseload or no more than 150 files. Case managers will be interviewed and case management systems will be examined, including local ASAP forms and documents. [~~These records shall be maintained in a secure area in locked file cabinets or a locked room with controlled access.~~]

3. The team will review the following areas of regulation, and will require documentation for verification of:

a. Training

b. Transfers

c. Referral contact

d. Intake

e. Classification

f. Education/treatment referral

g. Monitoring

h. Reporting

D. Education/treatment.

1. [~~Required~~ *Each ASAP shall have*] policy statement regarding:

a. Use of standardized VASAP curricula

-education

-intensive education

-young offenders (if applicable)

b. Use of treatment referral resources which are properly licensed

2. [~~Required~~ *The certificaition review team will require*] *documentation* [: , *evidence, or statements verifying action or efforts to fulfill the requirements. Examples of documentation may include:*]

a. Copies of service provider contracts or letters of agreement for both educational and treatment services

b. Copies of license of service providers

c. Copies of confidentiality regulations (local, state, federal)

d. Evidence of adherence to reporting guidelines from service providers:

-written receipt of referral within five working days

-Individual treatment plan within ~~fifteen~~ *15* days of the treatment interview

-written notice of change in treatment plan within ~~fifteen~~ *15* days

-verbal notice next working day, and written notice within five days, of absence or any other violation

-written progress reports every ninety days as well as final reports from treatment providers

-written final education reports

-written interim and final intensive education reports.

e. ASAP reports to service provider.

-written notice of referral summary of alcohol/drug information

-written notice of terminations, transfers, and excused and unexcused absences.

f. Evidence of instructor training for education and intensive education.

E. Public Information, education and prevention (PI & E).

1. [~~Required~~ *Each ASAP shall have*] policy [~~statement~~ *statements*] regarding the following:

a. Prevention and reduction of DUI incidents

b. Increase public knowledge of VASAP

c. Increase public knowledge of the alcohol/drug problem in transportation safety

2. [~~Documentation required.~~ *The certification review team will require documentation, evidence or statements verifying action or efforts to fulfill the requirements. Examples of documentation may include:*]

a. Designation of person(s) in charge of PI & E activities

b. Annual PI & E plan

c. Participation in Commission on VASAP and other statewide PI & E campaigns

d. Attendance at PI & E training workshops

e. Serve as PI & E resource for the community

F. Evaluation [*and certification*].

1. [~~Required~~ *Each ASAP shall have*] policy [~~statement~~ *statements*] regarding:

a. Designation of person(s) in charge of [~~PI & E~~ *evaluation*] activities [*;*]

b. Production of annual program report [*;*]

c. Evaluation of education/treatment services [*; and*]

d. Participation in state surveys/evaluation [~~project~~ *projects.*]

2. [~~Required documentation~~ *The certification review team will require documentation, evidence or statements verifying action or efforts to fulfill the requirements. Examples of documenation may include:*]

a. Automated systems [~~report~~ *reports;*]

b. Annual program [~~report~~ *reports;*]

c. Evidence of evaluations from education and treatment programs [*; or*]

d. Evidence of participation [~~of~~ *with*] Commission on VASAP and other statewide information gathering projects [.]

Category 6 - Fiscal Policies

Sc. 1: Each ASAP shall have written fiscal policies and procedures conforming to generally-accepted accounting [~~procedures~~ *principles*]. Such policies should include [, *at minimum,*] budgeting, purchasing, [~~audit~~ *auditing*], property management, receipt of revenue, accounts payable, accounts receivable and [~~method~~ *methods*] of accounting. Each ASAP shall have [~~policy~~ *policies*] which [~~conforms~~ *conform*] to fiscal requirements provided in the policy and procedure manual (VR 647-01-02).

Category 7 - Security and Confidentiality

[~~Sc. 1: Each ASAP shall process all offenders' records in a manner consistent with all applicable federal, state and local confidentiality and security regulations and laws.~~

~~Sc. 2: Each ASAP shall have written policies regarding research projects.~~

~~Sc. 3: Each ASAP shall have written policies and procedures for protecting, communicating and acquiring offender information, providing for release of information.~~

[*Each ASAP shall have written policies which conform to the security and confidentiality requirements provided in the Policy and Procedure Manual (VR 647-01-02, § 4.9).*

The certification team will require documentation, evidence or statements verifying efforts to fulfill the requirements. Examples of documentation may include the following:

a. Release of information form;

b. Disclosure logs; and

c. File location and security.]

Category ~~12~~ *8.* Waiver

Sc. 1 A justified exemption ~~shall~~ *may* be granted from a specific ASA certification requirement or any part thereof.

Sc. 2: [~~1.~~] The ASAP requesting a waiver shall submit the request in writing ~~form~~ to the executive director.

~~2. Upon receipt of a written waiver request, the Executive Director shall send a standardized waiver request form to the ASAP director desiring the waiver.~~

~~3. The ASAP director shall complete the standardized waiver request form within ten days and return it to the Executive Director.~~

~~4. The Executive Director shall then take the request form to the next Commission meeting for consideration and action.~~

~~5.~~ *Sc. 3:* The executive director must act on the waiver request within ~~45~~ *15* calendar days after [~~official~~] receipt of the [~~waiver~~] request[~~,~~] ~~and notify~~ ~~the~~ [~~*In*~~ *in*] conformance with § 3.3 of the Policy and Procedure Manual (VR 674-01-02)[~~, the requesting ASAP director *must be notified* in writing of the decision within~~] ~~ten~~ [~~*10*~~ ~~days of that decision~~].

§ ~~2.2.~~ *2.4.* Certificate of certification *(approval)* .

The certificate of ~~an approved~~ *approval* ~~ASAP~~ shall be delivered or mailed to the approved ASAP ~~, with whom the member director is employed,~~ and shall be kept in custody and control of such ASAP , *posted in such a manner as to be viewable by the general public* .

§ ~~2.3.~~ *2.5.* Recertification.

Recertification shall be based upon the ASAP's continued adherence to Standards for Certification.

ASAPs shall undergo [*the complete*] certification [~~review~~ *process*] every third year [~~by a certification committee of the commission~~].

[~~§~~] ~~2.4.~~ [~~*2.6.*~~] ~~DECERTIFICATION~~ [~~*Revocation of certification*~~].

~~The commission on its own motion, upon receipt of information that indicates an ASAP may no longer meet certification requirements or that other irregularities may exist within the ASAP, may send a certification review team to investigate the ASAP. Notice of the intended investigation by the certification review team shall be given to the ASAP director and the~~] ~~chairman~~ [~~*chair of the policy board. Upon completion of the investigation, the certification review team shall submit a report to the executive director, who may call a special meeting of the commission to review the report, giving notice to the local ASAP director.*~~

~~The commission may vote to~~] ~~decertify~~ [~~*revoke the certification of*~~ ~~the ASAP based on the report.~~] ~~Decertification~~ [~~*The revocation*~~ ~~shall become effective~~] ~~90 days from~~ [~~the date of the vote. If~~] ~~decertification~~] ~~*revocation* is voted, the executive director shall notify the ASAP director,~~] ~~chairman~~ [~~*chairperson of the policy board, political subdivisions, and the courts the ASAP serves.*~~

~~If the ASAP corrects its deficiencies within~~] ~~90~~ [~~*30 days, its certification may be reinstated by the commission. If the deficiencies are not corrected, the commission shall establish a new ASAP.*~~]

~~Section 7~~ [~~*§ 2.7.*~~ *§ 2.6.*] Final certification decision.

[~~A report~~ *The executive director*] shall [~~be filed~~ *file*] with the commission [~~30 thirty days prior to the next regularly scheduled meeting of the commission~~ *a report which details the certification reviews conducted since the last commission meeting*]. The commission shall review the document presented and make a certification decision. The executive director shall notify in writing *the* director [*and the policy board chairperson*] of each ASAP [~~as well as the~~] ~~chairman~~ [~~*chairperson of that ASAP's policy board*~~ *reviewed of the comission's decision*].

The commission may certify, ~~recertify, decertify, certify with provision,~~ *revoke certification* or decline to certify an ASAP.

~~If the decision is to certify with provision, the period of the certification shall extend 180 days from the decision date with such conditions as the Commission deems warranted. This type of certification may be extended for up to an additional 180 days, but no longer, at the Commission's discretion. If the certification review team's report indicated an ASAP has major deficiencies, the Commission may defer its certification for 90 days, giving the ASAP the opportunity to comply. No extensions may be granted.~~

If the commission fails to certify or ~~decertifies~~ *revokes* an ASAP's *certification* , the commission ~~should~~ [~~*shall*~~ *may*] establish a new ASAP.

The commission's certification decision shall be sent to the ASAP director, the ASAP policy board chairman, political subdivisions, and the courts the ASAP serves or would serve.

In the event of certification disputes with the certification review team, or the denial of a request for waiver of certification requirements by the executive director, the ASAP director may request a hearing before the commission. The request for the hearing must be in written form from the ASAP director and submitted to the commission 30 thirty days prior to the next regularly scheduled meeting of the commission. Upon receipt of a written request [~~for waiver hearing~~], the commission or its designee shall schedule a hearing.

Failure to file such a request [*or to appear as scheduled*] shall be deemed a settlement of the certification dispute or acceptance of the executive director's waiver decision.

~~PART 5.~~
~~Standards For Evaluation and Certification of Services~~

~~Section 5.1. CERTIFICATION MANUAL PROCEDURES.~~

~~Questions concerning any particular item of certification should be directed to the Commission. The certification review team shall rate the ASAP's level of compliance with the certification ratings as listed in Certification Requirements Manual (VR647-01-04), by using the following compliance ratings:~~

~~1 = Standards of Excellence 90.00 - 100.00~~

~~2 = Probationary Program Deficiencies 70.00 - 89.00~~

~~3 = Major Program Deficiencies 00.00 - 69.00~~

~~Section 5.2. CERTIFICATION SURVEY PROCEDURES.~~

~~The purpose of the certification review is to assess the extent of the ASAP's compliance with the standards in the Commission Certification Requirements Manual (VR647-01-04). Compliance shall be assessed through several methods:~~

~~1. Documentation of compliance provided by the ASAP personnel;~~

~~2. Answers to questions concerning the implementation of these standards that shall enable a judgment of compliance to be made; and~~

3. On-site observations conducted by the certification review team. Because each standard (category) has a weighted point value of importance, the ASAP must be prepared to provide evidence of compliance to this standard (category). To be certified, the ASAP shall demonstrate that it is in compliance with the standards, although it need not be in full compliance with each standard.

Prior to the on-site visit, the chairperson of the review team shall request the following information:

A. Copy of personnel policy.

B. Statement of purpose.

C. List of the administrative agent or governing board (Joint Exercise of Power Resolution).

D. Organizational chart.

E. Staff members and job descriptions.

F. Written fiscal policies and procedures.

G. Written policy and procedure for protecting, communicating and acquiring offender information.

After compilation of the above information, the certification rating can be tabulated according to Part 3 "Certification Questionnaire."

Section 5.3. CERTIFICATION DECISION.

At the completion of the on-site review, the certification review team shall hold a summation conference with the director of the ASAP. During this conference, the certification review team shall present findings for discussion and clarification, and the ASAP director shall be given full opportunity to comment on any adverse findings noted by the review team.

Section 5.4. CERTIFICATION PROCEDURES.

1. Evaluation by the certification review team.

A. Review and recommendations by the review team - The certification review team shall review the findings, documents and any other relevant material or information received from any source, and shall recommend to the Commission that the ASAP be certified in accordance with the certification ratings listed in Part 2, Section 2.3., Certification Ratings, Certification Requirements Manual (VR647-01-04).

B. Recommendation to certify - If the review team recommends full certification to the Commission, then the Commission shall consider the recommendation of the review team and, if necessary, review the findings, documents and any other relevant material received by the review team.

C. Determination to recommend probationary and major program deficiencies - If the review team, based on the findings, documents and any other relevant information received from the ASAP, determines it shall recommend to the Commission that the ASAP be placed on probationary status, denied certification, or denied recertification, a representative of the review team shall telephone the ASAP director to discuss the areas of non-compliance upon which this decision is based. This notification shall be confirmed in writing by the review team. If documentation to correct the program deficiencies can be provided by the ASAP within 30 days of being advised of the review teams findings, the review team shall review said documents for recommendation to certify as being in compliance with the Certification Requirements Manual (VR647-01-04).

D. If the ASAP is unable to provide the necessary documentation within 30 days, the review team shall submit its report to the Commission.

Section 6. CERTIFICATION REVIEW TEAM WORKSHEET.

Category 1. Statement of Purpose - Total Points - 4

SC1. Each ASAP shall have a written statement of purpose. (4 points) YES/NO

Category 2. Authority - Total Points - 19

SC1. Each ASAP shall have a legally constituted policy board which has due authority for the ASAP. (10 points) YES/NO

SC2. The policy board shall have the following written regulations and bylaws that set out. (4 points) YES/NO

1. The purpose and responsibilities of the policy board. (1 point) YES/NO

2. Method of appointment of policy board members. (1 point) YES/NO

3. Frequency of meetings of the policy board. (1 point) YES/NO

4. Parliamentary and legal authority of policy board. (1 point) YES/NO

5. Responsibility of policy board to Commission for compliance of ASAPs with statewide regulations. (1 point) YES/NO

Category 3. Directorship - Total Points - 5

SC1. Each ASAP shall have an identifiable director as defined in the VASAP Policy and Procedure Manual (VR647-01-02) (5 points) YES/NO

Category 4. Organizational Chart - Total Points - 6

SC1. Each ASAP shall have a written staff organizational chart which clearly delineates responsibility for ASAP operations. (6 points) YES/NO

Category 5. Position Descriptions - Total Points - 7

SC1. Each ASAP shall have written job descriptions for all staffed positions. (3.5 points) YES/NO

SC2. Job responsibilities shall be explicit and congruent with

16. Purchasing and printing (1 point) YES/NO

17. Grievance Procedure (1 point) YES/NO

Category 7. Budgetary Policies - Total Points - 13

SC1. Each ASAP shall have written fiscal policies and procedures conforming to generally accepted accounting procedures: (13 points) YES/NO

Category 8. *Countermeasures* - Total Points - 13

SC1. Each ASAP shall have a written plan of action or policy statement in each of the six countermeasure areas. (13 points) YES/NO

Category 9. Staffing - Total Points - 4

SC1. Each ASAP shall employ adequate staff to ensure that the ASAP operates cost-effectively. (1 point) YES/NO

SC2. Each ASAP shall employ appropriate staff to ensure that required services are provided for each referral. YES/NO

SC3. Each ASAP shall, within budgetary constraints, employ adequate staff to provide activities in each countermeasure area. (1 point) YES/NO

Category ten. Security and Confidentiality Total Points - 5

SC1. Each ASAP shall process offenders' records in a manner consistent with applicable federal, state and local confidentiality and security regulations and laws. (2 points) YES/NO

SC2. Each ASAP shall have written policies regarding research projects. (1 point) YES/NO

SC3. Each ASAP shall have written policies and procedures for protecting, communicating, and acquiring offender information. (2 points) YES/NO

Category 11. Planning - Total Points - 4

SC1. Each ASAP shall comply with applicable federal, state and local certification and licensing requirements. (4 points) YES/NO

Total Points:

Certification Ratings Total Points - 100

Major Program Deficiencies 00.00 - 60.00

(90 days with no extension)

Probationary Program Deficiencies 70.00 - 89.00

(180 days with one extension)

Standards of Excellence 00.00 - 100.00

Commission on VASAP
Treatment Agency Report

ASAP:

Instructions:
Initial Contact: return white copy within 5 days of initial contact.
Intake Information: return yellow copy within 15 days of intake.
Progress Report: return green copy within 60 days of intake.
Final Report: return pink copy within 15 days of discharge.

INITIAL CONTACT

Probationer:	ASAP Case Manager:	Date Referred to Treatment:
		Agency:
SSN:	Scheduled Treatment Intake Date: Time:	Intake Counselor:
Comments:		Signed: Date:

INTAKE

Intake Completed on:_____ Has been scheduled for: ____ Group; ____ Individual; ____ Both

Next Scheduled Appointment/Group:_____

Comments:_____

Signed: Title: Date:

TREATMENT PLAN MUST BE ATTACHED

PROGRESS REPORT

Group/Individual:
Treatment Counselor:

Projected Completion Date:

___ Treatment Group Attended _____ of _____ Sessions to Date
Number of times late _____ Number of Absences _____

___ Individual Sessions Attended _____ of _____ Sessions to Date
Number of times late _____ Number of Absences _____

Observations to date:	Excellent	Good	Fair	Poor	Improving	Undetermined
Attitude:						
Participation:						

Comments:_____

Signed: _____ Title: _____ Date: _____

FINAL REPORT

___ Treatment Group Attended _____ of _____ Sessions to Date
Number of times late _____ Number of Absences _____

___ Individual Sessions Attended _____ of _____ Sessions to Date
Number of times late _____ Number of Absences _____

Attitude toward Treatment: ___ Excellent ___ Good ___ Fair ___ Poor

Prognosis: ___ Goood ___ Poor ___ Fair ___ Uncertain

DISCHARGE SUMMARY MUST BE ATTACHED

COMMISSION ON VASAP
CONSENT FOR THE RELEASE OF CONFIDENTIAL INFORMATION

I,_____/_____ authorize
(Name of Participant) (Social Security #)

_____to disclose to/obtain from_____
Program Making the Disclosure (Person or

_____
Organization to/or from Whom Disclosure is to be Made)

the following information_____
(Nature of Information)

_____.

Purpose of the disclosure is_____

_____.

I understand that my records are protected under the Federal confidentiality Regulations and cannot be disclosed without my written consent unless otherwise provided for in the regulations. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it (e.g. probation, parole, etc.) and that in any event this consent expires automatically as described below.

_____
(Date, Event, or Condition upon which this consent will expire)

Executed this_____day of _____19_____.

This consent includes / does not include information placed on my records after the above date.

_____
Participant's Signature

_____
Date

_____
Witness

_____
Parent/Guardian, where required

Date Revoked:_____

Participant's Signature_____

Parent/Guardian, where required_____

Witness_____

PROHIBITION ON RE-DISCLOSURE: This information has been disclosed to you from records protected by Federal Confidentiality Rules (42 CFR Part 2). The federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is not sufficient for this purpose.

FINANCIAL REPORT

ASAP NAME:_____

REPORTING PERIOD:_____

RECEIPT NO._____THRU NO._____

Revenue: Year- To- Date Totals

Fees - Local Referrals.....$_____
Fees - Transfers In.....$_____
Other Revenue.....$_____

Total Revenue.....$_____

Computation of State Share

Total Revenue.....$_____
Deduct: Transfers in on which the state share had already been paid to the Treasurer of Virginia by the transferring ASAP.....$_____

Other Revenue.....$_____

Total Deductions.....$_____

Balance on which the State share is computed...$_____

State Percentage.....$_____ X 10%

State share due to Treasurer.....$_____

Program Net Revenue

Total Revenue.....$_____

Deduct: Expenditures for this period.....$_____

Deficit.....$_____

I CERTIFY THAT THE ABOVE INFORMATION IS TRUE AND ACCURATE ACCOUNTING FOR PERIOD REPORTED.

_____
DIRECTOR

COMMISSION ON VIRGINIA ALCOHOL SAFETY ACTION PROGRAM
(VASAP) REQUEST FOR DEFICIT FUNDING

DATE OF REQUEST:_____

PROGRAM MAKING REQUEST:_____

BRIEF PROBLEM STATEMENT:_____

_____

_____

_____

_____

_____

_____

_____

AMOUNT OF FUNDING REQUESTED:_____

Please submitt this form along with a copy of your current Budget and Financial Report to the Executive Director of the Commission on VASAP.

_____
Director

_____
Board Chairperson

VASAPDA TREATMENT COMMITTEE
PROPOSED STANDARD TREATMENT SERVICES AGREEMENT

This agreement entered into the _____ day of _____,19 __ by and between the _____ ASAP, hereafter referred to as the ASAP and _____, hereafter referred to as the Service Provider.

Whereas, the ASAP is endeavoring to develop, implement and evaluate a comprehensive countermeasure program to reduce highway injuries, fatalities, and property damages caused by drinking driver; and,

Whereas, the Service Provider is licensed or certified by the Commonwealth to provide treatment and rehabilitation services to those individuals whose use of intoxicating substances has resulted in social, economic and/or physical problems.

Now, therefore, witnesseth that for and in consideration of the respective undertakings of the parties to this agreement, the ASAP and the Service Provider hereby agree to the following provisions:

ARTICLE I - TREATMENT SERVICES

The ASAP agrees to refer probationers to the Service Provider for treatment and the Service Provider agrees to provide treatment for such individuals. Nothing herein is to be construed as an agreement that the ASAP shall refer all of its probationers in need of treatment to the Service Provider. Probationers referred for treatment to the Service Provider shall receive treatment services as established by the Service Provider. Such treatment services shall be of the same quality as that provided other clientele of the Service Provider. Prior to signing this agreement, a written description of these treatment services shall be filed with the ASAP. The ASAP will also receive advance notice of any change in this description for the duration of this agreement. The requirements described in this agreement are minimum requirements. Additional requirements may be negotiated between the local ASAP and the Service Provider and should be attached to this agreement.

ARTICLE II - REPORTS TO SERVICE PROVIDER

The ASAP shall submit at least the following information to the Service Provider:

1. Written notice of referral.
2. Summary of the probationers alcohol or other drug history.
3. Written notice of all terminations for noncompliance, transfers, and absences prior to the next scheduled treatment session.

In the event of verbal or telephone requests for probationer information form a service provider, the case manager shall respond in writing within ten (10) working days of the request.

ARTICLE III - REPORTS FROM SERVICE PROVIDER

The ASAP shall require at least the following reports from the Service Provider:

1. Written notice of receipt of referral within five (5) working days of initial contact with the probationer.
2. A tentative outline of the treatment plan within fifteen (15) days of the intake session.
3. Written notice within ten (10) working days of any change in the probationer's treatment plan.
4. Verbal notice by the next working day, and written notice within five (4) working days, when the probationer is in violation of any section of the ASAP's or their service provider's agreement to participate.
5. Progress reports within sixty (60) days of the treatment intake and every ninety (90) days thereafter.
6. When the Service Provider receives a written request for a specific report from the ASAP a written response shall be due within ten (10) working days.
7. The Service Provider will utilize the Standard Interim report provided by the ASAP for each probationer referred for treatment. Additional reports as needed by the ASAP may be required.

ARTICLE IV - LIMITATION OF FUNDS

ASAPs may provide financial assistance for a portion of the costs for treatment. This amount, if any, must be negotiated according to regulations specified in Section 11.2 "Financial Services" of the VASAP Commission Policy & Procedure Manual. Upon expenditure of this sum, if any, the probationer and not the ASAP, will be responsible for any fair and reasonable charges thereafter.

ARTICLE V - CONFIDENTIALITY OF PROBATIONER RECORDS

The ASAP and the Service Provider agree to comply with all Federal and State laws pertaining to dissemination and use of client and criminal justice records.

ARTICLE VI - RIGHT TO TERMINATE

Nothing in this agreement shall affect the right of either party to terminate this contract. At least (60) days written notice shall be given prior to termination. Termination of this agreement shall not relieve the Service Provider of their obligation to complete treatment of existing referrals.

ARTICLE VII - INTERPRETATIONS OR MODIFICATION

No oral or written statement of anyone other than the designees of the respective parties to this agreement shall modify or otherwise affect the terms and meaning of this contract. However, memoranda of understanding of a clarifying nature may be added to this agreement upon the signature of the respective designees in accordance with the VASAP Commission Policy and Procedure Manual.

ARTICLE VIII - PERIOD OF PERFORMANCE

The term of this agreement shall be _____ through _____ and shall continue from year to year unless otherwise terminated upon sixty (60) days notice in writing.

Approved:	Approved:
_____ (Name of ASAP)	_____ (Service Provider)
_____ (ASAP Director)	_____ (Director Service Provider)
_____ (ASAP Board Chairperson)	_____ (Board Chairperson)
_____ (Date)	_____ (Date)

The Commission on VASAP
VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

VASAP TRANSFER SHEET

Virginia Alcohol Safety Action Program
1001 East Broad Street, Ste. 245
Old City Hall Building, Box No. 28
Richmond, Virginia 23219

DATE _____

VASAP 33 (REV 10/88)

FROM	TO		
NAME	SSN		BIRTHDATE
ADDRESS - STREET AND NUMBER			HOME PHONE NO. WORK PHONE NO.
CITY	STATE		ZIP
FEE ASSESSED	TOTAL PAID	PAID TO WHOM	BAL:
CASE MANAGER AT REFERRING ASAP			
TYPES OF REPORTS NEEDED AND SUBMIT DATES REQUIRED			
STATUS (IF PARTICIPANT IS TRANSFERRED AFTER BEGINNING ASAP PROGRAM)			

TRANSFER SHEET – PART TWO
(RETURN TO ORIGINATING ASAP WITHIN MAXIMUM OF 90 DAYS)

PARTICIPANT NAME				SSN
ASAP AGENCY NAME AND REPRESENTATIVE'S SIGNATURE				
DATE CLASSIFIED	ASSIGNED TO LEVEL:	PROGRAM BEGINNING DATE	ESTIMATED COMPLETION DATE	FEE STATUS
REASON FOR DELAY OR CHANGE IN STATUS (IF ANY)				

TRANSFER SHEET – PAGE ONE
(RETURN TO ORIGINATING AGENCY WITHIN 10 DAYS)

PARTICIPANT NAME	SSN
AGENCY RECEIVING TRANSFER DOCUMENTS	
DATE DOCUMENTS RECEIVED	INTAKE DATE
IF INTAKE DATE IS TO BE DELAYED STATE REASON	
ASAP AGENCY REPRESENTATIVE SIGNATURE	

This certification questionnaire is provided to allow ASAPs the opportunity to review program operation prior to the arrival of a certification team and to review program operation on an interim basis in years when certification review is not scheduled.

This is also designed to provide a standard format for the review team to assess an ASAP operation.

DMV
Virginia Department of Motor Vehicles
P.O. Box 27412 Richmond Va 23269-0001

VASAP REPORT FORM

VASAP
Virginia Alcohol Safety Action Program

DATE _____ ☐ PROGRESS REPORT ☐ FINAL REPORT★

TSA 42 (12/85)

TO (AGENCY & CASE MGR.)	FROM (AGENCY & CASE MGR)

PARTICIPANT'S NAME		SSN
ADDRESS		BIRTHDATE
CITY	STATE	ZIPCODE
LEVEL ☐ ONE ☐ TWO ☐ THREE	DATE OF FIRST SESSION:	

PROGRESS REPORT

ESTIMATED DATE OF COMPLETION	PARTICIPATION: ☐ EXCELLENT ☐ SATISFACTORY ☐ UNSATISFACTORY★ ☐ IMPROVING
ATTENDANCE: NUMBER OF CLASSES ATTENDED_____OUT OF NUMBER OF CLASSES HELD____ NUMBER OF CLASSES ABSENT_____	
CURRENT REPORT OF DRINKING: ☐ ABSTINENCE ☐ CONTROLLED ☐ OUT OF CONTROL★	
INDICATION OF CHANGE IN DRINKING/DRIVING BEHAVIOR ☐ APPROPRIATE ☐ INAPPROPRIATE★ ☐ UNDETERMINED	

FINAL REPORT

COMPLETION: ☐ SUCCESSFUL ☐ UNSUCCESSFUL★	COMPLETION DATE
ATTENDANCE: NUMBER OF CLASSES ATTENDED_____OUT OF TOTAL NUMBER OF CLASSES_____	
CURRENT REPORT OF DRINKING: ☐ ABSTINENCE ☐ CONTROLLED ☐ OUT OF CONTROL★	
INDICATION OF CHANGE IN DRINKING/DRIVING BEHAVIOR ☐ APPROPRIATE ☐ INAPPROPRIATE★ ☐ NONE★	

★ COMMENTS—PROGRESS OR FINAL REPORT

EXPLAIN ANY STAR ★ ITEMS CHECKED, PROVIDE SPECIFIC INFORMATION CONCERNING NONCOMPLIANCE, DATES, SPECIAL REQUIREMENTS, RECOMMENDATIONS.

COMMISSION ON VASAP

CERTIFICATION REVIEW INSTRUMENT

VASAP CERTIFICATION QUESTIONNAIRE
SCORE SHEET

PROGRAM: _____

ORGANIZATION AND ADMINISTRATION		YES	NO
Category 1 - Statement of Purpose			
Sc. 1	Does the ASAP have a written statement of purpose (which states their relationship to highway safety, court and community)?	___	___
Sc. 2	Does the ASAP have written goals and objectives which reflect the overall Commission on VASAP goal?	___	___
Category 2 - Authority			
Sc. 1	Does the ASAP have a legally constituted independent Policy Board which has due authority for operation of the Program?	___	___
	(Resolutions or other documentation), unless otherwise approved.	___	___
Sc. 2	Does the Policy Board have written Regulations and By-Laws which follow the Commission on VASAP Policies and Procedures:		
	a. Purpose and responsibility.	___	___
	b. Method of appointment of members; (who, how, when, tenure).	___	___
	c. Frequency of meetings.	___	___
	d. Parliamentary authority.	___	___
	e. Responsibility of independent Policy Board to the Commission on VASAP for adherence and compliance of local program with statewide regulations.	___	___

		YES	NO
Sc. 3	Does the ASAP have a Program Organizational Chart which clearly defines administrative and staff responsibility for program operations, and reflects positions shown by Job descriptions?	____	____

Category 3 - Personnel

Sc. 1	Does the ASAP have the explicit written job descriptions which includes qualifications for all staff positions?	____	____
Sc. 2	Staff qualifications are explicit and in accordance with job descriptions?	____	____
Sc. 3	Does the ASAP have a written Personnel Policies and Procedures Manual which includes:		
	a. Benefits	____	____
	b. Confidentiality	____	____
	c. Conflict of Interest	____	____
	d. Employment Procedures	____	____
	e. Equal Employment Opportunity	____	____
	f. Grievance Procedures	____	____
	g. Office Hours	____	____
	h. Pay Scales	____	____
	i. Performance Appraisal	____	____
	j. Personnel Records	____	____
	k. Probationary Period	____	____
	l. Purchasing	____	____
	m. Reduction in Staff	____	____
	n. Standard of Conduct	____	____
	o. Termination of Employment	____	____

		YES	NO
	p. Training	____	____
	q. Travel	____	____

Category 4 - Staffing

Sc. 1	Does the ASAP employ adequate staff to insure that required services are provided for each referral?	____	____
Sc. 2	Does the ASAP employ adequate staff to insure that each countermeasure activity is covered?	____	____

Category 5 - Countermeasures

Sc. 1	Does the ASAP have written action plans, policy statements, and exhibits of work for each of the six (6) countermeasures?		
	a. Enforcement	____	____
	b. Adjudication	____	____
	c. Case Management	____	____
	d. Education/Treatment	____	____
	e. Public Information, Education and Prevention	____	____
	f. Evaluation	____	____

Category 6 - Fiscal Policies

	Does your agency have written fiscal policies and procedures and a financial plan conforming to generally accepted accounting procedures?	____	____
Sc. 1	Audit		
	1. Was an audit performed the past fiscal year?	____	____
	2. Was an audit performed by a CPA firm?	____	____
	Name & address of firm _____		
	_____		

		YES	NO
3.	Does program use an accrual basis of accounting?	____	____

Sc. 2 Budget

1.	Does agency have written budget procedures?	____	____
2.	Is there included a mechanism for revision?	____	____
3.	Is revenue appropriated by the policy board?	____	____

If no, indicate what authorization to expend revenue is used.

_____

Sc. 3 Fiscal Agent

1.	Does agency utilize an outside fiscal agency?	____	____
2.	Is the fiscal agency compensated?	____	____

If yes, how is the amount of payment determined?

_____

_____

3.	Does your fiscal agent provide services other than payroll, purchasing, accounts payable, and personnel matters?	____	____

If yes, list other services _____

_____

Sc. 4 Purchasing

1.	Are there written purchasing procedures?	____	____
2.	If yes, do the procedures include an authorizing officer?	____	____

		YES	NO
3.	Is there a procedure in place to handle receipt of materials and supplies?	____	____

Sc. 5 Payroll

1.	Who prepares payroll for staff?	____	____
2.	Who issues payroll checks?	____	____
3.	Where are payroll records maintained?	____	____
4.	Where are cancelled payroll checks filed?	____	____

Sc. 6 Income

1. Who collects fees?_____

2. What method is used to receipt revenue?

_____

3.	Is an automated system utilized?	____	____

4. What form of payment is accepted?

___ Personal Check ___ Cash

___ Money Order ___ Certified Check

5.	Is there a posted statement indicating each defendant will receive a receipt for payment made?	____	____
6.	Does agency have procedures for:		
	Returned check	____	____
	Transfer in or out	____	____
	Refunds	____	____
7.	Does agency have revenue sources other than from offender fee (non-ASAP revenue)?	____	____
8.	Has agency obtained grant funding?	____	____
9.	Has agency had deficit funding?	____	____

		YES	NO
Sc. 7	Revenue Deposits		
1.	Name of person making deposits. _____		
2.	Is a copy of stamped deposit slip maintained?	____	____
3.	Where are funds deposited?	____	____
4.	Are ledgers reconciled with deposits?	____	____
Sc. 8	Expenditures		
1.	How does agency reflect expenditures for costs (journals, ledgers, etc.)? _____ _____		
2.	How are accounts payable handled? (includes contracts, goods & services). _____ _____		
3.	Who authorizes payment of vouchers? (Look at several approved vouchers). _____		

7

COMMISSION ON VASAP

VASAP CERTIFICATION REPORT

ASAP Program: Director: Certification Date:

Certification Documents:

Submitted by: _____ Date: _____

Approved by: _____ Date: _____

Review Team:

_____

_____

_____

_____

Standard Category Sited	Description of Deficiency	Planned Corrective Action	Completion Date

Waiver Granted	Date	Specify Conditions of Waiver

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: **Emergency Regulation for the Omnibus Budget Reconciliation Act of 1990.**
VR 460-01-17. Section 2.6.
VR 460-01-33. Hearings for Applicants and Recipients.
VR 460-01-68. Prohibition Against Reassignment of Provider Claims.
VR 460-02-2.2100. Groups Covered and Agencies Responsible for Eligibility Determination.
VR 460-02-2.6100. Eligibility Conditions and Requirements.
VR 460-02-4.1410. Criteria for Nursing Home Preadmission Screening: Medicaid Eligible Individuals and All Mentally Ill and Mentally Retarded Individuals At Risk of Institutionalization.
VR 460-03-2.6101. Income Eligibility Levels--Mandatory Group of Qualified Medicare Beneficiaries with Incomes up to Federal Poverty Line.
VR 460-03-2.6113. Section 1924 Provisions.
VR 460-03-3.1100. Narrative for the Amount, Duration and Scope of Services.
VR 460-03-4.1940:1. Nursing Home Payment System.

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

Effective Dates: January 1, 1991, through December 31, 1991.

Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled the Omnibus Budget Reconciliation Act of 1990. These policy changes will conform the State Plan for Medical Assistance to the latest Congressional mandates in the Social Security Act.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding the Omnibus Budget Reconciliation Act of 1990. The Department will complete the required appropriate Administrative Process Act procedures in the Code of Virginia § 9-6.14:7.1.

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: December 20, 1990

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: December 20, 1990

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Registrar
Date: December 27, 1990

DISCUSSION

6. BACKGROUND: The Omnibus Budget Reconciliation Act of 1990 (OBRA 90) requires a number of changes in the State Plan for Medical Assistance to be effective on or before January 1, 1991. These requirements are discussed in the order of Client Services, Eligibility, Provider Reimbursement, and Quality Care Assurance. The Department of Medical Assistance Services (DMAS) is submitting the accompanying federal filing package, State Plan Amendments 90-28 and 90-30, containing those issues which became effective upon the President's signing of the legislation. Those issues which are to be effective January 1, 1991, will be submitted as a separate State Plan Amendment.

Client Services

i. Billing for Services of Substitute Physician: (Effective upon the enactment of OBRA 90) Section 4708 of OBRA 90 provides for informal reciprocal arrangements between providers for the treatment of recipients. A provider may bill for those services rendered by another provider to his patient under an informal reciprocal arrangement. The period of time is limited to 14 continuous days in such informal arrangements. In the case of arrangements involving per diem payments or other fee-for-time compensation, the period may be as long as 90 days. The Secretary of the U.S. Department of Health and Human Services may specify longer periods as provided in OBRA 90. The claim must identify the servicing provider in a manner specified by the Secretary.

Eligibility

i. Income Levels for Qualified Medicare Beneficiaries: (Effective January 1, 1991) Section 4501 of OBRA 90 amended § 1905(p)(2)(B) of the Social Security Act to increase the mandatory income level for Qualified Medicare Beneficiaries to 100% of the federal poverty income guidelines.

ii. Delay in Counting Social Security COLA Increases for QMBs: (Effective January 1, 1991). Section 4501 of OBRA 90 also amended § 1905(p)(1)(B) of the Social Security Act to require that the cost of living adjustments (COLAs) in Social Security Title II benefits made each January 1 be disregarded until April 1. This provision was designed to protect the Medicaid eligibility of those individuals who would lose eligibility because the COLA caused their income to exceed the income limit.

iii. Medicaid Eligibility for Infants under Age 1: (Effective January 1, 1991) Section 4603 of OBRA 90 amended § 1902(e) of the Social Security Act to require that infants who are born to Medicaid-eligible women remain eligible until their first birthday, so long as the mother remains eligible

for Medicaid or would be eligible for Medicaid if she were pregnant.

iv. Pregnant Woman's Role in Paternity Determinations: (Effective upon the enactment of OBRA 90) Section 4606 of OBRA 90 amends § 1912(a)(1)(B) of the Social Security Act to exempt pregnant women from requirements to cooperate in establishing paternity for their unborn children or other living children as a condition of their eligibility for Medicaid.

v. Spousal Impoverishment: (Effective upon the enactment of OBRA 90) Section 4714 of OBRA 90 amended Sections 1924 (b)(2) and 1924(c)(1) of the Social Security Act relating to the way in which the income and resources of an institutionalized spouse are counted when determining eligibility for Medicaid. The Social Security Act § 1924 was created by the Medicare Catastrophic Coverage Act of 1988 to revise the amounts that the institutionalized spouse was allowed to reserve for the support of the spouse in the community.

OBRA 90 clarified that state community property laws do not apply for purposes of post-eligibility treatment of an institutionalized spouse's income for the purposes of determining the patient pay for inpatient services. It also clarified that the only time the spousal share of a couple's resources is determined is at "the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse."

vi. Disregarding German Reparations Payments in Post-eligibility Treatment of Income: (Effective January 1, 1991) Section 4715 of OBRA 90 requires that states disregard from post-eligibility treatment of income any reparation payments made by the Federal Republic of Germany. These payments are made to survivors of the Holocaust.

vii. Medicaid Aid to Dependent Children Transition Cases: (Effective upon the enactment of OBRA 90) Section 4716 of OBRA 90 amended Section 1925(f) of the Social Security Act to prohibit eligibility termination of former ADC families whose Medicaid has been extended for 12 months when the family has not complied with the reporting requirements if the family has good cause for not reporting. Also, Section 1925 (b)(3)(B) of the Act was amended to prohibit any eligibility termination of families effective earlier than 10 days after the family is sent a notice of the termination.

Provider Reimbursement

i. Denial of Payment of Legal Fees for Frivolous Litigation: (Effective upon the enactment of OBRA 90) Section 4801(e) of OBRA 90 amends § 1903(i) of the Social Security Act which requires Medicaid to deny reimbursement or compensation to a nursing facility for payment of legal expenses associated with any action initiated by the facility that is dismissed on the basis that no reasonable legal ground existed for the action.

Quality Care Assurance

i. Reimbursement for Prescribed Drugs: (Effective January 1, 1991) Section 4401 of OBRA 90 mandates that the Secretary of Health and Human Services enter into agreements with drug manufacturers to provide specified rebates to state Medicaid programs on a quarterly basis in order for a state to receive federal matching dollars for those drugs. Payment for covered outpatient drugs of a manufacturer must be covered in a rebate agreement in effect between the manufacturer and the Secretary on behalf of all states. Payment may also be made if the rebate agreement is between the manufacturer and the state, if the Secretary has delegated authority to the state to enter into such agreements. DMAS expects to secure such authority from the Secretary.

OBRA 90 provides for specific circumstances under which federal matching payment may be made for drugs not covered under a rebate agreement. Payment for drugs not covered by rebate agreements may be made if they are single-source or innovator multiple source drugs which the state has determined are essential to the state's beneficiaries' health under the State plan. Payment may also be made if the drugs have been given a 1-A rating by the U.S. Food and Drug Administration, and if either the physician has obtained approval for use in advance of dispensing in accordance with the requirements of an established prior authorization program, or if the Secretary has approved the state's determination that the drugs are essential to the beneficiaries. Payment may be also be made for non-rebated drugs if the Secretary determines that in the first calendar quarter of 1991 there were extenuating circumstances.

Each state is required to report to each manufacturer and to HCFA the total number of dosage units of each covered outpatient drug dispensed under the plan during the quarter. Drug manufacturers must also make price reports to the Secretary each quarter.

To assist states with start-up administrative costs of the rebate program, an enhanced federal match of 75% will be provided for federal FY 91.

A four year moratorium is established on reductions in dispensing fees to pharmacists.

ii. Preadmission Screening: (Effective January 1,

1991) Section 4801(b)(2) of OBRA 90 provides that states' preadmission screening programs shall not apply to an individual:

a. who is admitted to a nursing facility directly from a hospital after receiving acute inpatient care at the hospital,

b. who requires nursing facility services for the condition for which he or she received care in the hospital,

c. whose attending physician has certified, before admission to the facility, that he or she is likely to require fewer than 30 days of nursing facility services.

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.

The Omnibus Budget Reconciliation Act of 1990, as enacted on November 5, 1990, modified the Social Security Act's Title XIX in many areas that affect the State Plan for Medical Assistance.

Without an emergency regulation, an amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the immediate and January 1, 1991, effective dates for the issues specified in this document.

8. FISCAL/BUDGETARY IMPACT: The issues are discussed in this Fiscal/Budgetary Impact section in the same order as above.

Client Services

i. Billing for Services of Substitute Physician: (Effective upon upon enactment of OBRA 90) No fiscal impact is anticipated.

Eligibility

i. Income Levels for Qualified Medicare Beneficiaries: (Effective January 1, 1991) The policy change requires the earlier coverage of approximately 13,500 QMBs with incomes between 95% and 100% of the federal poverty income guidelines. (This estimate uses 1980 census data on people over age 65 and projects it forward using population information from the most recent Virginia Statistical Abstract. Disabled Medicare beneficiaries were not taken into consideration.)

The cost of deductibles was calculated at $100, which was assumed to be spent in the first six months of the calendar year. The premiums were calculated at the published 25% of Medicare Part B program costs. Coinsurance was calculated from the FY 90 HCFA 2082 report and spread evenly over the fiscal year.

Costs were only considered for calendar year 1991 as this population would have become eligible on January 1, 1992, without the statutory change.

FY 91:	GF	$2,766,227
	NGF	$2,766,227
	TOTAL	$5,532,454
FY 92:	GF	$4,867,472
	NGF	$4,867,473
	TOTAL	$9,734,945

ii. Delay in Counting Social Security COLA Increases for QMBs: (Effective January 1, 1991) Individuals will gain 3 months of eligibility for Medicaid as Qualified Medicare Beneficiaries. This change will have no impact in FY 91 because the same section of OBRA 90 also increases the income scale from 90% to 100% of the federal poverty income guideline. That change is greater than the amount of the COLA increase for January 1.

iii. Medicaid Eligibility for Infants under Age 1: (Effective January 1, 1991) DMAS enrollment data were used to determine the number of children born to Medicaid eligible women who would remain eligible to age 1 under the change. For FY 91, the formula is as follows: 7,430 expected infants X 89% who become ineligible for financial reasons X 262 days (365 full year - 103 current average length of enrollment X 50% (half a year in which this policy is in place in FY 91) X $2.60 cost per day per infant X 1.082 FY 90 to FY 91 inflation factor = $2,436,973 total funds. For FY 92, the formula is as follows: 10,236 expected infants X 89% who became ineligible for financial reasons X 262 days (365 full year - 103 current average length of enrollment) X $2.60 cost per day per infant X 1.176 FY 90 to FY 92 inflation factor = $7,297,972 total funds.

FY 91 GF $1,218,486	FY 92 GF $3,648,986
NGF $1,218,486	NGF $3,648,986
TOTAL $2,436,972	TOTAL $7,297,972

iv. Pregnant Woman's Role in Paternity Determinations: (Effective upon enactment of OBRA 90). It is not possible to determine the number of women who were ineligible for Medicaid because they refused to cooperate with a local agency in establishing paternity. Therefore the fiscal impact, if any, cannot be determined.

v. Spousal Impoverishment: (Effective upon enactment of OBRA 90). DMAS does not expect these provisions to have any fiscal impact on Virginia. Virginia does not have community property laws. The definition of the continuous period of eligibility is expected to benefit only a few people who have interrupted periods of institutionalization.

vi. Disregarding German Reparations Payments in Post-eligibility Treatment of Income: (Effective January 1, 1991). No fiscal impact is anticipated from this amendment. Very few Virginians receive these payments.

vii. Medicaid Aid to Dependent Children Transition Cases: (Effective upon enactment of OBRA 90) No significant fiscal impact is expected from these amendments. DMAS expects few cases re-establishing eligibility because failure to report was exempted because of good cause. Virginia was already sending a 10-day notice in advance of termination, so no additional period of eligibility will be conferred by this amendment.

Provider Reimbursement

i. Denial of Payment of Legal Fees for Frivolous Litigation: (Effective upon enactment of OBRA 90) A cost savings would occur if an action initiated by a nursing home were dismissed on the basis of no reasonable legal ground existing for the action. The incidence of future litigation to be dismissed on this basis is unknown, therefore DMAS is unable to project any potential cost savings.

Quality Care Assurance

i. Reimbursement for Prescribed Drugs: (Effective January 1, 1991) The federal government estimates total savings at $1.9 billion over the next five years with the bulk of the savings occurring in FY 93 and beyond. Savings, which shall apply to all state programs, are based on projected federal rebate agreements with pharmaceutical manufacturers. States may continue their own agreements with pharmaceutical firms, through the minimum term of the contract, provided the contract complies with section 1927(a) of the Social Security Act and the manufacturer's rebate totals at least 10% of the manufacturer's sales to the Virginia Medicaid program.

Virginia has already initiated a plan that will reimburse pharmacies for the Average Wholesale Price (AWP) minus 9%. This initiative is projected to generate cost savings of $1,156,000 in FY 91 ($578,000 GF and $578,000 NGF). FY 92 cost savings are $1,262,000 ($631,000 GF and $631,000 NGF). In addition, DMAS is negotiating with pharmaceutical firms to sign agreements to provide the state with rebates. A $1,000,000 ($500,000 GF and $500,000 NGF) reduction in FY 92 have been taken from the DMAS budget in anticipation of savings from the HB 1046, which required those rebates.

DMAS is also, as one of its cost management initiatives, implementing a drug utilization review program. This program is expected to save $200,000 ($100,000 GF and $100,000 NGF) in FY 92 net of administrative costs.

For the FY 91 - FY 92 biennium, the net savings from the three initiatives now in place are expected to equal any savings from the OBRA 90 pharmacy provisions. Any additional savings in future years will be reflected in the pharmacy forecasts.

ii. Preadmission Screening: (Effective January 1, 1991) The fiscal impact of this requirement could be a small administrative cost savings for the program. The administrative cost for implementation would be limited to provider notification and manual changes. These costs would be covered by the savings realized.

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action. Issues specified above which became effective with the enactment of OBRA 90 are to be effective pending the approval of the Health Care Financing Administration once adopted and filed with the Registrar of Regulations. Issues specified above which are to be effective January 1, 1991, will be effective, once this emergency regulation is adopted and filed with the Registrar, on that date. From its effective date, these regulations are 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 conform the State Plan for Medical Assistance to these mandates of OBRA 90.

10. Approval Sought for VR 460-01-17, 460-01-33, 460-01-68, 460-02-2.2100, 460-02-2.6100, 460-02-4.141, 460-03-2.6101, 460-03-2.6113, 460-03-4.1940:1.

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 regulations.

VR 460-01-17. Section 2.6.

17

Revision: HCFA-PM-87-4 (BERC) OMB No.: 0938-0193
MARCH 1987

State: VIRGINIA

Citation		
42 CFR Part 435 §435.10, and Subparts G & I AT-780-90 AT-80-6 AT-80-34 AT-81-4 46 FR 47976 and 1920 of the Act, P.L.99-509 (§9407)	2.6 (b)	Medically needy. All requirements of 42 CFR Part 435, Subparts G and I and §1920 of the Act are met with respect to the families and individuals to whom the requirements apply. The level of income and resources, expressed in total dollar amounts, that are used as a basis for establishing eligibility under the plan are described in ATTACHMENT 2.6-A. /__/ Not applicable. The medically needy are not included in the plan.
1902(a)(10)(E) and 1905(p)of the Act, P.L. 99-509 (§9403) OBRA 90 1905(p)(2)(D) (§4501)	(c)	Qualified Medicare beneficiaries. All requirements of §1905(p) of the Act are met with respect to qualified Medicare beneficiaries. The levels of income and resources, expressed in total dollar amounts that are used as a basis for establishing eligibility under the plan are described in ATTACHMENT 2.6-A. /__/ Not applicable. Qualified Medicare Beneficiaries are not included in the plan.

VR 460-01-33. Hearings for Applicants and Recipients.

33

Revision: HCFA-AT-80-38 (BPP)
May 22, 1980

State of VIRGINIA

Citation		
42 CFR 431.202 AT-79-29	4.2	Hearings for Applicants and Recipients The Medicaid agency has a system of hearings that meets all the requirements of 42 CFR Part 431, Subpart E.
OBRA 90 (4716)		No termination of coverage under §1925 shall be effective earlier than 10 days after the date of mailing of the notice required by §1925(b)(3)(B).

VR 460-01-68. Prohibition Against Reassignment of Provider Claims.

68

Revision: HCFA-AT-81-34 (BPP)

State of Virginia

Citation	
	4.21 Prohibition Against Reassignment of Provider Claims
42 CFR 447.10(c) ALT-78-90 46 FR 42699	Payment for Medicaid services furnished by any provider under this plan is made only in accordance with the requirements of 42 CFR 447.10.
OBRA 90 (§4708)	In the case of services furnished (during periods that do not exceed 14 continuous days in the case of an informal reciprocal arrangement or 90 continuous days (or such longer period as the Secretary may provide) in the case of an arrangement involving per diem, or other fee-for-time compensation) by or incident to the services of one physician to the patient of another physician who submits the claim for such services, payment shall be made to the physician submitting the claim (as if the services were furnished by, or incident to, the physician's services), but only if the claim identifies (in a manner specified by the Secretary) the physician who furnished the services.

VR 460-02-2.2100. Groups Covered and Agencies Responsible for Eligibility Determination.

Revision: HCFA-PM-87-9 (BERC) Attachment 2.2 A
August 1987 Page 2 OMB No.: 0938-0193

Agency*	Citation(s)	Groups Covered
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.
IV A	406(h) and 1902(a)(10)(A)(i)(I) of the Act, P.L. 98-378 (§20)	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	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	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	1902(a)(52) & 1925 of the Act P.L. 100-485 OBRA 90 (§4716)	3. Of the 12 months of extended benefits to families terminated from AFDC solely because of earnings, hours of employment, loss of earned income disregards in acco. dance with §1925 of the Act. This provisi expires on September 30, 1998.
IV A	435.112	4. Families terminated from AFDC solely becau of increased earnings or hours of emplo ment, provided the family received AFDC at least three months during the 6-mon period immediately preceding the month which ineligibility began and provided th one member of the family is employ throughout the period specified in the ne sentence. Medicaid is provided for fo calendar months beginning with the mon AFDC is terminated or if AFDC is terminat retroactively, with the first month which AFDC was erroneously paid.

* Agency that determines eligibility for coverage.

Agency*	Citation		Groups Covered
IV-A	1902(a)(10(A)(i)(III) and 1905(n) of the Act, P.L.98-369 (Section 2361) and P.L.99-272 (Section 9511)	b.	A child who is under six years of age who would be eligible for an AFDC cash payment on the basis of the income and resource requirement of the State's approved AFDC plan. The child must be born after— /XXX/ September 30, 1983; or /___/ _____ (specify optional earlier date)
IV-A	1902(e)(5) of the Act, P.L. 99-272 (Section 9501)	7.	A woman who, while pregnant, is eligible for, has applied for, and has received Medicaid under the approved State plan. The woman continues to be eligible, as though she were pregnant, for all pregnancy related and postpartum medical assistance under the plan for a 60-day period after her pregnancy ends. The 60-day period begins on the last day of her pregnancy.
IV	1902(e)(4) of the Act, P.L. 98-369 (Section 2362) OBRA 90 (§4603)	8.	A child born to a woman who is eligible for and receiving Medicaid on the date of the child's birth. The child is deemed eligible for one year from birth as long as the mother remains eligible (or would remain if pregnant) and the child remains in the same household as the mother.

*Agency that determines eligibility for coverage.

Agency*	Citation(s)		Groups Covered
IV A	1902(e) of the Act, P.L.99-272 (§9501)	2.	Women who, while pregnant, were eli for, have applied for, and have rec Medicaid as medically needy under approved State plan. These continue to be eligible, as though were pregnant, for all pregnanc lated and postpartum services unde plan for a 60-day period after pregnancy ends. The 60-day p 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. 100-485	3.	Individuals under age 18 who, but f income and resources, would be elig under §1902(a)(10)()(i) of the Act. including 1902(a)(10)()(i)(V) and 1905 (m)(1).
	1902(e)(4) of the Act, P.L.98-369 (§2362) OBRA 90 (§4603)	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 t child's birth. The child is deemed have applied and been found eli for Medicaid on the date of birth remains eligible for one year so as the woman remains eligible (or remain if pregnant) and the child member of the woman's household.
IV A	435.308	X	5. Financially eligible individuals are not described in section C.3. and who are under the age of -- X 21 and who meet the covered re classification groups in At 2.2A, Item B7b excluding uals in ICF/MR facilities. ___ 20 X 19 under age 19 for AFDC individuals as described A.1. ___ 18
IV A	435.310	___	6. Caretaker relatives.
IV A	435.320 435.330	X	7. Aged individuals.
IV A	435.322 435.330	X	8. Blind individuals.
IV A	435.324 435.330	X	9. Disabled individuals.

*Agency that termines eligibility for coverage.

VR 460-02-2.6100. Eligibility Conditions and Requirements.

SOCIAL SECURITY ACT UNDER TITLE XIX ATTACHMENT 2.6-A
page 2

State: VIRGINIA

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Citation		Condition or Requirement
435.403 and 1902(b) of the Act. P.L. 99-272 (§9529)	4.	Is a resident of the State. ____ State has interstate residency agreement with the following states: XXXX State has open agreement(s). ____ Not applicable; no residency requirement.
435.1008	5. a.	Is not an inmate of a public institution. Public institutions do not include medical institutions, intermediate care facilities, or publicly operated community residences that serve no more than 16 residents, or certain child care institutions.
435.1008	b.	Is not a patient under age 65 in an institution for mental diseases except as an inpatient under age 22 receiving active treatment in an accredited psychiatric facility or program. ____ Not applicable with respect to individuals under age 22 in psychiatric facilities or programs. Such services are not provided under the plan.
433.145 435.604 1912 of the Act. P.L. 99-272 (§9503) OBRA 90 (§4606)	6.	Is required, unless the individual is described in §1902(l)(1)(A), as a condition of eligibility, to assign rights to medical support and to payments for medical care from any third party, to cooperate in obtaining such support and payments, and to cooperate in identifying and providing information to assist in pursuing any liable third party. The assignment of rights obtained from an applicant or recipient is effective only for services that are reimbursed by Medicaid. The requirements of 42 CFR 433.146 through 433.148 are met. ____ Assignment of rights is automatic because of State law.

Revision: HCFA-PM-87-4 (BERC)
MARCH 1987

Attachment 2.6-A
page 4
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Citation		Condition or Requirement
435.725 435.733 435.832	B.	Post-Eligibility Treatment of Institutionalized Individuals The following amounts are deducted from gross in when computing the application of an individual's couple's income to the cost of institutional care:
In computing income for purposes of post-eligibility treatment of income, any reparation payments made by the Federal Republic of Germany are disregarded (OBRA 90, §4715)	1.	Personal Needs Allowance. a. Aged, blind, disabled— Individuals $ 30.00 Couples $ 60.00 For the following individuals with gre need—patients in institutions who par ipate in work programs as part of treatm The first $75.00 of earnings plus 1/2 remainder, up to a maximum of $190.00 mon is allowed to be retained for personal nee b. AFDC related— Children $ 30.00 Adults $ 30.00 c. Individuals under age 21 covered in th as specified in Item B.7 of ATTACHMENT 2. $ 30.00
435.725 435.733 435.832	2.	For maintenance of the non-institutionaliz spouse only. The amount must be based on reasonable assessment of need but must exceed the highest of— SSI level $ 407.00 SSP level $ ____ Monthly medically needy level $ ____ Other as follows $ ____

Revision: HCFA-PM-87-4 (BERC) ATTACHMENT 2.6-A
MARCH 1987 Page 9
OMB No.: 0938-0193

Citation	Condition or Requirement
1905(p)(1)(c) and (m)(5)(B) of the Act, P.L. 99-509 (Secs. 9403(b) and (f)	f. In determining countable income for qualified Medicare beneficiaries covered under Section 1902(a)(10)(E) of the Act, the following disregards are applied: XX The disregards of the SSI program. ___ The disregards of the State supplementary payment program, as follows: ___ The disregards of the SSI program except for the following restrictions, applied under the provisions of Section 1902(f) of the Act.
	Supplement 1 to ATTACHMENT 2.6-A specifies for non-1902(f) and 1902(f) states the income levels for optional categorically needy groups of individuals with incomes up to the Federal nonfarm income poverty line-pregnant women and infants or children covered under §1902(a)(10)(A)(ii)(IX) of the Act and aged and disabled individuals covered under §1902(a)(10)(A)(ii)(X) of the Act--and groups of qualified Medicare beneficiaries covered under §1902(a)(10)(E) of the Act. Supplement 7 to ATTACHMENT 2.6-A specifies for 1902(f) states the income levels for categorically needy aged, blind and disabled persons who are covered under requirements more restrictive than SSI. ~~Supplement 8 to ATTACHMENT 2.6-A specifies the income levels for optional categorically needy groups of individuals with incomes up to the Medicare/Medicaid/Medicaid~~
OBRA 90 1905(p)(2)(D) (§4501)	g. In determining under this subsection the monthly income of an individual who is entitled to monthly insurance benefits under Title II for a transition period [as defined in clause ii of 1905(p)(2)(D)], such income shall not include cost of living adjustments in Title II benefits payable for months beginning with December of the previous year.

VR 460-02-4.1410. Criteria for Nursing Home Preadmission Screening: Medicaid Eligible Individuals and All Mentally Ill and Mentally Retarded Individuals At Risk of Institutionalization.

"Private Pay Individuals" means persons who are not Medicaid eligible or are not expected to be Medicaid eligible within 180 days of admission to a nursing facility.

"State Mental Health or Mental Retardation Authority" means the designated representative(s) of the Department of Mental Health, Mental Retardation and Substance Abuse Services who shall make active treatment decisions.

§ 2. Persons Subject to Nursing Home Pre-Admission Screening and Identification of Conditions of Mental Illness and Mental Retardation

A. As a condition of a nursing facility's Medicaid participation, all persons applying for admission to it shall be screened to determine whether they meet the criteria for nursing facility placement and whether conditions of mental illness and mental retardation or related conditions exist. Nursing facilities are responsible for ensuring that applicants for admission who have a known or suspected case of mental illness, mental retardation or related conditions are not admitted until an evaluation of their condition and need for active treatment has been made under the screening process.

B. Beginning 4/1/90, nursing facility residents shall be identified for conditions of mental illness and/or mental retardation through annual review.

C. Preadmission screening need not provide for determinations in the case of a readmission to a nursing facility of an individual who, after being admitted to the nursing facility, is transferred for care in a hospital. In addition, preadmission screening shall not apply to the admission to a nursing facility of an individual who is admitted to the facility directly from a hospital after receiving acute inpatient care at the hospital, who requires nursing facility services for the condition for which he received care in the hospital, and whose attending physician certified before admission to the facility that he is likely to require fewer than 30 days of nursing facility services.

§ 3. Pre-Admission Screening Assessment Process

A. Level I Assessment:

1. For individuals who are Medicaid eligible or are expected to become Medicaid eligible within 180 days, the Nursing Home Pre-Admission Screening Committees or other entity contracted by DMAS will complete the initial screening assessment to determine 1) the need for nursing facility services and 2) whether or not the individual has a known or suspected diagnosis of mental illness and/or mental retardation. The DMAS-95 form and the MI/MR

Supplemental Assessment will be used by the screening committees in making Level I assessments. Persons identified as possibly mentally ill and/or mentally retarded shall be referred for further diagnostic evaluation (Level II assessment) performed by the local Community Services Board (CSB) or other entity contracted to complete the Level II assessment.

2. For private pay individuals applying to enter a nursing facility, it will be the responsibility of the nursing facility to determine 1) the need for nursing facility services and 2) whether or not the individual is or may be mentally ill and/or mentally retarded. Persons identified as mentally ill and/or mentally retarded shall be referred to their private practitioners for further diagnostic evaluation.

VR 460-03-2.6101. Income Eligibility Levels–Mandatory Group of Qualified Medicare Beneficiaries with Incomes up to Federal Poverty Line.

C. INCOME ELIGIBILITY LEVELS–MANDATORY GROUP OF QUALIFIED MEDICARE BENEFICIARIES WITH INCOMES UP TO FEDERAL POVERTY LINE

The levels for determining income eligibility for groups of qualified Medicare beneficiaries under the provisions of § 1905 (p)(2)(A) of the Act are as follows:

Based on ~~90~~ *100* percent of the official Federal nonfarm income poverty line:

Size of Family Unit	Poverty Guideline	
1	~~$5,652~~	*6,280*
2	~~$7,758~~	*8,420*
~~3~~	~~$9,504~~	
~~4~~	~~$11,430~~	
~~5~~	~~$13,356~~	
~~6~~	~~$15,282~~	
~~7~~	~~$17,208~~	
~~8~~	~~$19,134~~	

VR 460-03-2.6113. Section 1924 Provisions.

Revision: HCFA-PM-87-4 (BERC)
MARCH 1987

Supplement 13
ATTACHMENT 2.6-A
page 1
OMB No. 0938-0193

Citation(s)	Condition or Requirement
	§1924 Provisions
	a. Income and Resource eligibility policies used t determine eligibility for institutionalized spouse who have spouses living in the community ar consistent with §1924.
	b. In the determination of resource eligibility the stat resource standard is $12,000 plus the annual inflatio rate specified in §1924.
	c. The definition of undue hardship for purposes o determining if institutionalized spouses receiv Medicaid in spite of having excess countable resource is described below:
	Denial of Medicaid eligibility would result in th institutionalized spouse being removed from th institution and unable to purchase life-sustainin medical care.
OBRA 90 (§4714)	d. State community property laws do not apply for purposes of post-eligibility treatment of income.
OBRA 90 (§4714)	e. The spousal share is determined at the beginning of th first continuous period of institutionalizatio (beginning on or after September 30, 1989) of th institutionalized spouse.

VR 460-03-3.1100. Narrative for the Amount, Duration and Scope of Services.

A. 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. *Drugs for which Federal Financial Participation is not available shall not be covered.*

A. Non-legend drugs, except insulin, syringes, and needles and 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~~ *nursing* facilities .

B. Legend drugs, with the exception of anorexant drugs prescribed for weight loss and transdermal drug delivery systems, are covered. Coverage of anorexiants for other than weight loss requires preauthorization.

C. The Program will not provide reimbursement for drugs determined by the Food and Drug Administration (FDA) to lack substantial evidence of effectiveness.

D. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia (1950), as amended, 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 certifies in his/her own handwriting "brand necessary" for the prescription to be dispensed as written.

12b. Dentures.

A. Provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

VR 460-03-4.1940:1. Nursing Home Payment System.

2. Allowable reimbursement in excess of charges may be carried forward for payment in the two succeeding cost reporting periods. A new provider may carry forward unreimbursed allowable reimbursement in the five succeeding cost reporting periods.

3. Providers may be reimbursed the carry forward to a succeeding cost reporting period (i) if total charges for the services provided in that subsequent period exceed the total allowable reimbursement in that period (ii) to the extent that the accumulation of the carry forward and the allowable reimbursement in that subsequent period do not exceed the providers' direct and indirect care operating ceilings plus allowable plant cost.

B. Payment for service shall be based upon the rate in effect when the service was rendered.

C. An interim settlement shall be made by DMAS within 90 days after receipt and review of the cost report. The word "review", for purposes of interim settlement, shall include verification that all financial and other data specifically requested by DMAS is submitted with the cost report. Review shall also mean examination of the cost report and other required submission for obvious errors, inconsistency, inclusion of past disallowed costs, unresolved prior year cost adjustments and a complete signed cost report that conforms to the current DMAS requirements herein. However, an interim settlement shall not be made when one of the following conditions exists.

1. Cost report filed by a terminated provider;

2. Insolvency of the provider at the time the cost report is submitted;

3. Lack of a valid provider agreement and decertification;

4. Monies owed to DMAS;

5. Errors or inconsistencies in the cost report; or

6. Incomplete/nonacceptable cost report.

§ 2.15. Legal fees/accounting.

A. Costs claimed for legal/accounting fees shall be limited to reasonable and customary fees for specific services rendered. Such costs must be related to patient care as defined by Medicare principles of reimbursement and subject to applicable regulations herein. Documentation for legal costs must be available at the time of audit.

B. Retainer fees shall be considered an allowable cost up to the limits established in Appendix III.

C. As mandated by the Omnibus Budget Reconciliation Act of 1990, effective November 5, 1990, reimbursement of legal expenses for frivolous litigation shall be denied if the action is initiated on or after November 5, 1990. Frivolous litigation is any action initiated by the nursing facility that is dismissed on the basis that no reasonable legal ground existed for the institution of such action.

§ 2.16. Documentation. Adequate documentation supporting cost claims must be provided at the time of interim settlement, cost settlement, audit, and final settlement.

§ 2.17. Fraud and abuse. Previously disallowed costs which are under appeal and affect more than one cost reporting

period shall be disclosed in subsequent cost reports if the provider wishes to reserve appeal rights for such subsequent cost reports. The reimbursement effect of such appealed costs shall be computed by the provider and submitted to DMAS with the cost report. Where such disclosure is not made to DMAS, the inclusion of previously disallowed costs may be referred to the Medicaid Fraud Control Unit of the Office of The Attorney General.

Article 4.
New Nursing Facilities.

§ 2.18. Interim rate.

A. For all new or expanded NFs the 95 percent occupancy requirement shall be waived for establishing the first cost reporting period interim rate. This first cost reporting period shall not exceed 12 months from the date of the NF's certification.

B. Upon a showing of good cause, and approval of the DMAS, an existing NF that expands its bed capacity by 50 percent or more shall have the option of retaining its prospective rate, or being treated as a new NF.

C. The 95 percent occupancy requirement shall be applied to the first and subsequent cost reporting periods' actual costs for establishing such NF's second and future cost reporting periods' prospective reimbursement rates. The 95 percent occupancy requirement shall be considered as having been satisfied if the new NF achieved a 95 percent occupancy at any point in time during the first cost reporting period.

D. A new NF's interim rate for the first cost reporting period shall be determined based upon the lower of its anticipated allowable cost determined from a detailed budget (or pro forma cost report) prepared by the provider and accepted by the DMAS, or the appropriate operating ceilings or charges.

* * * * * * * *

Title of Regulation: **Emergency Regulation for Limitation of XIX Payment of XVIII Part B Coinsurance.**
VR 460-01-29. Premiums.
VR 460-01-29.1. Deductibles/Coinsurance.
VR 460-01-31.1. Medicaid for Medicare Cost Sharing for Qualified Medicare Beneficiaries.
VR 460-02-3.2100. Coordination of Title XIX with Part A and Part B of Title XVIII.
VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates - Other Types of Care.
VR 460-03-4.1922. Methods and Standards for Establishing Payment Rates - Other Types of Care.

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

Effective Dates: January 1, 1991, through December 31, 1991.

Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled Limitation of Medicaid Payment of Medicare Part B Coinsurance. This policy modifies the Department of Medical Assistance Service's policy regarding Medicaid payments of procedures also covered by Medicare Part B coinsurance.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Limitation of Medicaid Payment of Medicare Part B Coinsurance. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: December 20, 1990

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: December 20, 1990

5. FILED WITH:

/s/ Ann M. Brown
Deputy Registrar of Regulations
Date: December 26, 1990

DISCUSSION

6. BACKGROUND: This emergency regulation is affecting three preprinted pages in the State Plan for Medical Assistance as well as three attachments in the back of the Plan.

The Department of Medical Assistance Services (DMAS) pays Medicare premiums for individuals who are eligible for both Medicare and Medicaid. This policy results in Medicare's coverage of their medical care, allowing for the use of 100% federal Medicare dollars, thereby reducing the demand for General Fund dollars.

Medicare pays for procedures up to 80% of the Medicare allowable maximum payment. The remainder of the Medicare maximum allowance is then paid by Medicaid even if the additional amount results in net payments which exceed the Medicaid maximum allowance for that procedure.

Federal statute and regulations allow DMAS to limit its coinsurance payments to the Medicaid maximum instead of the Medicare maximum allowable payment. Therefore, this emergency regulation and accompanying State Plan Amendment 90-29 limit the payment of the Medicare Part B coinsurance paid by the Department so that the

combined payments of Medicare and Medicaid do not exceed the Medicaid allowance for the procedure.

7. AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of DMAS the authority to administer and amend the State 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.

The Social Security Act § 1902(n) allows the payment for eligible individuals at the Medicaid maximum rate rather than the Medicare maximum payment.

Without an emergency regulation, this amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the January 1, 1991, effective date which will provide the projected cost savings.

8. FISCAL/BUDGETARY IMPACT: This change will affect approximately 11,000 providers who bill Medicaid for the Medicare Part B coinsurance. It should have no impact on Medicaid recipients because providers are required to accept Medicaid payment as payment in full. (There are approximately 60,000 Medicaid recipients for whom Medicaid pays the Medicare Part B coinsurance.) The Department expects to save $626,000 ($313,000 NGF; $313,000 GF) in FY 91 (half year, effective January 1, 1991) and $1,250,000 ($625,000 NGF; $625,000 in GF) in FY 92.

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action to become effective, once adopted and filed with the Registrar of Regulations, on January 1, 1991. 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 would lack the authority to limit coinsurance payments to the Medicaid maximum allowance.

10. Approval Sought for VR 460-01-29, 460-01-29.1, 460-01-31.1, 460-02-3.2100, 460-02-4.1920, 460-03-4.1922.

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 460-01-29. Premiums.

Revision:
VR 460-01-29

29

STATE: VIRGINIA

Citation	PREMIUMS
42 CFR 431.625(b) AT-78-90 P.L. 100-360 (§301) P.L. 100-647 (§8434)	A.Medicare-Medicaid Individuals The Medicaid agency makes the title XVIII Part B benefits available to certain individuals as part of the title XIX State Plan. /XXX/ by payment of the title XVIII Part B premium charges through a buy-in agreement. /___/ the Medicaid agency does not have a buy-in agreement. B.Medicare-Medicaid/QMB Individuals The Medicaid agency makes the title XVIII Part A and Part B benefits available to certain individuals as part of the title XIX State Plan by payment of the Part A premium, if applicable, and the Part B premium. C.Medicare-QMB Individuals The Medicaid agency makes the title XVIII Part A and Part B deductible and coinsurance cost sharing charges a part of the title XIX State Plan by payment of the Part A premium, if applicable, and the Part B premium for certain individuals.

VR 460-01-29.1. Deductibles/Coinsurance.

Revision:
VR 460-01-29.1

29a

STATE: VIRGINIA

Citation

42 CFR 431.625(b)
AT-78-90
P.L. 100-360
(§301)
P.L. 100-647
(§8434)

DEDUCTIBLES/COINSURANCE

A. Medicare-Medicaid Individuals

The Medicaid agency makes the title XVIII Part B benefits available as part of the title XIX State Plan to certain individuals who are eligible for title XVIII Part B services:

/ ___ / for the entire range of benefits available under Part B.

The agency makes the entire services available to recipients not covered by Medicare.

Yes / ___ / No / ___ /

/ XX / Only for the amount, duration and scope of services within the title XIX State Plan.

B. Medicare-Medicaid/QMB Individuals

The Medicaid agency makes the entire range of benefits under Part A and Part B of title XVIII available as part of the title XIX State Plan for individuals made mandatory as qualified Medicare beneficiaries by §301 of P.L. 100-360 and amended by §8434 of P.L. 100-647.

C. Medicare-QMB Individuals

The Medicaid agency makes the title XVIII Part A and Part B deductible/coinsurance cost sharing charges available as part of the title XIX State Plan for certain individuals made mandatory as qualified Medicare beneficiaries by §301 of P.L. 100-360 and amended by §8434 of P.L. 100-647.

(See Attachment 4.19 B, item j for a description of the reimbursement rates and/or methodology available for title XVIII deductible/coinsurance cost sharing charges)

VR 460-01-31.1. Medicaid for Medicare Cost Sharing for Qualified Medicare Beneficiaries.

Revision:
VR 460-01-31.1

31a

STATE: VIRGINIA

Citation
1902(a)(10)(E) and 1905(p) of the Act,
P.L. 100-360
(§301)
P.L. 100-647
(§8434)

3.5 Medicaid for Medicare Cost Sharing for Qualified Medicare Beneficiaries

(a) The Medicaid agency pays the following Medicare cost sharing expenses for qualified Medicare beneficiaries described in §1905(p) of the Act:

(1) Premiums under Medicare Part B and, if applicable, premiums for hospital insurance under Part A;

(2) Deductibles and coinsurance amounts under Medicare Part A and Part B; and

/ ___ / (3) Premiums for enrollment in an eligible HMO.

(b) The Medicaid agency uses the following methods to provide cost sharing specified under item 3.5(a) above:

/ XX / Buy-in agreements with the Secretary of HHS.

/ ___ / Group premium payment arrangements entered into with the Social Security Administration;

/ XX / Payment of deductibles and coinsurance costs;

/ ___ / Group premium payment arrangements entered into with eligible HMOs.

VR 460-02-3.2100. Coordination of Title XIX with Part A and Part B of Title XVIII.

The following method is used to provide benefits under Part A and Part B of title XVIII to the groups of Medicare-eligible individuals indicated:

A. Part B buy-in agreements with the Secretary of HHS. This agreement covers:

1. ☐ Individuals receiving SSI under title XVI or State supplementation, who are categorically needy under the State's approved title XIX plan.

Persons receiving benefits under title II of the Act or under the Railroad Retirement Systems are included:

Yes ☐ No ☐

2. ☐ Individuals receiving SSI under title XVI, State supplementation, or a money payment under the State's approved title IV-a plan, who are categorically needy under the State's approved title XIX plan.

Persons receiving benefits under title II of the Act or under the Railroad Retirement System are included:

Yes ☐ No ☐

3. ☒ All individuals eligible under the State's approved title XIX *except Qualified Disabled Working Individuals* .

4. ☒ *Qualified Medicare beneficiaries provided by section 301 of P.L. 100-360 as amended by § 8434 of P.L. 100-647.*

B. Part A group premium payment arrangement entered into with the Social Security Administration. This arrangement covers the following groups: *Qualified Disabled & Working Individuals provided by § 6408 of OBRA 1989 and Qualified Medicare beneficiaries provided by § 301 of P.L. 100-360 as amended by § 8434 of P.L. 100-647.*

C. Payment of Part A and Part B deductible and coinsurance cost. Such payments are made in behalf of the following groups:

1. All individuals eligible for Title XVIII covered services.

2. *Qualified Medicare beneficiaries provided by section 301 of P.L. 100-360 as amended by § 8434 of P.L. 100-647* .

VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates - Other Types of Care.

g. All reasonable measures will be taken to ascertain the legal liability of third parties to pay for authorized care and services provided to eligible recipients those measures specified under 42 USC 1396(a)(25).

h. The single state agency will take whatever measures are necessary to assure appropriate audit of records whenever reimbursement is based on costs of providing care and services, or on a fee-for-service plus cost of materials.

i. Payment for transportation services shall be according to the following table:

TYPE OF SERVICE	PAYMENT METHODOLOGY
Taxi services	Rate set by the single state agency
Wheelchair van	Rate set by the single state agency
Nonemergency ambulance	Rate set by the single state agency
Emergency ambulance	Rate set by the single state agency
Volunteer drivers	Rate set by the single state agency
Air ambulance	Rate set by the single state agency
Mass transit	Rate charged to the public
Transportation agreements	Rate set by the single state agency
Special emergency transportation	Rate set by the single state agency

j. Payments for Medicare coinsurance and deductibles for noninstitutional services shall not exceed the allowed charges determined by Medicare in accordance with 42 CFR 447.304(b) less the portion paid by Medicare, other third party payors, and recipient copayment requirements of this Plan. *See Supplement 2 for this methodology.*

k. Payment for eyeglasses shall be the actual cost of the frames and lenses not to exceed limits set by the single state agency, plus a dispensing fee not to exceed limits set by the single state agency.

l. Expanded prenatal care services to include patient education, homemaker, and nutritional services shall be reimbursed at the lowest of: State Agency fee schedule, Actual Charge, or Medicare (Title XVIII) allowances.

m. Targeted case management for high-risk pregnant women and infants up to age 2 and for community mental health and mental retardation services shall be reimbursed at the lowest of: State Agency fee schedule, Actual Charge, or Medicare (Title XVIII) allowances.

VR 460-03-4.1922. Methods and Standards for Establishing Payment Rates - Other Types of Care.

Revision: ATTACHMENT 4.19-B
Supplement 2

VR 460-03-4.1922
STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
MEDICAL ASSISTANCE PROGRAM

STATE: VIRGINIA

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - OTHER TYPES OF CARE

Item j. Payment of Title XVIII Part A and Part B Deductible/Coinsurance

Except for a nominal recipient co-payment, if applicable, the Medicaid agency uses the following method:

	Medicare-Medicaid	Medicare-Medicaid/QMB	Medicare-QMB
Part A Deductible	___ limited to State plan rates*	___ limited to State plan rates*	___ limited to State plan rates*
	X full amount	X full amount	X full amount
Part A Coinsurance	___ limited to State plan rates*	___ limited to State plan rates*	___ limited to State plan rates*
	X full amount	X full amount	X full amount
Part B Deductible	___ limited to State plan rates*	___ limited to State plan rates*	___ limited to State plan rates*
	X full amount	X full amount	X full amount
Part B Coinsurance	X limited to State plan rates*	X limited to State plan rates*	X limited to State plan rates*
	___ full amount	___ full amount	___ full amount

*For those title XVIII services not otherwise covered by the title XIX state plan, the Medicaid agency has established reimbursement methodologies that are described in Attachment 4.19-B, Item(s) j.

* * * * * * * *

Title of Regulation: **Emergency Regulation for Outpatient Rehabilitative Services.**
VR 460-03-3.1100. Narrative for the Amount, Duration and Scope of Services.
VR 460-03-3.1104. Durable Medical Equipment and Supplies Listing.
VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care.
VR 460-04-3.1300. Regulations for Outpatient Physical Rehabilitative Services.

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

Effective Dates: January 1, 1991, through December 31, 1991.

Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled Outpatient Rehabilitative Services. This policy will provide the regulatory authority to authorize and conduct utilization review of outpatient rehabilitative services.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Outpatient Rehabilitative Services. 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: December 21, 1990

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: December 21, 1990

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: December 20, 1990

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: December 27, 1990

6. BACKGROUND: The purpose of this action is to amend the State Plan for Medical Assistance to authorize and conduct utilization review (UR) of intensive outpatient physical rehabilitative services and outpatient physical therapy and related services (physical and occupational therapies and speech-language pathology services). The sections of the State Plan affected by this emergency regulation action are Attachment 3.1 C (Standards Established and Methods Used to Assure High Quality Care) and Attachment 3.1 A & B (Amount, Duration, and Scope of Services), Supplements 1 and 4. The state regulations affected by this action are VR 460-03-3.1100, VR 460-02-3.1300, and VR 460-04-3.1300. A State Plan amendment package to obtain federal approval will be submitted in February.

DMAS has reimbursed physical therapy and related rehabilitative services for Medicaid recipients since 1978. These services are provided by acute care inpatient hospitals, rehabilitation hospitals, rehabilitation agencies, home health providers, and outpatient hospitals. This emergency regulation provides for new limits on these services. DMAS' service limits policy will now require authorization for extensions of normal services for physical, occupational and speech/language therapies based upon individual medical needs.

An intensive rehabilitation program was implemented in February 1986 to provide a package of comprehensive rehabilitation services to include rehabilitation nursing, speech-language pathology services, social services, psychology, therapeutic recreation, durable medical equipment (to assist individuals being discharged from rehabilitation facilities), and physical, occupational, or cognitive therapy. This comprehensive package of services must be provided by a freestanding rehabilitation hospital, a Comprehensive Outpatient Rehabilitation Facility (CORF), or by an acute care hospital that has a physical rehabilitation unit which has been exempted from the Medicare Prospective Payment System.

By implementing the authorization and UR process for all intensive rehabilitation services and physical, occupational, and speech/language therapies, DMAS expects to prevent unnecessary expenditures and ensure better quality of care.

Nothing in this regulation is intended to preclude DMAS from reimbursing for special intensive rehabilitative services on an exception basis and reimbursing for these services on an individually negotiated rate basis. DMAS places some individuals with complex intensive physical rehabilitative needs (such as high level spinal cord injury and ventilator dependency) in out-of-state rehabilitation facilities because in-state facilities cannot provide the necessary services within their existing reimbursement. This regulation will also allow Medicaid to negotiate individual contracts with in-state intensive physical rehabilitation facilities for use of available in-state services, negotiated rates for special intensive physical rehabilitative care will only be used with the patient meets the criteria for intensive physical rehabilitation.

This emergency regulation also imposes new service limits on medically necessary medical supplies, equipment, and appliances which will continue to be covered for Medicaid recipients who receive outpatient intensive physical

rehabilitative services. Unusual amounts, types, and duration of usage must now be authorized by DMAS in accordance with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase.

7. AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medi cal 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.

The Code of Federal Regulations, Title 42, Part 456, grants states the authority to perform UR and authorization for outpatient rehabilitative services.

Without an emergency regulation, this amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the January 1, 1991, effective date established by the agency.

8. FISCAL/BUDGETARY IMPACT: Utilization review processes are expected to produce a net savings to DMAS of $334,000 GF in FY91 and $665,000 GF in FY92 in expenditures to rehabilitative agencies. Utilization review processes are expected to produce a net savings to DMAS of $225,000 GF in FY91 and $450,000 GF in FY92 for rehabilitative services provided in outpatient settings of acute and rehabilitation hospitals. These savings have been identified in the FY 1992 budget submission.

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action to become effective January 1, 1991. 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 would lack the authority to conduct authorization and UR of the provision of outpatient rehabilitative services.

10. Approval Sought for VR 460-03-3.1100, VR 460-02-3.1300, and VR 460-04-3.1300.

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 460-03-3.1100. Narrative for the Amount, Duration and Scope of Services.

D. The State Agency may place appropriate limits on a service based on dental necessity and/or for utilization control. Examples of service limitations are: examinations, prophylaxis, flouride treatment (once/six months); space maintenance appliances; bitewing x-ray – two films (once/twelve months); routine amalgam and composite restorations (once/three years); and extractions, permanent crowns, endodontics, patient education (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. Physical therapy and related services shall be defined as physical therapy, occupational therapy, and speech-language pathology services. These services shall be prescribed by a physician and be part of a written plan of care. Any one of these services may be offered as the sole service and shall not be contingent upon the provision of another service. All practitioners and providers of services shall be required to meet State and Federal licensing and/or certification requirements.

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~~ *facility* 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 service 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.

C. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified

physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11b. Occupational therapy.

A. Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, ~~skilled~~ nursing ~~home~~ *facility* service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for occupational therapy services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11c. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist; see Page 1, General and Page 12, Physical Therapy and Related Services.)

A. 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~~ *facility* service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for occupational therapy services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Speech-language therapy services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech Pathology;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech Pathology; and

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11d. Authorization for Services.

A. Physical therapy, occupational therapy, and speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, or home health agencies shall include authorization for up to twenty-four (24) visits by each ordered rehabilitative service within a 60-day period. A recipient may receive a maximum of forty-eight (48) visits annually without authorization. The provider shall maintain documentation to justify the need for services.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized. This request must be signed and dated by a physician.

Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS.

11e. Documentation Requirements.

A. Documentation of physical therapy, occupational therapy, and speech-language pathology services provided by a hospital-based outpatient setting, home health agency, or a rehabilitation agency shall, at a minimum:

1. describe the clinical signs and symptoms of the patient's condition;

2. include an accurate and complete chronological picture of the patient's clinical course and treatments;

3. document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;

4. include a copy of the physician's orders and plan of care;

5. include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);

6. describe changes in each patient's condition and response to the rehabilitative treatment plan; and

7. describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

11f. Service Limitations. The following general conditions shall apply to reimbursable physical therapy, occupational therapy, and speech-language pathology:

A. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

B. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

C. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

D. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Physical therapy, occupational therapy and speech-language services are to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

13. *Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.*

13a. Diagnostic services.

A. Not provided.

13b. Screening services.

A. Not provided.

13c. Preventive services.

A. Not provided.

13d. Rehabilitative services.

A. Intensive ~~medical~~ *physical* rehabilitation:

1. Medicaid covers intensive inpatient rehabilitation services as defined in § ~~2.1~~ *§ A.4.* in facilities certified as rehabilitation hospitals or rehabilitation 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 physical rehabilitation services as defined in § ~~2.1~~ *§ A.4.* 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 *physical* 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.

5. Nothing in this regulation is intended to preclude DMAS from negotiating individual contracts with in-state intensive physical rehabilitation facilities for those individuals with special intensive rehabilitation needs.

VR 460-03-3.1104. Durable Medical Equipment and Supplies Listing.

NOTICE: Due to its length, the Durable Medical Equipment and Supplies Listing is not being published; however, a copy is available for public inspection at the office of the Registrar of Regulations or at the Department of Medical Assistance Services.

VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care.

k. In the broad category of Special Services which includes medical supplies and equipment and non-emergency transportation, all such services for recipients will require preauthorization by a local health department. Local Health Department staff will also assist the patients in obtaining the necessary supplies and equipment of good quality. Medicare guidelines will be closely followed.

l. Standards in other specialized high quality programs such as the program of Crippled Children's Services will be incorporated as appropriate.

m. Provisions will be made for obtaining recommended medical care and services regardless of geographic boundaries.

n. *Intensive Physical* Rehabilitative Services ~~Admission Criteria~~

§ 1.1 A patient qualifies for intensive inpatient or outpatient physical rehabilitation if:

A. Adequate treatment of his medical condition requires an intensive rehabilitation program consisting of a multi-disciplinary coordinated team approach to ~~upgrade~~ *improve* his ability to function as independently as possible; and

B. It has been established that the rehabilitation program cannot be safely and adequately carried out in a less intense setting.

§ 1.2 In addition to the initial disability requirement, participants must meet the following criteria:

A. Require at least two of the listed therapies in addition to rehabilitative nursing

1. Occupational Therapy

2. Physical Therapy

3. Cognitive Rehabilitation

4. Speech-Language Therapy

B. Medical condition stable and compatible with an active rehabilitation program.

§ 2.1 Within 72 hours of a patient's admission to an ~~inpatient~~ *intensive* rehabilitation program, or within 72 hours of notification to the facility of the patient's Medicaid eligibility, the facility shall notify the Department of Medical of Assistance Services in writing of the patient's admission. This notification shall include a description of the admitting diagnoses, plan of treatment, expected progress and a physician's certification that the patient meets the admission criteria. The Department of Medical Assistance Services will make a determination as to the appropriateness of the admission for Medicaid payment and notify the facility of its decision. If payment is approved, the Department will establish and notify the facility of an approved length of stay. Additional lengths of stay shall be requested in writing and approved by the Department. Admissions or lengths of stay not authorized by the Department of Medical Assistance Services will not be approved for payment.

§ 3.1 Documentation of rehabilitation services must, at a minimum:

A. Describe the clinical signs and symptoms of the patient necessitating admission to the rehabilitation program;

B. Describe any prior treatment and attempts to rehabilitate the patient;

C. Document an accurate and complete chronological picture of the patient's clinical course and progress in treatment;

D. Document that a multi-disciplinary co-ordinated treatment plan specifically designed for the patient has been developed;

E. Document in detail all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response to treatment, and identify who provided such treatment;

F. Document each change in each of the patient's conditions;

G. Describe responses to and the outcome of treatment; and

H. Describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

§ 3.2 Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no ~~coverage~~ *reimbursement* will be provided.

§ 4.1 For a patient with a potential for *physical* rehabilitation for which an outpatient assessment cannot be adequately performed, an ~~inpatient~~ *intensive* evaluation of no more than seven (7) calendar days will be allowed. A comprehensive assessment will be made of the patient's medical condition, functional limitations, prognosis, possible need for corrective surgery, attitude toward rehabilitation, and the existence of any social problems affecting rehabilitation. After these assessments have been made, the physician, in consultation with the rehabilitation team, shall determine and justify the level of care required to achieve the stated goals.

§ 4.2 If during a previous hospital stay an individual completed a rehabilitation program for essentially the same condition for which inpatient hospital care is not being considered, reimbursement for the evaluation will not be covered unless there is a justifiable intervening circumstance which necessitates a re-evaluation.

§ 4.3 Admissions for evaluation and/or training for solely vocational or education purposes or for developmental or behavioral assessments are not covered services.

§ 5.1 Team conferences shall be held as often as needed but at least every two weeks to assess and document the patient's progress or problems impeding progress. The team shall periodically assess the validity of the rehabilitation goals established at the time of the initial evaluation, and make appropriate adjustments in the rehabilitation goals and the prescribed treatment program. A review by the various team members of each others' notes does not constitute a team conference. A summary of the conferences, noting the team members present, shall be recorded in the clinical record and reflect the reassessments of the various contributors.

§ 5.2 Rehabilitation care is to be terminated, regardless of the approved length of stay, when further progress toward the established rehabilitation goal is unlikely or further rehabilitation can be achieved in a less intensive setting.

§ 5.3 Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

§ 6.1 Properly documented medical reasons for furlough may be included as part of an overall rehabilitation program. Unoccupied beds (or days) resulting from an overnight therapeutic furlough will not be reimbursed by the Department of Medical Assistance Services.

§ 7.1 Discharge planning must be an integral part of the overall treatment plan which is developed at the time of admission to the program. The plan shall identify the anticipated improvements in functional abilities and the probable discharge destination. The patient, unless unable to do so, or the responsibile party shall participate in the discharge planning. Notations concerning changes in the discharge plan shall be entered into the record at least every 2 weeks, as a part of the team conference.

§ 8.1 Rehabilitation services are medically prescribed treatment for improving or restoring functions which have been impaired by illness or injury or, where function has been permanently lost or reduced by illness or injury, to improve the individual's ability to perform those tasks required for independent functioning. The rules pertaining to them are:

A. Rehabilitative Nursing:

Rehabilitative Nursing requires education, training, or experience that provides special knowledge and clinical skills to diagnose nursing needs and treat individuals who have health problems characterized by alteration in cognitive and functional ability.

Rehabilitative Nursing are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan approved by a physician after any needed consultation with a registered nurse who is experienced in rehabilitation.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed

by a registered nurse or licensed professional nurse, nursing assistant, or rehabilitation technician under the direct supervision of a registered nurse who is experienced in rehabilitation.

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis, and

4. The service shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice and include the intensity of rehabilitative nursing services which can only be provided in an intensive rehabilitation setting.

B. Physical Therapy:

1. Physical therapy services are those furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and under the direct supervision of a physical therapist licensed by the Board of Medicine;

c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

C. Occupational Therapy:

1. Occupational therapy services are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board;

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board or an occupational therapy assistant certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above;

c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

D. Speech-Language Therapy:

Speech-Language Therapy services are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech Pathology;

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech Pathology;

c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally

predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

E. Cognitive Rehabilitation:

1. Cognitive Rehabilitation services are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with a clinical psychologist experienced in working with the neurologically impaired and licensed by the Board of Medicine;

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be rendered after a neuropsychological evaluation administered by a clinical psychologist or physician experienced in the administration of neuropsychological assessments and licensed by the Board of Medicine and in accordance with a plan of care based on the findings of the neuropsychological evaluation;

c. Cognitive rehabilitation therapy services may be provided by occupational therapists, speech-language pathologists, and psychologists who have experience in working with the neurologically impaired when provided under a plan recommended and coordinated by a physician or clinical psychologist licensed by the Board of Medicine;

d. The cognitive rehabilitation services shall be an integrated part of the total patient care plan and shall relate to information processing deficits which are a consequence of and related to a neurologic event;

e. The services include activities to improve a variety of cognitive functions such as orientation, attention/concentration, reasoning, memory, discrimination and behavior; and

f. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis.

F. Psychology:

1. Psychology services are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified psychologist as required by state law;

c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the patient's condition in accordance withaccepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

G. Social Work:

1. Social Work services are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified social worker as required by state law;

c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

H. Recreational Therapy:

1. Recreational therapy are those services furnished a patient which meet all of the following conditions:

a. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services are performed as an integrated part of a comprehensive rehabilitation plan of care by a recreation therapist certified with the National Council for Therapeutic Recreation at the professional level;

c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

I. Prosthetic/orthotic services:

1. Prosthetic services furnished to a patient include prosthetic devices that replace all or part of an external body member, and services necessary to design the device, including measuring, fitting, and instructing the patient in its use;

2. Orthotic device services furnished to a patient include orthotic devices that support or align extremities to prevent or correct deformities, or to improve functioning, and services necessary to design the device, including measuring, fitting and instructing the patient in its use; and

3. Maxillofacial Prosthetic and related dental services are those services that are specifically related to the improvement of oral function not to include routine oral and dental care.

4. The services shall be directly and specifically related to an active written treatment plan approved by a physician after consultation with a prosthetist, orthotist, or a licensed, board eligible prosthodontist, certified in Maxillofacial prosthetics.

5. The services shall be provided with the expectation, based on the assessment made by physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and predictable period of time, or shall be necessary to establish an improved functional state of maintenance.

6. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical and dental practice; this includes the requirement that the amount, frequency, and duration of the services be reasonable.

J. Durable Medical Equipment:

1. Durable medical equipment furnished the patient receiving approved covered rehabilitation services is covered when the equipment is necessary to carry out an approved plan of rehabilitation. A rehabilitation hospital or a rehabilitation unit of a hospital enrolled with Medicaid under a separate provider agreement for rehabilitative services may supply the durable medical equipment. The provision of the equipment is to be billed as an outpatient service. ~~All durable medical equipment over $1,000 shall be preauthorized by the Department; however, all~~ *Medically necessary medical supplies, equipment and appliances shall be covered. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase. A listing of covered medical equipment and supplies, requirements for rental or purchase, and items for which authorization may be required is found in Supplement 4 to Attachment 3.1 A & B. Payment shall not be made for additional equipment or supplies unless the extended provision of services has been authorized by DMAS. All* durable medical equipment is subject to justification of need. Durable medical equipment normally supplied by the hospital for inpatient care is not covered by this provision.

§ 9.0 Hospice services.

§ 9.1 Admission Criteria. To be eligible for hospice coverage under Medicare or Medicaid, the recipient must be "terminally ill", defined as having a life expectancy of six months or less, and elect to receive hospice services rather than active treatment for the illness. Recertification of this limited life expectancy must be made by the hospice medical director at subsequent 90- and 30-day periods, not to exceed 210 days of hospice coverage.

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(2) The need for case management service shall be assessed and justified through the development of an annual plan of care. Continued service justification shall be documented at the six month review.

e. The individual's record must contain adequate documentation concerning progress or lack thereof in meeting plan of care goals.

q. General Outpatient Physical Rehabilitation Services

§ 1. Scope

A. Medicaid covers general outpatient physical rehabilitative services provided in outpatient settings of acute and rehabilitation hospitals and by rehabilitation agencies which have a provider agreement with the Department of Medical Assistance Services (DMAS).

B. Outpatient rehabilitative services shall be prescribed by a physician and be part of a written plan of care.

§ 2. Covered Outpatient Rehabilitative Services. Covered outpatient rehabilitative services shall include physical therapy, occupational therapy, and speech-language pathology services. Any one of these services may be offered as the sole rehabilitative service and shall not be contingent upon the provision of another service.

§ 3. Eligibility Criteria for Outpatient Rehabilitative Services. To be eligible for general outpatient rehabilitative services, the patient must require at least one of the following services: physical therapy, occupational therapy, speech-language pathology services, and respiratory therapy. All rehabilitative services must be prescribed by a physician.

§ 4. Criteria for the Provision of Outpatient Rehabilitative Services. All practitioners and providers of services shall be required to meet State and Federal licensing and/or certification requirements.

A. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

B. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

C. Speech-language therapy services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech Pathology;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech Pathology; and

3. The services shall be specific and provide effective treatment for the patient's condition in accordance

with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

§ 5. Authorization for Services.

A. General physical rehabilitative services provided in outpatient settings of acute and rehabilitation hospitals and by rehabilitation agencies shall include authorization for up to twenty-four (24) visits by each ordered rehabilitative service within a 60-day period. A recipient may receive a maximum of forty-eight (48) visits annually without authorization. The provider shall maintain documentation to justify the need for services.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized by using the Rehabilitation Treatment Authorization form (DMAS-125). This request must be signed and dated by a physician. Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS. Periods of care beyond those allowed which have not been authorized by DMAS shall not be approved for payment.

§ 6. Documentation Requirements.

A. Documentation of general outpatient rehabilitative services provided by a hospital-based outpatient setting or a rehabilitation agency shall, at a minimum:

1. describe the clinical signs and symptoms of the patient's condition;

2. include an accurate and complete chronological picture of the patient's clinical course and treatments;

3. document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;

4. include a copy of the physician's orders and plan of care;

5. include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);

6. describe changes in each patient's condition and response to the rehabilitative treatment plan; and

7. describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

§ 7. Service Limitations. The following general conditions shall apply to reimbursable physical rehabilitative services:

A. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

B. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

C. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

D. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Rehabilitation care is to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

VR 460-04-3.1300. Regulations for Outpatient Physical Rehabilitative Services.

§ 1. Scope

A. Physical therapy and related services shall be defined as physical therapy, occupational therapy, and speech-language pathology services.

B. Physical therapy and related services shall be prescribed by a physician and be part of a written plan of care.

C. Any one of these services may be offered as the sole rehabilitative service and is not contingent upon the provision of another service.

D. All practitioners and providers of services shall be

required to meet State and Federal licensing and/or certification requirements.

§ 2. Physical therapy.

A. Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility 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 service 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.

C. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

2. The services shall be of a level of complexity and sophisti- cation, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11b. Occupational therapy.

A. Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for occupational therapy services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11c. Services for individuals with speech, hearing, and language disorders.

A. 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, nursing facility service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for occupational therapy services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Speech-language therapy services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech Pathology;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech Pathology; and

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11d. Authorization for Services.

A. Physical therapy, occupational therapy, and speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service within a 60-day period. A recipient may receive a maximum of 48 visits annually without authorization. The provider shall maintain documentation to justify the need for services.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized by using the Rehabilitation Treatment Authorization form (DMAS-125). This request must be signed and dated by a physician. Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS. Periods of care beyond those allowed which have not been authorized by DMAS shall not be approved for payment.

11e. Documentation Requirements.

A. Documentation of physical therapy, occupational therapy, and speech-language pathology services provided by a hospital-based outpatient setting, home health agency, or a rehabilitation agency shall, at a minimum:

1. describe the clinical signs and symptoms of the patient's condition;

2. include an accurate and complete chronological picture of the patient's clinical course and treatments;

3. document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;

4. include a copy of the physician's orders and plan of care;

5. include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);

6. describe changes in each patient's condition and response to the rehabilitative treatment plan; and

7. describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

11f. Service Limitations. The following general conditions shall apply to reimbursable physical therapy, occupational therapy, and speech-language pathology services:

A. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

B. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

C. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

D. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Rehabilitation care is to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

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Title of Regulation: **VR 460-03-3.1120. Case Management Services for Mental Retardation Waiver Clients.**

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

Effective Dates: January 1, 1991, through December 31, 1991.

Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled Case Management for Mental Retardation Waiver Clients. This policy will allow the Department to reimburse for case management services to individuals who are admitted to the Community-Based Services Waivers for Persons with Mental Retardation.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Case Management for Mental Retardation Waiver Clients. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Bruce U. Kozlowski
Director
Date: December 12, 1990

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: December 20, 1990

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: December 21, 1990

5. FILED WITH:

/s/ Ann M. Brown
Deputy Registrar of Regulations
Date: December 26, 1990

DISCUSSION

6. BACKGROUND: The 1990 Appropriations Act (Item 466) directed the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and the Department of Medical Assistance Services (DMAS) to provide Medicaid coverage for community mental health, mental retardation, and substance abuse services in Virginia. As a part of this initiative, DMAS was instructed to seek a waiver to offer home and community-based services to deinstitutionalize and divert mentally retarded individuals from more costly institutional care into community care. This action enables the Commonwealth to realize cost savings and provide services in less restrictive environments which promote more individual growth and development.

Virginia has received approval from the Health Care Financing Administration (HCFA) for two waivers under § 1915(c) of the Social Security Act. Waiver I is for services to individuals in institutions for the mentally retarded or who are at risk of institutionalization and can be cared for in the community. Waiver II is targeted to individuals who currently reside in nursing homes but who require active treatment for mental retardation. The needed State Plan Amendment for this issue will be forwarded after the first of the year.

One of the services included in each of the waiver requests was targeted case management for clients approved to participate in one of the waivers. During the official review of the waiver proposals, HCFA staff requested that the coverage of case management services be removed from the waiver proposals and submitted instead as a State Plan optional service. The purpose of this emergency regulation submission is to promulgate the necessary state regulations to implement the direction of the General Assembly that case management services be provided to participants in the two community-based waiver programs for the mentally retarded.

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.

Chapter 972 of the Code of Virginia directs DMHMRSAS and DMAS to provide Medicaid coverage for community mental retardation services including case management services.

Without an emergency regulation, this amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the January 1, 1991, effective date established by the General Assembly.

8. FISCAL/BUDGETARY IMPACT: DMAS expects the waivers to be adequately funded by a combination of General Funds transferred from DMHMRSAS and $787,500 in FY 91 and $3,150,000 in FY 92 (GF) appropriated to DMAS and federal matching dollars.

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action to become effective on January 1, 1991. 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 would lack the authority to administer case management services for mentally retarded persons.

10. APPROVAL SOUGHT for VR 460-03-3.1120.

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 460-03-3.1120. Case Management Services for Mental Retardation Waiver Clients.

(6) formulating, writing and implementing individualized service plans to reach goal attainment for seriously mentally ill and emotionally disturbed persons

(7) negotiating with consumers and service providers

(8) coordinating the provision of services by diverse public and private providers

(9) identifying community resources and organizations and coordinating resources and activities

(10) using assessment tools (e.g. level of function scale, life profile scale)

c. Abilities to:

(1) demonstrate a positive regard for consumers and their families (e.g. treating consumers as individuals, allowing risk taking, avoiding stereotypes of mentally-ill people, respecting consumers' and families' privacy, believing consumers are valuable members of society)

(2) be persistent and remain objective

(3) work as a team member, maintaining effective inter- and intra- agency working relationships

(4) work independently, performing position duties under general supervision

(5) communicate effectively, verbally and in writing

§ 5. Individuals with mental retardation and related conditions who are participants in the Home and Community-Based Care Waivers for persons with mental retardation and related conditions.

A. Target Group. Medicaid eligible individuals with mental retardation and related conditions, or a child under 6 years of age who is at developmental risk, who have been determined to be eligible for Home and Community Based Care Waiver Services for persons with mental retardation and related conditions. An active client for waiver case management shall mean an individual who receives a minimum of one face-to-face contact every two months and monthly on-going case management interactions. There shall be no maximum service limits for case management services. Case management services must be preauthorized by DMAS after review and recommendation by the Care Coordinator employed by DMHMRSAS and verification of waiver eligibility.

B. Areas of State in which services will be provided:

☒ Entire State

☐ Only in the following geographic areas (authority of section 1915(g)(1) of the Act is invoked to provide services less than Statewide:

C. Comparability of Services

☐ Services are provided in accordance with section 1902(a)(10)(B) of the Act.

☒ Services are not comparable in amount, duration, and scope. Authority of section 915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.

D. Definition of Services: Mental retardation services to be provided include:

1. Assessing needs and planning services, determining the appropriateness of, and need for, mental retardation services, evaluating individual needs, reevaluating individual needs periodically, and developing consumer service plan (does not include performing medical and psychiatric assessment but does include referral for such assessment);

2. Linking the individual to services and supports specified in the consumer service plan;

3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources, including crisis services;

4. Coordinating services with other agencies and providers involved with the individual (e.g., Departments of Social Services, Rehabilitative Services and Health, school division, Area Agency on Aging, Social Security Administration);

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic and recreational services;

6. Making collateral contacts with the individual's significant others to promote implementation of the service plan and community adjustment; and

E. Qualifications of Providers:

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is

invoked to limit case management providers for individuals with mental retardation and serious/chronic mental illness to the Community Services Boards only to enable them to provide services to serious/chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act.

2. To qualify as a provider of services through DMAS for rehabilitative mental retardation case management, the provider of the services must meet certain criteria. These criteria shall be:

a. The provider must guarantee that clients have access to emergency services on a 24 hour basis;

b. The provider must demonstrate the ability to serve individuals in need of comprehensive services regardless of the individuals' ability to pay or eligibility for Medicaid reimbursement;

c. The provider must have the administrative and financial management capacity to meet state and federal requirements;

d. The provider must have the ability to document and maintain individual case records in accordance with state and federal requirements;

e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

f. The provider must be certified as a mental retardation case management agency by the DMHMRSAS.

3. Providers may bill for Medicaid mental retardation case management only when the services are provided by qualified mental retardation case managers. The case manager must possess a combination of mental retardation work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities. The incumbent must have at entry level the following knowledge, skills and abilities. These must be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

(1) the definition, causes and program philosophy of mental retardation

(2) different types of assessments and their uses in program planning

(3) consumers' rights

(4) local service delivery systems, including support services

(5) types of mental retardation programs and services

(6) effective oral, written and interpersonal communication principles and techniques

(7) general principles of record documentation

(8) the service planning process and the major components of a service plan

b. Skills in:

(1) negotiating with consumers and service providers

(2) observing, recording and reporting behaviors

(3) identifying and documenting a consumer's needs for resources, services and other assistance

(4) identifying services within the established service system to meet the consumer's needs

(5) coordinating the provision of services by diverse public and private providers

(6) analyzing and planning for the service needs of mentally retarded persons

c. Abilities to:

(1) demonstrate a positive regard for consumers and their families (e.g. treating consumers as individuals, allowing risk taking, avoiding stereotypes of mentally retarded people, respecting consumers' and families' privacy, believing consumers can grow)

(2) be persistent and remain objective

(3) work as team member, maintaining effective inter- and intra-agency working relationships

(4) work independently, performing position duties under general supervision

(5) communicate effectively, verbally and in writing

F. The State assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan does not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

* * * * * * * *

Title of Regulation: **Emergency Regulation for Home Health Services.**
VR 460-03-3.1100. Narrative for the Amount, Duration and Scope of Services.
VR 460-03-3.1104. Durable Medical Equipment and Supplies Listing.
VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care.

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

Effective Dates: January 1, 1991, through December 31, 1991.

Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled Home Health Services to provide the authority to authorize and conduct utilization review of home health services.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Home Health Services. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Bruce U. Kozlowski, Director
Date: December 18, 1990

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: December 20, 1990

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: December 20, 1990

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: December 27, 1990

6. BACKGROUND: The purpose of this action is to amend the State Plan for Medical Assistance regarding authorization and utilization review of the provision of home health services. The sections of the State Plan for Medical Assistance modified by this action are "Amount, Duration, and Scope of Services" (Attachment 3.1 A & B) and "Standards Established and Methods Used to Assure High Quality Care" (Attachment 3.1-C). This action also adds the new Supplement 4 Durable Medical Equipment and Supplies to Attachment 3.1 A & B. The State Plan Amendment for this issue, which is to be effective January 1, 1991, will be submitted after the first of the year.

Home health services are provided by certified home health agencies on a part-time or intermittent basis to homebound recipients in their residences other than hospitals or nursing facilities. The Department of Medical Assistance Services (DMAS) has provided reimbursement for home health services since 1969 without the specified requirements and limits contained in this regulatory action.

DMAS expects to prevent unnecessary expenditures by implementing an authorization and utilization review process for home health services. Authorization ensures the delivery of medically necessary services and allows DMAS to control inappropriate use. Utilization review shall be performed to ensure that home health services are provided only when medically necessary and that the rendered care meets established written criteria and quality standards.

Covered home health services include nursing services, home health aide services, physical therapy, occupational therapy, speech-language pathology services, and medical supplies and equipment suitable for use in the home. Any of these services can be offered individually and the services are not contingent upon the provision of another service. Home health services must be prescribed by a physician and be part of a written plan of care. The physician must certify that the service is medically necessary and that the treatment prescribed is in accordance with standards of medical practice.

All practitioners, providers of services, and agencies shall be required to meet state and federal licensing and/or certification standards as a condition of enrollment as authorized home health providers. All services furnished by a home health agency, whether provided directly by the agency or under arrangements with others, must be furnished by or under the supervision of qualified personnel. Services not specifically documented in patients' medical records as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

Home health services provide for authorization for a given number of services within a specific time period and allow for further authorization of extended services based on individual need. For home health aide services and rehabilitative therapy services (physical therapy, occupational therapy, and speech-language pathology services), 24 visits may be made by each discipline to home health recipients within a 60-day period or 48 visits annually without authorization from DMAS. For nursing services, 32 visits may be made within a 60-day period without authorization. A recipient may receive a maximum of 64 nursing visits annually without authorization. The

provider's documentation must justify the need for the services which have been provided in the approved time period.

If extended services are determined by the physician to be required, then the home health agency shall request authorization from DMAS for additional services using the "Request for Authorization for Extended Home Health Services" (DMAS-450) which must be accompanied by the Home Health Certification and Plan of Treatment forms (HCFA 485, 486 and 487). Payment shall not be made for additional service unless authorized by DMAS.

A predetermined limit for durable medical equipment and supplies, based upon the Health Care Financing Administration Common Procedure Coding System (HCPCS), is supplied in Supplement 4 to Attachment 3.1 A & B. If extended utilization of the equipment and/or supplies is required, then the provider shall request additional equipment or supplies from DMAS. Payment shall not be made for additional equipment or supplies unless the extended provision of services has been authorized by DMAS.

The following criteria apply to the provision of home health services:

a. Physician Services: Patient must be under the care of a physician who is legally authorized to practice and is acting within the scope of his or her license. The physician may be the patient's private physician or a physician on the staff of the home health agency or a physician working under an arrangement with the institution which is the patient's residence or, if the agency is hospital-based, a physician on the hospital or agency staff.

These services shall be furnished under a written plan of care and must be reviewed by a physician at least once every 60 days. The requested services or items must be necessary to carry out the plan of care and must be related to the patient's condition. A physician recertification is required at intervals of at least once every 60 days and must be signed and dated by the physician who reviews the plan of care. The written plan of care and recertifications must appear on the Home Health Certification and Plan of Treatment forms (HCFA 485, 486, and 487).

b. Nursing Services: Nursing care must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing who is licensed as a registered nurse. Nursing visit categories are as follows:

(1) initial visit: comprehensive assessment of patients' health care needs and development of nursing plans of care based on the physicians' plans of care

(2) routine follow-up visit: visit to perform or teach a specific task and/or monitor compliance

(3) intensive/extended visit: visit requiring complex high technology skills.

c. Home Health Aide Services: Home health aides must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aide services may include assisting with personal hygiene, meal preparation and feeding, walking, and taking and recording blood pressure, pulse, and respiration. These services must be provided under the general supervision of a registered nurse. Such visits made for supervisory purposes only are not reimbursable. A recipient may not receive duplicative home health aide services and personal care aide services.

d. Rehabilitative Services: Rehabilitative services may include physical and occupational therapies and speech-language pathology services that are used for the purpose of symptom control or for the individual to improve performance of activities of daily living and basic functional skills. Physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services. There are two types of visits, as follows:

(1) initial visit: visit to conduct a comprehensive assessment of patient's rehabilitative needs and to develop a rehabilitative plan of care

(2) routine follow-up visit: visit to perform or to teach specific treatment and/or monitor compliance with established plan of care

e. Medical Supplies and Equipment: Durable medical equipment and supplies must be ordered by the physician, be related to the needs of the recipient, and listed in the plan of care. Physician orders for durable medical equipment and supplies shall include the specific item identification including all modifications, the number of supplies needed monthly, and an estimate of how long the recipient will require the use of the equipment or supplies. Treatment supplies used during the visit are included in the visit rate. Treatment supplies left in the home to maintain treatment after the visits should be charged separately.

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 adoption of emergency regulations by agencies of the Commonwealth 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.

The Code of Federal Regulations, Title 42, Part 456 Subpart B, grants states the authority to perform utilization review and authorization for home health services.

Without an emergency regulation, this amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the January 1, 1991, effective date established by the agency.

8. FISCAL/BUDGETARY IMPACT: Monies will be shifted from the medical to the administrative budget to cover the administrative costs of implementing the authorization and utilization review processes. Savings in the medical budget are expected to cover the cost of starting the program. This policy change is expected to produce cost avoidance in future years, which will be reflected in utilization and inflation.

FTEs required for the authorization and utilization review process will be reassigned from within the existing agency structure. A new form entitled "Request for Authorization for Extended Home Health Services" (DMAS-450) has been developed. Existing forms and methods to track data will be used as much as possible.

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action to become effective January 1, 1991. 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 would lack the authority to conduct authorization for and utilization review of the provision of home health services.

10. Approval Sought for VR 460-03-3.1100, 460-03-3.1104, 460-02-3.1300.

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 460-03-3.1100. Narrative for the Amount, Duration and Scope of Services.

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 initital availability of twenty-six (26) sessions, with one possible extension of twenty-six (26) sessions during the first year of treatment. The availability is further restricted to no more than twenty-six (26) sessions for each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three (3) sessions in any given seven (7) 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. *Nursing services provided by a home health agency.*

1. 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.

2. Patients may receive up to 32 visits by a licensed nurse within a 60-day period without authorization. A patient may receive a maximum of 64 nursing visits annually without authorization. If services beyond these limitations are determined by the physician to be required, then the home health agency shall request authorization from DMAS for additional services.

C. Home health aide services provided by a home health agency.

1. Home Health Aides must function under the supervision of a ~~professional~~ *registered* nurse.

2. Home Health Aides must meet the certification requirements specified in 42 CFR 484.36.

3. For home health aide services, patients may receive up to 32 visits within a 60-day period without authorization from DMAS. A recipient may receive a maximum of 64 visits annually without authorization. If services beyond these limitations are determined by the physician to be required, then the home health agency shall request authorization from DMAS for additional services.

D. Medical supplies, equipment, and appliances suitable for use in the home.

1. All *medically necessary* medical supplies, equipment, and appliances are ~~available to~~ *covered for* patients of the Home Health Agency. *Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published polices and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase. A listing*

of covered medical equipment and supplies, requirements for rental or purchase, and items for which authorization may be required is found in Supplement 4 to Attachment 3.1 A & B.

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~~ *authorized* by ~~the local health department~~ *the agency.*

3. The following are non-covered supplies, equipment, or appliances:

a. Items and services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (for example, dentifrices, toilet articles, non-medicated shampoos, prepared baby formulas, infant disposable diapers, non-legend drugs, dental adhesives, cosmetic items, soaps (non-medicated), sugar and salt substitutes, and support stockings.

b. Space conditioning equipment, such as room humidifiers and air conditioners

c. Furniture or appliances not defined as medical equipment, such as blenders, bedside tables, mattresses other than for a hospital bed, pillows and blankets or other bedding, special reading lamps, and bathroom scales

d. Equipment and supplies which are not medically necessary but are requested for the convenience of the patient or of those caring for him; example: hospital bed when the patient simply needs a bed

e. Over-the-counter drugs

f. Home or vehicle modifications

g. Equipment that the primary function is vocationally or educationally related (i.e., computers, environmental control devices, speech devices, etc.)

h. Orthotics

E. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.

1. Service covered only as part of a physician's plan of care.

2. Patients may receive up to 24 visits for each rehabilitative therapy service ordered within a 60-day period without authorization. Patients may receive up to 48 visits for each rehabilitative service ordered annually without authorization. If services beyond these limitations are determined by the physician to be required, then the home health agency shall request authorization from DMAS for additional services.

8. *Private duty nursing services.*

A. 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 were carried to term.

B. Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that:

1. are provided to outpatients;

VR 460-03-3.1104. Durable Medical Equipment and Supplies Listing.

NOTICE: Due to its length, the Durable Medical Equipment and Supplies Listing is not being published; however, a copy is available for public inspection at the office of the Registrar of Regulations or at the Department of Medical Assistance Services.

VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care.

i. Home Health Services

1. Home health services which meet the standards prescribed for participation under Title XVIII will be supplied.

2. Home health services shall be provided by a certified home health agency on a part-time or intermittent basis to a homebound recipient in his place of residence. The place of residence shall not include a hospital or nursing facility. Home health services must be prescribed by a physician and be part of a written plan of care utilizing the Home Health Certification and Plan of Treatment forms which the physician shall review at least every 60 days.

3. Except in limited circumstances described in subsection 4 below, to be eligible for home health services, the patient must be essentially homebound. The patient does not have to be bedridden. Essentially homebound shall mean:

a. the patient is unable to leave home without the assistance of others or the use of special equipment;

b. the patient has a mental or emotional problem which is manifested in part by refusal to leave the

home environment or is of such a nature that it would not be considered safe for him to leave home unattended;

c. the patient is ordered by the physician to restrict activity due to a weakened condition following surgery or heart disease of such severity that stress and physical activity must be avoided;

d. the patient has an active communicable disease and the physician quarantines the patient.

4. Under the following conditions, Medicaid will reimburse for home health services when a patient is not essentially homebound. When home health services are provided because of one of the following reasons, an explanation must be included on the Home Health Certification and Plan of Treatment forms:

a. when the combined cost of transportation and medical treatment exceeds the cost of a home health services visit;

b. when the patient cannot be depended upon to go to a physician or clinic for required treatment, and, as a result, the patient would in all probability have to be admitted to a hospital or nursing facility because of complications arising from the lack of treatment;

c. when the visits are for a type of instruction to the patient which can better be accomplished in the home setting;

d. when the duration of the treatment is such that rendering it outside the home is not practical.

5. Covered Services: Any one of the following services may be offered as the sole home health service and shall not be contingent upon the provision of another service.

a. Nursing services

b. Home health aide services

c. Physical therapy services

d. Occupational therapy services

e. Speech-language pathology services

f. Medical supplies, equipment, and appliances suitable for use in the home.

6. General Conditions. The following general conditions apply to reimbursable home health services.

a. The patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his or her license. The physician may be the patient's private physician or a physician on the staff of the home health agency or a physician working under an arrangement with the institution which is the patient's residence or, if the agency is hospital-based, a physician on the hospital or agency staff.

b. Services shall be furnished under a written plan of care and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of care and must be related to the patient's condition. The written plan of care shall appear on the Home Health Certification and Plan of Treatment forms.

c. A physician recertification shall be required at intervals of at least once every 60 days, must be signed and dated by the physician who reviews the plan of care, and should be obtained when the plan of care is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long home health services will be needed. Recertifications must appear on the Home Health Certification and Plan of Treatment forms.

d. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

e. The physician orders for durable medical equipment and supplies shall include the specific item identification including all modifications, the number of supplies needed monthly, and an estimate of how long the recipient will require the use of the equipment or supplies. All durable medical equipment or supplies requested must be directly related to the physician's plan of care and to the patient's condition.

f. A written physician's statement located in the medical record must certify that:

(1) the home health services are required because the individual is confined to his or her home (except when receiving outpatient services);

(2) the patient needs licensed nursing care, home health aide services, physical or occupational therapy, speech-language pathology services, or durable medical equipment and/or supplies;

(3) a plan for furnishing such services to the individual has been established and is periodically reviewed by a physician; and

(4) these services were furnished while the

individual was under the care of a physician.

g. The plan of care shall contain at least the following information:

(1) diagnosis and prognosis

(2) functional limitations

(3) orders for nursing or other therapeutic services

(4) orders for medical supplies and equipment, when applicable

(5) orders for home health aide services, when applicable

(6) orders for medications and treatments, when applicable

(7) orders for special dietary or nutritional needs, when applicable

(8) orders for medical tests, when applicable, including laboratory tests and x-rays

6. Utilization review shall be performed by DMAS to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in patients' medical records as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

7. All services furnished by a home health agency, whether provided directly by the agency or under arrangements with others, must be performed by appropriately qualified personnel. The following criteria shall apply to the provision of home health services:

a. Nursing Services. Nursing services must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

b. Home Health Aide Services. Home health aides must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aide services may include assisting with personal hygiene, meal preparation and feeding, walking, and taking and recording blood pressure, pulse, and respiration. Home health aide services must be provided under the general supervision of a registered nurse. A recipient may not receive duplicative home health aide and personal care aide services.

c. Rehabilitation Services. Services shall be specific and provide effective treatment for patients' conditions in accordance with accepted standards of medical practice. The amount, frequency, and duration of the services shall be reasonable. Rehabilitative services shall be provided with the expectation, based on the assessment made by physicians of patients' rehabilitation potential, that the condition of patients will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with the specific diagnosis.

(1) Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

(2) Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

(3) Speech-language pathology services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech Pathology. The services shall be of a level of complexity and sophistication, or the condition of

the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech Pathology.

d. Durable Medical Equipment and Supplies: Durable medical equipment, supplies, and/or appliances must be ordered by the physician, be related to the needs of the patient, and included on the plan of care. Treatment supplies used for treatment during the visit are included in the visit rate. Treatment supplies left in the home to maintain treatment after the visits shall be charged separately.

j. Optometrists' services are limited to examinations (refractions) after preauthorization by the State Agency except for eyeglasses as a result of an Early and Periodic Screening, Diagnosis, and Treatment (EPSDT).

BUREAU OF INSURANCE

November 1, 1990

Administrative Letter 1990-20

TO: ALL PROPERTY AND CASUALTY INSURERS AND RATE SERVICE ORGANIZATIONS LICENSED IN VIRGINIA

RE: DELAYED EFFECT OF RATE FILINGS

Administrative Letter 1988-17, dated November 3, 1988, outlined the filing requirements for the subclasses of liability insurance subject to delayed effect of rates pursuant to Virginia Code § 38.2-1912. It also advised insurers of the subclasses of insurance exempted from the rate filing requirements of Chapter 19 of Title 38.2. Both listings were subsequently amended by Administrative Letter 1989-13, dated December 18, 1989. In an Order entered on September 7, 1990 in Case No. INS900256 the State Corporation Commission amended the subclasses of insurance that were the subject of Administrative Letters 1988-17 and 1989-13. This letter is to advise all insurers and rate service organizations of the amendments required by the September 7, 1990 Order which has already been sent to all insurers licensed to write the affected lines of insurance.

Effective September 7, 1990, the list of subclasses of liability insurance subject to § 38.2-1912 (delayed effect of rates) is as follows:

Detective or Investigative Agencies Liability (private)
Gas Companies Liability
Insurance Agents Professional Liability
Law Enforcement Agencies Liability
Lawyers Professional Liability
Medical Professional Liability
Public Officials Errors & Omissions Liability
Real Estate Agents Professional Liability
School Board Errors and Omissions Liability
Security Guards Liability
Sewage Treatment Plants Liability
Volunteer Fire Departments and Rescue Squads Liability, and
Water Treatment Plants Liability

The list of subclasses of liability insurance exempted from the rate filing requirements of Chapter 19 is as follows:

Architects and Engineers Professional Liability
Asbestos Abatement Contractors Liability
Directors and Officers Liability
Landfill Liability
Public Housing Liability
Underground Tanks Liability

Other subclasses previously exempted from the rate filing requirements continue to be exempt.

All of the rule and rate filing procedures described in Administrative Letters 1988-17 and 1990-3 remain in effect. Please pay particular attention to the instructions regarding incomplete form and rate filings and the requirements for policy effective dates. Administrative Letter 1989-10 deals with issues related to the filing of rates subject to § 38.2-1912; therefore you may find it helpful to review it prior to submitting rate filings.

BUREAU OF INSURANCE

December 19, 1990

Administrative Letter 1990-21

TO: ALL COMPANIES LICENSED TO WRITE PRIVATE PASSENGER AUTOMOBILE AND/OR HOMEOWNERS INSURANCE IN VIRGINIA

RE: REVISIONS TO VA CP-12 (12/90), VA CP-19 (12/90), VA CP-20 (12/90) (AND REVISIONS TO FILING PROCEDURES OF THESE FORMS)

The Bureau of Insurance developed Competitive Pricing Forms to establish a rate level index system for private passenger automobile and homeowners insurance. Administrative Letters have been issued to update and revise these forms as needed.

We are again amending Competitive Pricing Forms VA CP-12, VA CP-19 and VA CP-20 to reflect updated rating criteria. Amended forms reflecting a December 1990 edition date are attached. These forms should be reproduced for future use.

In the past, insurers have been required to submit Competitive Pricing Forms with each rate filing. This procedure is being eliminated and insurers will now be required to submit these forms annually upon notification by the Bureau of Insurance.

This letter is to notify you that the Bureau of Insurance is designating the first report to be due April 1, 1991. The enclosed Transmittal Form must be submitted on or before April 1, 1991 and must reflect rates for policies effective on and after April 1, 1991. You will be notified annually of the due date of future reports.

This letter is notification of withdrawal of the following Administrative Letters dealing with Competitive Pricing Forms: 1989-4, 1983-4, 1979-4 and 1977-1.

Transmittal Form

Date: .....

*Rates Effective: .....

Company Name: .....

NAIC No.: .....

RE: VA CP-12 (12/90), VA CP-19 (12/90) and VA CP-20 (12/90)

Please return the completed VA CP-12 (12/90) and the VA CP-19 (12/90) and/or VA CP-20 (12/90) NO LATER THAN APRIL 1, 1991 TO:

Priscilla Gaulden
Insurance Market Examiner
Bureau of Insurance
State Corporation Commission
Box 1157
Richmond, VA 23209
(804) 786-0551

* Use the effective date of your rates currently on file with the Bureau of Insurance

COMPANY
VIRGINIA HOMEOWNERS INSURANCE PREMIUMS
RATES EFFECTIVE

TERRITORY/CODE		TOTAL PREMIUM
Alexandria/		
	Frame ($100,000)	
	Masonry (100,000)	
Norfolk/		
	Frame ($100,000)	
	Masonry (100,000)	
Richmond/		
	Frame ($100,000)	
	Masonry (100,000)	
Roanoke/		
	Frame ($100,000)	
	Masonry (100,000)	
Charlotte County/	- Use Protection Class 10 -	
	Frame ($100,000)	
	Masonry (100,000)	

(See Reverse Hereof for Instructions)

VA CP-12(12/90)

INSTRUCTIONS

Report ANNUAL premiums for the best fire protection class in each territory for coverage under "Special Form (Form 3)" with a $250 flat deductible. Dollar amounts in parentheses are "insured for" values. Do not apply any other rating rules or procedures. Since Charlotte County is representative of a rural risk, Protection Class 10 should be used.

The premiums displayed contemplate a Section II Liability Limit of $100,000 and Medical Payments coverage of $1,000.

* * * * * * * * * * * *

NOTE: IF THE COMPANY DOES NOT PROVIDE THE SPECIFIC COVERAGE REQUESTED, PLEASE CLEARLY NOTE THIS FACT AND INDICATE THE DIFFERENCES BELOW* AND REPORT THE PREMIUM CHARGED FOR THE POLICY MOST NEARLY COMPARABLE TO THE ONE FOR WHICH PREMIUM DATA IS REQUESTED. FOR EXAMPLE, IF THE COMPANY DOES NOT OFFER A $250 DEDUCTIBLE, REPORT THE PREMIUMS FOR THE MOST COMPARABLE DEDUCTIBLE.

* * * * * * * * * * * *

*COMPANY'S EXCEPTIONS:

Form completed by: _____ Signature Date Completed: _____

_____ Title Phone: _____

VA CP-12 (12/90)

COMPANY
VIRGINIA SPECIAL PACKAGE AUTOMOBILE POLICY INSURANCE PREMIUMS
RATES EFFECTIVE

* MODEL YEAR USED _____
OCN/SYMBOL USED _____/_____

CLASSIFICATION RATING FACTORS	TERRITORY/CODE	SPECIAL PACKAGE AUTOMOBILE POLICY	UNINSURED MOTORISTS	COMPREHENSIVE	COLLISION	TOTAL
	Alexandria/_____					
_____	Married Adult-Age 45					
_____	Unmarried Male-Age 20					
_____	Unmarried Female-Age 20					
	Norfolk/_____					
_____	Married Adult-Age 45					
_____	Unmarried Male-Age 20					
_____	Unmarried Female-Age 20					
	Richmond/_____					
_____	Married Adult-Age 45					
_____	Unmarried Male-Age 20					
_____	Unmarried Female-Age 20					
	Roanoke/_____					
_____	Married Adult-Age 45					
_____	Unmarried Male-Age 20					
_____	Unmarried Female-Age 20					
	Charlotte County/_____					
_____	Married Adult-Age 45					
_____	Unmarried Male Age-20					
_____	Unmarried Female-Age 20					

(See Reverse Hereof For Instructions)
(Complete both sides)

* Use current model year. (Remember, model year changes October 1 to the next year. Any exception to the October 1 model year change should be clearly noted.)

VA CP-19 (12/90)

INSTRUCTIONS:

Report ANNUAL premiums for minimum Special Package Automobile Policy liability coverage, including uninsured motorists coverage, required by Virginia's financial responsibility laws; i.e., SPAP=$70,000 Single Limit with $2,000 Medical Services and $1,000 Death Benefit and Uninsured Motorists coverage at minimum limits. Report ANNUAL Special Package Automobile Policy physical damage premiums for a new, standard performance intermediate class car (OCN $12,000, Age Group 1), with Bumper Discount, where applicable. Report Comprehensive premiums with a $50 deductible. Report Collision premiums with a $100 deductible.

Report premiums for risks who are owners or principal operators, who are accident and conviction free for the preceding three years, who have had driver training, who do not use their vehicles for business, who drive 12,000 miles a year and who drive to or from work 9 miles each way. (Report the married adult premiums for a risk whose vehicle is customarily operated by no one other than the insured or spouse.) Do not apply any other rating rules or procedures.

* * * * * * * * * * * *

NOTE:
1. IF THE COMPANY DOES NOT PROVIDE THE SPECIFIC COVERAGE REQUESTED, PLEASE CLEARLY NOTE THIS FACT BELOW* AND REPORT THE PREMIUM CHARGED FOR THE POLICY MOST NEARLY COMPARABLE TO THE ONE FOR WHICH PREMIUM DATA IS REQUESTED. FOR EXAMPLE, IF THE COMPANY DOES NOT OFFER A $50 DEDUCTIBLE COMPREHENSIVE, REPORT THE PREMIUMS FOR THE MOST COMPARABLE DEDUCTIBLE.

2. INCLUDE, BY SEPARATE ATTACHMENT, A SPECIFIC EXAMPLE OF THE METHOD OF CALCULATION USED TO COMPUTE THESE PREMIUMS. THE EXAMPLE SHOULD INCLUDE ALL THE STEPS NECESSARY TO COMPUTE THE FINAL PREMIUM, SUCH AS ROUNDING, APPLICATION OF FACTORS, ETC.

* * * * * * * * * * * *

*COMPANY'S EXCEPTIONS:

Form completed by: _____ Signature Date Completed: _____

_____ Title Phone: _____

VA CP-19 (12/90)

COMPANY
VIRGINIA PRIVATE PASSENGER AUTOMOBILE INSURANCE PREMIUMS
RATES EFFECTIVE

* MODEL YEAR USED _____
OCN/SYMBOL USED _____/_____

CLASSIFICATION RATING FACTORS	TERRITORY/CODE	BODILY INJURY	PROPERTY DAMAGE	MEDICAL PAYMENTS	UNINSURED MOTORISTS	COMPREHENSIVE	COLLISION	TOTAL
	Alexandria/_____							
_____	Married Adult-Age 45							
_____	Unmarried Male-Age 20							
_____	Unmarried Female-Age 20							
	Norfolk/_____							
_____	Married Adult-Age 45							
_____	Unmarried Male-Age 20							
_____	Unmarried Female-Age 20							
	Richmond/_____							
_____	Married Adult-Age 45							
_____	Unmarried Male-Age 20							
_____	Unmarried Female-Age 20							
	Roanoke/_____							
_____	Married Adult-Age 45							
_____	Unmarried Male-Age 20							
_____	Unmarried Female-Age 20							
	Charlotte County/_____							
_____	Married Adult-Age 45							
_____	Unmarried Male Age-20							
_____	Unmarried Female-Age 20							

(See Reverse Hereof For Instructions)
(Complete both sides)

* Use current model year. (Remember, model year changes October 1. Any exception to the October 1 model year change should be clearly noted.)

VA CP-20 (12/90)

INSTRUCTIONS:

Report ANNUAL premiums for minimum liability coverage, including uninsured motorists coverage, required by Virginia's financial responsibility laws; i.e., Bodily Injury limits of $25,000/$50,000, Property Damage limits of $20,000, Uninsured Motorists coverage at minimum limits and Medical Payments coverage of $1,000. Report ANNUAL physical damage premiums on a new, standard performance intermediate class car (OCN $12,000, Age Group 1) with Bumper Discount, where applicable. Report Comprehensive premiums with a $50 deductible. Report Collision premiums with a 00 deductible.

Report premiums for risks who are owners or principal operators, who are accident and conviction free for the preceding three years, who have had driver training, who do not use their vehicles for business, who drive 12,000 miles a year and who drive to or from work 9 miles each way. (Report the married adult premiums for a risk whose vehicle is customarily operated by no one other than the insured or spouse.) Do not apply any other rating rules or procedures.

* * * * * * * * * * * *

NOTE:
1. IF THE COMPANY DOES NOT PROVIDE THE SPECIFIC COVERAGE REQUESTED, PLEASE CLEARLY NOTE THIS FACT AND INDICATE THE DIFFERENCES BELOW* AND REPORT THE PREMIUM CHARGED FOR THE POLICY MOST NEARLY COMPARABLE TO THE ONE FOR WHICH PREMIUM DATA IS REQUESTED. FOR EXAMPLE, IF THE COMPANY DOES NOT OFFER A $50 DEDUCTIBLE COMPREHENSIVE OR MINIMUM LIABILITY COVERAGE, REPORT THE PREMIUMS FOR THE MOST COMPARABLE DEDUCTIBLE OR LIMIT.

2. INCLUDE, BY SEPARATE ATTACHMENT, A SPECIFIC EXAMPLE OF THE METHOD OF CALCULATION USED TO COMPUTE THESE PREMIUMS. THE EXAMPLE SHOULD INCLUDE ALL THE STEPS NECESSARY TO COMPUTE THE FINAL PREMIUM, SUCH AS ROUNDING, APPLICATION OF FACTORS, ETC.

* * * * * * * * * * * *

*COMPANY'S EXCEPTIONS:

Form completed by: _____ Signature Date Completed: _____

_____ Title Phone: _____

VA CP-20 (12/90)

DIRECTOR'S ORDER NUMBER THIRTY-SIX (90)

VIRGINIA'S FIRST ON-LINE GAME LOTTERY; "PICK 3," FINAL RULES FOR GAME OPERATION; SECOND REVISION

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the revised rules for game operation in Virginia's first on-line game lottery, "Pick 3." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of on-line 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 supersedes Director's Order Number Four (90), issued January 25, 1990. This 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: December 11, 1990

DIRECTOR'S ORDER NUMBER THIRTY-SEVEN (90)

VIRGINIA'S SEVENTH INSTANT GAME LOTTERY; "LUCKY DRAW," END OF GAME

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby give notice that Virginia's seventh instant game lottery, "Lucky Draw," will officially end at midnight on Thursday, February 7, 1991. The last day to redeem winning tickets for "Lucky Draw" will be Tuesday, August 6, 1991, 180 days from the declared official end of the game. Claims for winning tickets from "Lucky Draw" will not be accepted after that date. Claims which are mailed and received in an envelope bearing a postmark of August 6, 1991, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

This order is 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: December 21, 1990

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF SOCIAL SERVICES

Title of Regulation: **VR 615-01-33. Allowance of Telephone Costs in the Food Stamp Program.**

Governor's Comment:

I concur with the form and the content of this proposal.

/s/ Lawrence Douglas Wilder
Governor
Date: December 27, 1990

DEPARTMENT OF TAXATION

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

Governor's Comment:

I recommend that the Department of Taxation consider the issues identified by the Department of Planning and Budget. Specifically, I recommend that the Department of Taxation thoroughly investigate the limited application of the threshold proposed in these regulations to ensure that they are not more restrictive than the statute, § 58.1-492, Code of Virginia.

/s/ Lawrence Douglas Wilder
Governor
Date: December 28, 1990

* * * * * * * * *

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

Governor's Comment:

Pending public comment, I concur with the regulations as proposed.

/s/ Lawrence Douglas Wilder
Governor
Date: December 28, 1990

STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-15-02. Virginia Water Protection Permit Regulation.**

Governor's Comment:

This regulation intends to protect a number of important natural resources, including stream flows and nontidal wetlands. I strongly favor this intent. At the same time, I realize that this regulation has undergone a great deal of public scrutiny and resulted in a number of comments. I would like the benefit of these comments prior to making any recommendations.

/s/ Lawrence Douglas Wilder
Governor
Date: December 20, 1990

GUBERNATORIAL OBJECTION

OFFICE OF THE GOVERNOR

January 3, 1991

Mr. C. M. Martin, Sr.
Chairman
Virginia Safety and Health Codes Board
P. O. Box 606
Chesterfield, VA 23832-0606

Dear Mr. Martin:

In November, Governor Wilder notified the Virginia Safety and Health Codes Board of his objection to the following regulations: "The Control of Hazardous Energy (Lockout/Tagout)" – (VR 425-02-71) and "Virginia Occupational Safety and Health Standards for the Construction Industry, Sanitation" – (VR 425-02-72). This letter details the Governor's objections.

Let me begin by stating that the Governor has been very concerned with the proliferation of regulations among state agencies. Since he has taken office, he has been dismayed by the quantity and substance of regulations submitted for his comment. It has begun to look as if the state is attempting to regulate every facet of life, much in the same vein as the federal government. As you are aware, the general public finds a significant amount of difficulty with the overwhelming number of federal regulations now extant. Recent presidents have attempted to cut the number of federal regulations but have yet proven to be effective in meeting the task. The Governor does not want the Commonwealth of Virginia to become a mini federal government. He believes that if we rely on government to regulate everything, not only will it create and encourage "big government", it will also abrogate the conscience of the individual to do what is right. If regulations are burdensome, a certain mentality will begin to prevail that individuals will not do what they should unless the regulations mandate it.

We need to get back to the trust in the human initiative and conscience. Generally, the large majority of persons will do what is right even if there is no regulation that mandates it. In the case at hand, if the evidence proves the merit, employers will take the appropriate steps to remedy the situation requested without the oversight of a state conscience. Accordingly, unless the evidence is very strong that the only and sole way to cure a problem is to regulate it, it should be left to the trust of the public.

Having said the foregoing, with regard to VR 425-02-71, the Governor questions whether the evidence supports it and whether Virginia should adopt a lockout standard that is more stringent than existing federal and state standards. According to the U.S. Occupational Safety and Health Administration's Office of Regulatory Analysis, tagout procedures (currently in force at the federal level and in Virginia) are approximately 80% effective in preventing injuries and lockout procedures are approximately 85% effective in preventing injuries. The Governor does not believe that the small differential between these approximate figures provides the necessary evidence that the figures are correct and adequately justify the need for more stringent regulations. In the absence of more compelling evidence, the Governor believes that Virginia employees should be given the opportunity to weigh the evidence and to decide individually on either a tagout or lockout procedure.

With regard to VR 425-02-72, the Governor also questions why Virginia should adopt construction sanitation standards that are more stringent than existing federal and state standards. The evidence presented does not compel the conclusion that a toilet and hand washing facility is needed for every 20 construction workers, as opposed to every 40 workers, or that "cool drinking water" should replace the "drinking water" standard. The Governor, however, sees merit to requiring single-use drinking cups to help prevent the spread of Hepatitis A and other diseases transmitted by saliva.

One again, good employers have a conscience and will see that their workers are provided sufficient sanitary facilities. To mandate an arbitrary standard is to mandate a requirement that is costly and unnecessary in an unconscionable number of instances.

With best wishes, I am

Very truly yours,

/s/ Walter A. McFarlane
Executive Assistant

cc: The Honorable Lawrence H. Framme, III
Secretary of Economic Development

Carol A. Amato
Commissioner, Department of Labor and Industry

Joan W. Smith
Registrar of Regulations

Symbol Key †
† Indicates entries since last publication of the Virginia Register

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Architects, Professional Engineers, Land Surveyors, and Landscape Architects intends to consider amending regulations entitled: **VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.** The purpose of the proposed action is to change the contents of the regulations to accommodate reporting requirements and other changes as needed.

Statutory Authority: § 54.1-404 of the Code of Virginia.

Written comments may be submitted until February 8, 1991.

Contact: Bonnie S. Salzman, Assistant Director, 3600 W. Broad St., Department of Commerce, Richmond, VA 23230, telephone (804) 367-8514.

AUCTIONEERS BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Auctioneers Board intends to consider amending regulations entitled: **VR 150-01-2. Auctioneers Board.** The purpose of the proposed action is to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity and cost of compliance in accordance with its Public Participation Guidelines.

Statutory Authority: §§ 54.1-100, 54.1-201 and 54.1-602 of the Code of Virginia.

Written comments may be submitted until January 31, 1991.

Contact: Geralde W. Morgan, Administrator, 3600 W. Broad St., Department of Commerce, Richmond, VA 23230-4917, telephone (804) 367-8534.

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 190-04-01. Private Security Services Businesses Regulations.** The purpose of the proposed action is to solicit public comment on all existing regulations as to the effectiveness, efficiency, necessity, clarity and cost of compliance in accordance with its Public Participation Guidelines and bring into compliance the cycle for renewing licenses, registrations, and certifications according to new requirements for compulsory minimum training standards for Private Security Services Business Personnel recently adopted by the Criminal Justice Services Board. Other changes to the regulations which may be necessary will be considered.

Statutory Authority: §§ 54.1-100 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until March 1, 1991.

Contact: Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

DEPARTMENT OF CORRECTIONS (STATE 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 promulgating regulations entitled: **VR 230-30-004. Adult Community Residential Services Standards.** The purpose of the proposed action is to establish minimum standards for Adult Community Residential Programs.

Statutory Authority: § 53.1-178 of the Code of Virginia.

Written comments may be submitted until January 21, 1991.

Contact: R. M. Woodard, Regional Manager, Adult Community Alternatives, 302 Turner Road, Richmond, VA 23225, telephone (804) 674-3729.

BOARD OF DENTISTRY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Dentistry intends to consider amending regulations entitled: **Board of Dentistry Regulations.** The purpose of the intended action is to receive comments on the topics, as follows:

1. The propriety of promulgating regulation to permit the licensing of specialists.

2. Change in the number of Dental Hygienists supervised by a dentist.

3. General supervision of those duties performed by dental auxiliaries presently permitted by current regulation.

4. All current regulations.

Statutory Authority: §§ 54.1-2700 through 54.1-2728 of the Code of Virginia.

Written comments may be submitted until March 4, 1991.

Contact: Nancy Taylor Feldman, Executive Director, Virginia Board of Dentistry, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9906.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Dentistry intends to consider amending regulations entitled: **VR 255-01-1. Board of Dentistry Regulations.** The purpose of the proposed action is to amend the regulations to require the name of the dental assistant providing service. Currently, the only names required for providing service are the dentist and the dental hygienist in § 4.1(B) (7) of the existing regulation.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Written comments may be submitted until March 4, 1991.

Contact: Nancy Taylor Feldman, Executive Director, Virginia Board of Dentistry, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9906.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Funeral Directors and Embalmers intends to consider promulgating regulations entitled: **Curriculum for Resident Trainee Program.** The purpose of the proposed action is to provide consistency and accountability in the resident trainee program of the funeral profession.

Statutory Authority: §§ 54.1-2803 of the Code of Virginia.

Written comments may be submitted until February 15, 1991.

Contact: Meredyth P. Partridge, Board Administrator, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-7390 or toll-free 1-800-533-1560.

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 amend and update the regulations which deal with the Annual Charge Survey conducted by the council. The anticipated charges will reflect more accurately what information will be collected from nursing homes and hospitals.

Statutory Authority: §§ 9-160 and 9-164 of the Code of Virginia.

Written comments may be submitted until February 15, 1991.

Contact: G. Edward Dalton, Deputy Director, 805 E. Broad St., 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 on all existing regulations as to their effectiveness, efficiency, necessity, clarity and cost of compliance in accordance with its Public Participation Guidelines.

Statutory Authority: § 54.1-201 of the Code of Virginia.

Written comments may be submitted until February 14, 1991.

Contact: Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

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.

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 440-01-137.2. 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 2/219, 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 440-01-137.6. 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: Psychologists Clinical.** The purpose of the proposed action is to provide reimbursement for services rendered by paychologists clinical who are licensed by the Board of Psychology.

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

Written comments may be submitted until February 1, 1991, to C. Mack Brankley, Director, Division of Client 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.

BOARD OF NURSING HOME ADMINISTRATORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Nursing Home Administrators intends to consider amending regulations entitled: **VR 500-01-2:1. Regulations of the Board of Nursing Home Administrators.** The purpose of the proposed action is to amend existing regulations to establish standards for the practice of nursing home administration including training programs and examination for licensure.

Statutory Authority: § 54.1-3101 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Meredyth P. Partridge, Board Administrator, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-7390 or toll-free 1-800-533-1560.

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 promulgating regulations entitled: **Yard Waste Composting Regulations.** The purpose of the proposed action is to provide 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 of 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.

These proposed regulations would make permanent the emergency regulations entitled Yard Waste Compost Regulations (VR 672-20-31) adopted on September 10, 1990.

Statutory Authority: § 10.1-1408.1 of the Code of Virginia.

Written comments may be submitted until March 4, 1991.

Contact: S. T. Ashton IV, Environmental Program Analyst, Department of Waste Management, 101 N. 14th St., 11th Fl., Monroe Bldg., Richmond, VA 23219, telephone (804) 225-2867.

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 promulgating regulations entitled: **Regulations for the Certification of Recycling Machinery or Equipment for Tax Credit Purposes.** The purpose of the proposed action is to establish the procedure by which the purchaser of "recycling" machinery or equipment would apply to the Department of Waste Management for certification of such machinery or equipment. Such certification would allow the purchaser to then apply for any available local government tax exemptions appropriate to the use of such machinery or equipment.

A public meeting will be held on Monday, February 11, 1991, 1 p.m., in Conference Room C, Monroe Building, 101 N. 14th St., Richmond, Virginia. (Informational purposes only)

Statutory Authority: §§ 10.1-1400, 10.1-1411 and 58.1-3661 of the Code of Virginia.

Written comments may be submitted until February 15, 1991.

Contact: G. Stephen Coe, Program Analyst, Department of Waste Management, 101 N. 14th St., 11th Fl., Monroe Bldg., Richmond, VA 23219, telephone (804) 786-8679, SCATS 371-0044, toll-free 1-800-533-7488 or (804) 371-8737/TDD ☎

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider amending regulations entitled:

VR 680-16-02. Roanoke River Basin Water Quality Management Plan. The purpose of the proposed action is to amend the Roanoke River Basin Water Quality Management Plan to delete the out-of-date Upper Roanoke River Sub-area material that is to be covered by adoption of the new Upper Roanoke River Sub-area Plan.

Federal and state laws require that Virginia Pollutant Discharge Elimination System (VPDES) permits be in compliance with appropriate area and basin wide water quality management plans. There are approximately 332,612 persons residing in the Upper Roanoke River Sub-area and 105 issued VPDES permits. No financial impact to the regulated community is anticipated. A public meeting will be held at 7 p.m. on Wednesday, February 20, 1991, at the Roanoke County Administration Center Community Room, 3738 Brambleton Avenue, S.W., Roanoke, Virginia, to receive comments from the public. (See Calendar of Events Section) The proposed action is authorized by the statutes cited below and is governed by the State Water Control Law; Permit Regulation (VR 680-14-01); Water Quality Standards; the Clean Water Act, 33 USCA Sections 1251 et seq; and 40 CFR, Parts 35 and 130. A copy of these documents may be reviewed or obtained by contacting Mr. Wellford S. Estes at the address below.

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Written comments may be submitted until February 22, 1991.

Contact: Wellford S. Estes, State Water Control Board, West Central Regional Office, P.O. Box 7017, Roanoke, VA 24019, telephone (804) 857-7432.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-16-02.1. Upper Roanoke River Sub-area Water Quality Management Plan.** The purpose of the proposed action is to update the Upper Roanoke River Sub-area portion of the Roanoke River Basin Water Quality Management Plan to reflect current data and scientific studies; new or revised legislation, procedures, policy and regulations; and the results of facilities planning.

Federal and state laws require that Virginia Pollutant Discharge Elimination System (VPDES) permits be in compliance with appropriate area and/or basin wide water quality management plans. There are approximately 332,612 persons residing in the Upper Roanoke River Sub-area and 105 issued VPDES permits. No financial impact to the regulated community is anticipated. A public meeting will be held at 7:00 p.m. on Wednesday, February 20, 1991, at the Roanoke County Administration Center Community Room, 3738 Brambleton Avenue, S.W., Roanoke, Virginia, to receive comments from the public. (See Calendar of Events Section) The Proposed action is authorized by the statutes cited below and is governed by the State Water Control Law; Permit Regulation (VR 680-14-01); Water Quality Standards; the Clean Water Act, 33 USCA Sections 1251 et seq; and 40 CFR, Parts 35 and 130. A copy of these documents may be reviewed or obtained by contacting Mr. Wellford S. Estes at the address below.

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Written comments may be submitted until February 22, 1991.

Contact: Wellford S. Estes, State Water Control Board, West Central Regional Office, P.O. Box 7017, Roanoke, VA 24019, telephone (804) 857-7432.

GENERAL NOTICES

NOTICES TO STATE AGENCIES

CHANGE OF ADDRESS: Our new mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed in copy. Our FAX number is: 371-0169.

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) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

ERRATA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: **VR 115-04-09. Rules and Regulations for the Enforcement of the Virginia Seed Law.**

Publication: 7:7 VA.R. 1063 December 31, 1990

Correction to the Final Regulation Notice:

Line 3 of the Notice should read:

"...adopted as it was proposed in 6:21 VA.R. 3303-3312 July..."

BOARD OF NURSING

Title of Regulation: **VR 495-01-01. Board of Nursing Regulations.**

Publication: 7:6 VA.R. 950-968 December 17, 1990

Correction to the Final Regulation:

Page 963, column 2, § 5.3 D 1 a should read:

"...a. Communicate and interact competently (emphasis added)..."

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

Title of Regulation: **VR 394-01-02. Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen.**

Publication: 7:7 VA.R. 1069-1076 December 31, 1990

Correction to the Final Regulation:

Page 1074, column 1, line 11, insert the following text after the word "within":

"*... 90 days of receipt of the decision of the agent or certification board. The appeals board must meet within ...*"

Page 1076, column 1, Blaster Certification Progam, 2nd line of address should read:

National Assessment Institute

Title of Regulation: **VR 394-01-22. Virginia Uniform Statewide Building Code, Volume II - Building Maintenance Code/1990.**

Correction to the Final Regulation:

Page 1091, column 2, § 109.4.2, line 2 should read:

"...detectors: Battery or AC-powered single and multiple station smoke detectors meeting the requirements of the USBC, Volume..."

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 FOR ACCOUNTANCY

January 28, 1991 - 10 a.m. – Open Meeting
January 29, 1991 - 8 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting to (i) review applications; (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.

DEPARTMENT FOR THE AGING

Long-Term Care Ombudsman Program Advisory Council

March 28, 1991 - 9:30 a.m. – Open Meeting
8007 Discovery Drive, Blair Building, 2nd Floor, Conference Room A and B, Richmond, Virginia. ♿

Business will include review of goals and objective. Meeting attendees will include representatives of legislative groups concerned with aging issues.

Contact: Virginia Dize, State Ombudsman, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-3141, toll-free 1-800-552-3402 or 225-2271/TDD ☎

BOARD OF AGRICULTURE AND CONSUMER SERVICES

† **February 20, 1991 - 1 p.m.** – Open Meeting
† **February 21, 1991 - 9 a.m.** – Open Meeting
Washington Building, 1100 Bank Street, Room 204, Richmond, Virginia. ♿

At this regular meeting, the board will review issues relating to legislation, regulations, and fiscal matters and will receive reports from the staff of the Department of Agriculture and Consumer Services. The board may consider other matters relating to its responsibilities. At the conclusion of other business on February 21, the board will review public comment, total of which not to exceed thirty minutes.

Contact: Roy E. Seward, Secretary to the Board, Virginia Department of Agriculture and Consumer Services, Room 210, Washington Building, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-3501 or 371-6344/TDD ☎

DEPARTMENT OF AIR POLLUTION CONTROL

† **February 4, 1991 - 6:30 p.m.** – Public Hearing
John L. Hurt Jr. Elementary School, 315 Prospect Road, Hurt, Virginia. ♿

A public hearing to consider an application from Multitrade Limited Partnershsip to construct a 79.5 megawatt wood/coal fired small power production facility in Pittsylvania Co. near Hurt, Virginia.

Contact: Terry Moore, Environmental Engineer Senior, 7701-03 Timberlake Road, Lynchburg, VA 24502, telephone (804) 947-6641.

† **February 11, 1991 - 1:30 p.m.** – Public Hearing
West Point Town Council Chambers, 6th Street, West Point, Virginia.

A public hearing will be held to receive comments on a permit application by Chesapeake Corporation to construct a recovery boiler and to modify existing equipment at their paper mill located in West Point, Virginia.

Contact: Gregory L. Clayton, Regional Director, Department of Air Pollution Control, Region 4, 300 Central Rd., Suite B, Fredericksburg, VA 22401, telephone (703)

899-4600.

Region VI

† **January 30, 1991 - 10 a.m.** – Open Meeting
2010 Old Greenbrier Road, Suite A, Chesapeake, Virginia. ♿ (Interpreter for deaf provided if requested)

A meeting to allow public comment on request for permit to construct and operate three simple cycle combustion turbines/electric generators north of South Military highway and east of Deep Creek Canal near the confluence of St. Julian Creek and the southern branch of the Elizabeth River in Chesapeake, Virginia.

Contact: Edward F. Rogers, III, 2010 Old Greenbrier Rd., Suite A, Chesapeake, VA 23320, telephone (804) 424-6707.

ALCOHOLIC BEVERAGE CONTROL BOARD

February 4, 1991 - 9:30 a.m. – Open Meeting
February 20, 1991 - 9:30 a.m. – Open Meeting
March 4, 1991 - 9:30 a.m. – Open Meeting
March 18, 1991 - 9:30 a.m. – Open Meeting
2901 Hermitage Road, Richmond, Virginia. ♿

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determied.

Contact: Robert N. Swinson, Secretary to the Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

March 14, 1991 - 10 a.m. – Public Hearing
Department of Commerce, 3600 West Broad Street, Room 395, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to amend regulations entitled: **VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.** The proposed amendment will adjust fees contained in current regulations.

Statutory Authority: §§ 54.1-113 and 54.1-404 of the Code of Virginia.

Written comments may be submitted until March 4, 1991.

Contact: Bonnie S. Salzman, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

Board for Architects

† **February 21, 1991 - 9:30 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to (i) approve minutes of November 8, 1990; (ii) review correspondence; (iii) review applications; and (iv) review enforcement files.

Contact: Bonnie S. Salzman, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

Board for Landscape Architects

† **February 28, 1991 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to (i) approve minutes of October 18, 1990, meeting; (ii) review correspondence; and (iii) review applications.

Contact: Bonnie S. Salzman, Assistant Director, Department of Commerce, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

Board for Professional Engineers

† **February 14, 1991 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to (i) approve minutes from November 14, 1990, meeting; (ii) review correspondence; (iii) review applications; and (iv) review enforcement files.

Contact: Bonnie S. Salzman, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

BOARD FOR AUCTIONEERS

† **January 29, 1991 - 9:30 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Fifth Floor, Conference Room One, Richmond, Virginia.

A formal hearing: File Numbers 86-01650 and 86-01573 Board for Auctioneers v. George W. Minson

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

† **February 19, 1991 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A open meeting to conduct regulatory review and

other matters which require board action.

Contact: Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

BOARD OF AUDIOLOGY AND SPEECH PATHOLOGY

† **February 28, 1991 - 10 a.m.** – Public Hearing
1601 Rolling Hills Drive, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Audiology and Speech Pathology intends to repeal existing regulations and promulgate new regulations entitled: **VR 155-01-2:1. Regulations of the Board of Audiology and Speech Pathology.** The board proposes to repeal existing regulations and promulgate new regulations to establish standards for the practice of audiology and speech pathology in the Commonwealth.

Pupose: The proposed regulations establish standards for the practice of audiology and speech pathology and qualifications for licensure of audiologists and speech pathologists. The public participation section provides opportunity for public involvement in the promulgation and formulation of regulations.

The proposed regulations result from a comprehensive review initiated in December, 1989. Promulgation of the proposed regulations was delayed to ensure compliance with educational accreditation requirements of the American Speech, Language, and Hearing Association concerning accreditation of professionals.

Estimated Impact: The majority of the proposed regulations for the licensure of audiologists and speech pathologists reflect revisions only for format, editing, clarity, simplicity, and ease of compliance.

Explanation of Need: The regulations are needed to ensure public protection through requirements that assure minimum competence for professional practice. Strengthened standards for conduct of practice provide protection from deceptive practices and inept care to the population being served.

The increase in fees are needed to fund the board's enforcement and administrative programs. Without the fee increases, the board will generate income of $79,700 during the 1990-92 biennium. With the projected minimum expenditures of $125,985 during the biennium to meet costs necessary for board expenses and operation, a deficit of $46,285 will occur. The proposals for annual renewal and increased fees will allow the board to remain a self-sustaining unit within the Department of Health Professions and will provide revenue to cover the anticipated deficit.

Impact: The proposed regulations will differntially impact professional practices with larger or smaller service volumes. Licensees who practice independently or in small group practices will be more affected by the fee increases than large or institutional practices. In many, but not all, instances, licensure and other professional fees are paid by employer agencies or organizations. Since the board licenses individuals, and not organizations, there appear to be no workable alternatives to increase in fees assessed for individuals.

Statutory Authority: §§ 54.1-100 and 54.1-103 of the Code of Virginia.

Written comments may be submitted until March 29, 1991.

Contact: Meredyth P. Partridge, Executive Director, 1600 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9111.

BOARD FOR BARBERS

† **January 28, 1991 - 10 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A meeting to review barber teacher examination, and to discuss routine board business.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

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February 11, 1991 - 11 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 Board for Barbers intends to repeal regulations entitled: **VR 170-01-1. Board for Barbers Regulations,** and promulgate new regulations entitled: **VR 170-01-1:1. Board for Barbers Regulations.** The Board for Barbers proposes to repeal existing regulations and promulgate new regulations to establish the requirements for licensure of barbers, barber instructors and barber shops and barber schools.

Statutory Authority: § 54.1-201 of the Code of Virginia.

Written comments may be submitted until March 4, 1991.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

CHILD DAY-CARE COUNCIL

February 1, 1991 - 9 a.m. – Open Meeting
February 8, 1991 - 9 a.m. – Open Meeting
Memorial Guidance Clinic, 5001 West Broad Street, Suite 217, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

Officers of the Child Day-Care Council will meet during the 1991 General Assembly Session to discuss proposed legislation.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

DEPARTMENT OF COMMERCE

February 3, 1991 – 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 Department of Commerce intends to amend regulations entitled: **VR 190-03-1. Regulations Governing Polygraph Examiners.** The proposed regulation will adjust the fee structure of the board and bring its application in line with these adjustments for polygraph examiners in the Commonwealth of Virginia.

Statutory Authority: §§ 54.1-113, 54.1-201 and 54.1-1802 of the Code of Virginia.

Written comments may be submitted until February 3, 1991.

Contact: Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

COMPENSATION BOARD

March 14, 1991 - 5 p.m. – Open Meeting
Ninth Street Office Building, 202 North Ninth Street, 9th Floor, Room 913/913A, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

A routine meeting to conduct business of the board.

Contact: Bruce W. Haynes, Executive Secretary, P.O. Box 3-F, Richmond, VA 23206-0686, telephone (804) 786-3886 or (804) 786-3886/TDD ☎

BOARD OF CORRECTIONS

February 13, 1991 - 10 a.m. – Open Meeting
March 13, 1991 - 10 a.m. – Open Meeting
6900 Atmore Drive, Board of Corrections Board Room, Richmond, Virginia. ♿

A regular monthly meeting to consider such matters as may be presented.

Contact: Ms. Vivian Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

BOARD FOR COSMETOLOGY

† **February 4, 1991 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting to (i) adopt final cosmetology regulations; (ii) consider routine board business; (iii) consider new business; and (iv) consider old business.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

COURT APPOINTED SPECIAL ADVOCATE PROGRAM ADVISORY COMMITTEE

January 30, 1991 - 10 a.m. – Open Meeting
Virginia Housing Development Authority Building, 601 South Belvidere Street, Richmond, Virginia. ♿

A business meeting.

Contact: Paula J. Scott, Staff Executive, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

BOARD OF DENTISTRY

† **January 30, 1991 - 5 p.m.** – Open Meeting
Alcoholic Beverage Comm., 4907 Mercury Boulevard, Hampton, Virginia. ♿

A meeting of the Advertising Committee to discuss article for the VDA Journal and advertising cases. The public may observe the meeting and comments from the public will be accepted.

† **February 23, 1991 - 10:30 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ♿

A meeting of the Examination Committee to discuss changes in the radiology exam and the SRTA exam.

The public may observe the meeting and comments from the public will be accepted.

† **March 16, 1991 - 11 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ♿

A meeting of the Legislative Committee to discuss any possible legislative changes for 1992 session of the General Assembly. The public may observe the meeting and comments from the public will be accepted.

Contact: Nancy Taylor Feldman, Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-9906.

BOARD OF EDUCATION

February 28, 1991 - 9 a.m. – Open Meeting
March 1, 1991 - 9 a.m. – Open Meeting
Berkeley Hotel, 12th and Cary Streets, Richmond, Virginia. ♿ (Interpreter for deaf provided if requested)

The Board of Education and the Board of Vocational Education will hold its regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request. Public comment will not be received at the meeting.

Contact: Margaret Roberts, Executive Director, State Department of Education, P.O. Box 6-Q, Richmond, VA 23216, telephone (804) 225-2540.

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

February 7, 1991 - 5:30 p.m. – Open Meeting
March 7, 1991 - 5:30 p.m. – Open Meeting
Chesterfield County Administration Building, 10,001 Ironbridge Road, Chesterfield, Virginia. ♿

A meeting to meet requirements of Superfund Amendment and Reauthorization Act of 1986.

Contact: Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

LOCAL EMERGENCY PLANNING COMMITTEE - COUNTY OF PRINCE WILLIAM, CITY OF MANASSAS, AND CITY OF MANASSAS PARK

February 18, 1991 - 1:30 p.m. – Open Meeting
March 18, 1991 - 1:30 p.m. – Open Meeting
1 County Complex Court, Prince William, Virginia. ♿

Local Emergency Planning Committee to discharge the provisions of SARA Title III.

Contact: Thomas J. Hajduk, Information Coordinator, 1 County Complex Court, Prince William, VA 22192-9201, telephone (703) 335-6800.

VIRGINIA EMPLOYMENT COMMISSION

State Advisory Board

† **March 5, 1991 - 1 p.m.** – Open Meeting
† **March 6, 1991 - 1 p.m.** – Open Meeting
Virginia Employment Commission, 703 East Main Street, Richmond, Virginia. ♿

A regular meeting to conduct general business.

Contact: Nancy L. Munnikhuysen, 703 East Main St., Richmond, VA 23219, telephone (804) 371-6004.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **February 4, 1991 - 9 a.m.** – Open Meeting
1601 Rolling Hills Drive, Conference Room 4, Richmond, Virginia. ♿

Funeral Directors and Embalmers Informals. Public comment will be received during last 30 minutes of meeting.

† **February 5, 1991 - 9 a.m.** – Open Meeting
† **March 13, 1991 - 9 a.m.** – Open Meeting
1601 Rolling Hills Drive, Conference Room 1, Richmond, Virginia. ♿

A regularly scheduled board meeting. Public comment will be received during last 30 minutes of meeting.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9907.

DEPARTMENT OF GENERAL SERVICES

Division of Consolidated Laboratory Services

† **February 8, 1991 - 9:30 a.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, Room E, Richmond, Virginia.

A meeting to discuss issues, concerns, and programs that impact the Division of Consolidated Laboratory Services and its user agencies.

Contact: Dr. A. W. Tiedemann, Jr., Director, 101 North 14th Street, Richmond, VA 23219, telephone (804) 786-7905.

HAZARDOUS MATERIALS TRAINING COMMITTEE

January 29, 1991 - 10 a.m. – Open Meeting
Richmond Airport Hilton, 5501 Eubank Road, Sandston, Virginia.

The purpose of this meeting will be to discuss curriculum, course development, and review existing hazardous materials courses.

Contact: Larry L. Logan, Fire and Emergency Services, 3568 Peters Creek Rd., N.W., Roanoke, VA 24019.

BOARD OF HEALTH

January 28, 1991 - 11 a.m. – Open Meeting
Monroe Building, Conference Room D, Richmond, Virginia.

A regular business meeting at 11 a.m. and an informal dinner meeting at 7:30 p.m. with the Medical Assistance Services Board.

January 29, 1991 - 8 a.m. – Open Meeting
Marriott, Richmond, Virginia.

Legislative Day Breakfast at Marriott and subsequent meetings with legislators to continue at State Capitol.

Contact: Susan R. Rowland, Assistant to Commissioner, Main Street Station, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-3561.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

February 26, 1991 - 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 ☎

BOARD FOR HEARING AID SPECIALISTS

February 3, 1991 – 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 Hearing Aid Specialists intends to amend regulations entitled: **VR 375-01-02. Board for Hearing Aid Specialists Regulations.** The proposed regulation will adjust the fee structure of the board and bring its application in line with these adjustments for hearing aid specialists in the Commonwealth of Virginia.

Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until February 3, 1991.

Contact: Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

STATE COUNCIL OF HIGHER EDUCATION

† **February 6, 1991 - 9 a.m.** – Open Meeting
Monroe Building, 101 North 14th Street, Council Conference Room, Richmond, Virginia. ♿

A general business meeting.

Contact: Barry M. Dorsey, Deputy Director, 101 North 14th Street, 9th Floor, Monroe Bldg., Richmond, VA 23219, telephone (804) 225-2629 or SCATS 225-2607.

DEPARTMENT OF HISTORIC RESOURCES (BOARD OF)

February 20, 1991 - 7 p.m. – Public Hearing
Virginia War Memorial Auditorium, 621 South Belvidere Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Historic Resources intends to amend regulations entitled: **VR 390-01-02. Regulations Governing Permits for the Archaeological Excavation of Human Remains.** The purpose of the proposed action is to implement the Virginia Antiquities Act, § 10.1-2305 of the Code of Virginia, governing the issuance of permits for the archaeological excavation of unmarked human burials. This permitting process will affect any persons or entities who conduct any type of archaeological field investigation involving the removal of human remains or associated artifacts from any unmarked human burial. It will also affect any such removal involving archaeological investigation as part of a court-approved removal of a cemetery. This permitting process serves as an alternative to the legal requirement for a court order to remove human burials from unmarked graves and as a supplementary process when the court orders such removal in cases of marked graves and cemeteries. The proposed regulations include technical criteria, and administrative procedures governing the issuance of said permits including such issues as: professional qualifications of applicant, research goals and methodology, interim curation, and final disposition and public comment.

Statutory Authority: § 10.1-2300 et seq. of the Code of

Virginia.

Written comments may be submitted until March 15, 1991.

Contact: Dr. M. Catherine Slusser, State Archaeologist, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

February 5, 1991 - 9 a.m. – Open Meeting
March 5, 1991 - 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.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Amusement Device Technical Advisory Committee

† **February 14, 1991 - 9 a.m.** – Open Meeting
205 North Fourth Street, Seventh Floor Conference Room, Richmond, Virginia. ♿

A meeting to review and discuss regulations pertaining to the construction, maintenance, operation and inspection of amusement devices adopted by the Board of Housing and Community Development.

Contact: Jack A. Proctor, CPCA, Deputy Director, Building Regulation, Department of Housing and Community Development, 205 North Fourth St., Richmond, VA 23219, telephone (804) 786-4752, SCATS 786-4752 or (804) 786-5405/TDD ☎

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Regulatory Effectiveness Advisory Committee

February 14, 1991 - 9 a.m. – Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ♿

A meeting to develop committee positions relative to the 1991 proposed changes to the BOCA National Codes. REAC Committee positions thus developed are forwarded to the Board of Housing and Community Development.

Positions approved by the board will be presented at the BOCA 1991 Code Change Hearings in Oklahoma City, Oklahoma, April 8-12, 1991.

Contact: Carolyn R. Williams, CPCA, Building Code Supervisor, 205 N. Fourth St., Richmond, VA 23219, telephone (804) 371-7772 or (804) 786-5405/TDD ☎

VIRGINIA INTERAGENCY COORDINATING COUNCIL ON EARLY INTERVENTION

† **February 13, 1991 - 9 a.m.** – Open Meeting
Richmond Radisson Hotel, 555 East Canal Street, Richmond, Virginia.(Interpreter for deaf provided upon request)

The Virginia Interagency Coordinating Council (VICC) according to public law 101-476, Individuals with Disabilities Education Act (IDEA) Part H, Infants and Toddlers with Disabilities, is meeting to advise and assist the Department of Mental Health, Mental Retardation and Substance Abuse Services, as lead agency, to develop and implement a statewide interagency early intervention program.

Contact: Michael Fehl, Ed. D., Director, Mental Retardation Children and Youth Services, Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. 1797, Richmond, VA 23214, telephone (804) 786-3710.

INTERDEPARTMENTAL REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN

Coordinating Committee

† **February 15, 1991 - 8:30 a.m.** – Open Meeting
† **March 15, 1991 - 8:30 a.m.** – Open Meeting
† **April 19, 1991 - 8:30 a.m.** – Open Meeting
Office of the Coordinator, Interdepartmental Regulation, Suite 208, 1603 Santa Rosa Road, Tyler Building, 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 LABOR AND INDUSTRY

Virginia Apprenticeship Council

† **February 7, 1991 - 10 a.m.** – Open Meeting
Virginia Housing Development Authority Building, 601

South Belvidere Street, Richmond, Virginia.

Regular Apprenticeship Council meeting to discuss and act on (i) results of open meetings and written comment on prioritizing apprenticeship related instruction funds; (ii) results of open meetings on the policy for selecting and evaluating related instruction administrative agents; (iii) response of Dorey Electric Company; (iv) report on apprenticeship program evaluations; (v) staff proposals on safety and health, and (vi) staff proposal on location of Apprenticeship Council meetings.

Contact: Robert S. Baumgardner, Director, Apprenticeship Division, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-2381.

LONG-TERM CARE COUNCIL

February 1, 1991 - 9 a.m. – Open Meeting
Ninth Street Office Building, Room 729, Richmond, Virginia. (Interpreter for deaf provided upon request)

A meeting to discuss the development of the Long-Term Care Demonstration Projects.

Contact: Janet Lynch, Director, Long-Term Care Council, 700 E. Franklin St., 10th Floor, Richmond, VA 23219, telephone (804) 371-0552, toll-free 1-800-552-4464 or (804) 225-2271/TDD

LONGWOOD COLLEGE

Board of Visitors

February 8, 1991 - 1 p.m. – Open Meeting
Ruffner Building, Virginia Room, Farmville, Virginia.

A routine business meeting.

Contact: William F. Dorrill, President, Office of the President, Longwood College, Farmville, VA 23901, telephone (804) 395-2001.

STATE LOTTERY DEPARTMENT (STATE LOTTERY BOARD)

February 27, 1991 - 10 a.m. – Open Meeting
NOTE: CHANGE IN MEETING DATE
† **March 25, 1991 - 10 a.m.** – Open Meeting
State Lottery Department, Conference Room, 2201 West Broad Street, Richmond, Virginia.

A regular monthly meeting of the board. Business will be conducted 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.

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February 27, 1991 - 10 a.m. – Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board intends to amend regulations entitled: **VR 447-01-2. Aministration Regulations.** These amendments clarify department procurement procedures and conform to amendments in the Code of Virginia.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

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February 27, 1991 - 10 a.m. – Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board intends to amend regulations entitled: **VR 447-02-1. Instant Game Regulations.** These amendments clarify standards for licensing; authorize issuance of lottery retailer license on a perpetual basis; establish annual license review process instead of license renewal; under certain circumstances, authorize prize payment based on photocopy of lottery ticket; clarify when prizes are payble over time and conform to amendments in the Code.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

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February 27, 1991 - 10 a.m. – Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board

intends to amend regulations entitled: **VR 447-02-2. On-Line Game Regulations.** These amendments clarify standards for licensing; authorize issuance of lottery retailer license on a perpetual basis; reduce prize redemption period for free tickets from 180 to 60 days; under certain circumstances, authorize prize payment based on photocopy of lottery ticket; clarify when prizes are payable over time and conform to amendments in the Code.

Sta utory Authority: § 58.1-4007 of the Code of Virginia.

NOTE: CORRECTION TO WRITTEN COMMENT DATE

Written comments may be submitted until February 1, 1991.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

JOINT BOARD LIAISON COMMITTEE

† **February 1, 1991 - 10 a.m.** – Open Meeting
Madison Building, 109 Governor Street, 13th Floor, Conference Room, Richmond, Virginia.

A quarterly meeting of the Joint Board Liaison Committee comprised of representatives of the Boards of Education; Health; Mental Health, Mental Retardation and Substance Abuse Services; Rehabilitative Services; and Social Services. Agenda items include topics of common interest and the development of joint policies relative to clients who are mutually served.

Contact: Jane V. Helfrich, Administrative Staff, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

ADVISORY COMMISSION ON MAPPING, SURVEYING AND LAND INFORMATION SYSTEMS

† **February 7, 1991 - 10 a.m.** – Open Meeting
Washington Building, Suite 901, 1100 Bank Street, Richmond, Virginia.

A regular business meeting.

Contact: Charles E. Tyger, Chief Engineer, Systems and Software Management, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or (804) 225-3624/TDD

MARINE RESOURCES COMMISSION

† **February 26, 1991 - 9:30 a.m.** – Open Meeting
2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. (Interpreter for deaf provided if requested)

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 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.

BOARD OF MEDICAL ASSISTANCE SERVICES

January 28, 1991 - 1 p.m. – Open Meeting
Board Room, Suite 1300, 600 East Broad Street, Richmond, Virginia.

A meeting to discuss medical assistance services and issues pertinent to the board.

7:30 p.m.: The Board of Medical Assistance Services will have an informal joint dinner meeting with the Board of Health at the Marriott Hotel.

Contact: Patricia A. Sykes, Legislative Analyst, Suite 1300, 600 E. Broad St., Richmond, VA 23219, telephone (804) 786-7958, toll-free 1-800-552-8627 or 1-800-343-0634/TDD

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

March 15, 1991 – 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 460-02-2.2100, VR 460-02-2.6100, VR**

460-03-2.6105, and VR 460-03-2.6112. Restoration of Income and Resource Methodologies. This action proposes to restore Medicaid's income and resource methodologies which were overturned by court order.

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

Written comments may be sumitted until 4:30 p.m., March 15, 1991, to Ann E. Cook, Eligibility and Regulatory Consultant, Division of Policy and Research, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Mental Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-9733.

BOARD OF MEDICINE

February 7, 1991 - 8 a.m. – Open Meeting
February 8, 1991 - 8 a.m. – Open Meeting
February 9, 1991 - 8 a.m. – Open Meeting
February 10, 1991 - 8 a.m. – Open Meeting
Department of Health Professions, Board Room 1, 1601 Rolling Hills Drive, Richmond, Virginia.

The full board will meet on February 7 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, to review reports, interview licensees and make decisions on discipline matters.

Public comment will be received at the conclusion of the meeting.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond, VA 23229-5005, telephone (804) 662-9925.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

State Human Rights Committee

† **February 8, 1991 - 10 a.m.** – Open Meeting
Dejarnette Center, P.O. Box 2309, Staunton, Virginia.

A regular meeting to discuss business relating to human rights issues. Agenda items are listed prior to the meeting.

Contact: Elsie D. Little, ACSW, 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.

University of Virginia Institute of Law, Psychiatry and Public Policy, Division of Continuing Education, Office of Continuing Legal Education and Office of Continuing Medical Education

March 7, 1991 - 9 a.m. – Open Meeting
March 8, 1991 - 9 a.m. – Open Meeting
Richmond Marriott Hotel, 500 East Broad Street, Richmond, Virginia.

Fourteenth Annual Symposium on Mental Health and the Law. An annual symposium addressing issues related to mental health and the law. Approximately nine hours in Category 1 CME, 9 CEU and 9 CLE credits applied for.

Contact: Carolyn Engelhard, Administrator, Institute of Law, Pysychiatry and Public Policy, Box 100, Blue Ridge Hospital, Charlottesville, VA 22901, telephone (804) 924-5435.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† **February 27, 1991 - 10 a.m.** – Open Meeting
James Madison Building, 13th Floor Conference Room, Richmond, Virginia.

A regular monthly meeting. The agenda will be published on February 20 and may be obtained by calling Jane Helfrich.

February 26, Tuesday: Informal session - 6 p.m.

February 27, Wednesday: Committee meetings 8:45 a.m. and regular session 10 a.m.

See agenda for location.

Contact: Jane V. Helfrich, Board Administrator, State MHMRSAS Board, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3912.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

February 16, 1991 - 8:30 a.m. – Open Meeting
Virginia Military Institute, Smith Hall Board Room, Smith Hall, Lexington, Virginia.

A regular meeting of the VMI Board of Visitors to consider committee reports and reports on visits to academic departments.

Contact: Colonel Edwin L. Dooley, Jr., Secretary to BOV, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206.

DEPARTMENT OF MINES, MINERALS AND ENERGY

† **March 26, 1991 - 10 a.m.** – Public Hearing
Department of Social Services, S.W. Virginia Regional office, 190 Patton Street, Abingdon, Virginia.

† **March 27, 1991 - 1 p.m.** – Public Hearing
General Assembly Building, House Room D, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to repeal regulations entitled: **VR 480-05-22. Rules and Regulations for Conservation of Oil and Gas Resources and Well Spacing** and adopt regulations entitled: **VR 480-05-22.1. Gas and Oil Regulations.** The existing regulation governing development, operation, and reclamation of gas and oil operations in Virginia will be repealed concurrently with promulgation of the VR 480-05-22.1 Gas and Oil Regulations which will govern development, operations and reclamation of gas, oil or geophyscial operations in Virginia.

STATEMENT

Basis: This regulation is being promulgated pursuant to §§ 45.1-1.3 and 45.1-361.27 of the Code of Virginia.

Purpose: This regulation is designed to ensure the safe and efficient development and production of gas or oil resources in Virginia. This regulation will set standards for:

- preventing pollution of state waters and requiring compliance with the Water Quality Standards adopted by the State Water Control Board;

- protecting against off-site disturbances from gas, oil or geophysical operations;

- ensuring the restoration of all sites disturbed by gas, oil or geophysical operations;

preventing the escape of gas or oil resources;

providing for coal and mineral mining safety;

controlling wastes from gas, oil or geophysical operations;

providing for the accurate measurement of gas or oil production and delivery to the first point of sale; and

- protecting the public safety and general welfare.

Substance: This regulation will govern gas, oil and geophysical operations in Virginia in order to protect the land and water rsources of the Commonwealth and the public safety from the risks associated with gas, oil or geophysical operations. The regulation will set standards for permitting, technical practices and reporting by gas, oil and geophysical operators, and enforcement actions of the department. The regulation will include standards for conventional gas and oil wells, including injection wells, as well as coalbed methane gas wells, geophysical operations and gathering pipline.

Issues: The issues with this regulation involve establishing the proper regulatory balance to foster, encourage and promote the exploration and development of the Commonwealth's gas and oil resources while protecting the public and the environment from the risks associated with the development and production of gas and oil. Issues include determining standards needed to protect the land and water resources, including requirements for erosion, sediment control, stormwater management, and protection of water quality; determining standards needed to protect miner and public safety; determining enforcement procedures for obtaining compliance with the Act and this regulation while protecting permittees' due process rights; and determining the extent to which this regulation should establish environmental protection not specifically addressed in the Act.

Impact: As of November 1, 1990, there were 29 gas, oil or geophyscial permittees holding 979 permits for operations in Virginia that will be affected by this regulation.

The department estimates the additional costs to prepare an application for a gas, oil or geophysical permit will range from $1,000 to $2,000 per permit; additional drilling costs will range fro $500 to $4,000 per site; and the additional costs to operate a facility and reclaim the site when operations cease will range from $650 to $2,000 per site. These additional costs represent from 0.8% to 3.1% of the cost to drill and complete a typical well in Virginia.

This regulation also establishes new standards for wells where gas in used on-site and not transported to a commercial pipeline. Costs to an owner of such a well will be approximately $200 to vent the well. Costs to plug such a well should be approximately $1,500 since these wells are relatively shallow and do not require the special plugging techniques used when a well penetrates deep gas or oil bearing strata. Actual costs may vary from this estimate if there are unusual conditions in a well. If the owner of such a well chooses to permit the well, costs will vary greatly depending on unique site conditions.

Statutory Authority: §§ 45.1-1.3 and 45.1-361.27 of the Code of Virginia.

Written comments may be submitted until March 29, 1991.

Contact: B. Thomas Fuller, Gas and Oil Inspector, Department of Mines, Minerals and Energy, Division of Gas and Oil, P.O. Box 1416, 230 Charwood Dr., Abingdon, VA 24210, telephone (703) 628-8115, SCATS 676-5501 or toll-free 1-800-552-3831.

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† **March 26, 1991 - 10 a.m.** – Public Hearing
Department of Social Services, S.W. Virginia Regional Office, 190 Patton Street, Abingdon, Virginia.

† **March 27, 1991 - 1 p.m.** – Public Hearing
General Assembly Building, House Room D, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to amend regulations entitled: **VR 480-05-96. Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells.** The regulation provides requirement for safe operation of vertical mine ventilation holes and for safe mining near gas and oil wells.

STATEMENT

Basis: The proposed amendments are being implemented pursuant to §§ 45.1-1.3(4), 45.1-92.1 and 45.1-104 of the Code of Virginia.

Purpose: The purpose of these amendments is to improve the effectiveness of the Rules and Regulations Governing Vertical Mine Ventilation Holes in protecting the safety of underground miners who work near drill holes installed for the extraction and removal of gas and oil from subsurface strata. The amendments also are designed to incorporate provisions of the Virginia Oil and Gas Act of 1982 which were transferred by the 1990 General Assembly to § 45.1-92.1 of the Mining Laws of Virginia, and to provide continued protection of mine workers in conjunction with development of a new coalbed methane extraction industry.

Substance: Vertical ventilation holes are used to allow the escape of methane gas commonly found in coal seams to escape into the atmosphere. Accumulation of methane in coal seams being mined is hazardous to miners because the gas is highly flammable. These regulations are designed to allow mine operators to safely drill holes from the surface down into coal seams to allow gas to escape. The proposed amendments provide requirements for safe conduct of mining activity near and through vertical ventilation holes, natural gas wells and oil wells that pass through mineable coal into deeper subsurface strata. The amendments also set provisions to facilitate conversions between vertical ventilation holes and coalbed methane wells, and provide protection of groundwater and other mineable coal seams.

Issues: The issues likely to be raised in connection with the proposed amendments would involve adequacy of the provisions in protecting mine workers, the economic impacts of the amendments on the coal industry, and the economic impacts on owners of methane reserves.

Impact: There are three coal companies currently drilling vertical ventilation holes in Virginia. These companies employ approximately 2,200 miners at mines where vertical ventilation holes are drilled. All three are expected to continue such drilling. There is no indication that additional companies will begin to drill vertical ventilation holes. On the other hand, because gas and oil wells are scattered throughout the coalfields, there is potential for all of Virginia's estimated 350 underground coal mines to be affected by the portion of the regulations governing mining conducted near gas and oil wells. These mines employ approximately 9,000 miners. However, the amendments are not expected to impose a significant cost increase to industry or workers. The amendments do not significantly change the requirements for conducting the regulated activities. Instead, they are designed to make the requirements clearer and simpler and to allow easier conversion of vertical ventilation holes to producing gas wells. Reduction in the number of forms required for compliance with the program will reduce the burden of paperworkk foro the industries affected.

Statutory Authority: §§ 45.1-1.3(4), 45.1-92.1 and 45.1-104 of the Code of Virginia.

Written comments may be submitted until 5 p.m., March 29, 1991.

Contact: Bill Edwards, Policy Analyst, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-0330.

BOARD OF NURSING

January 28, 1991 - 9 a.m. – Open Meeting
January 29, 1991 - 9 a.m. – Open Meeting
January 30, 1991 - 9 a.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

Regular meeting of the Virginia Board of Nursing to consider matters related to nursing education programs, discipline of licensees, licensing by examination and endorsement and other matters under the jurisdiction of the board.

Public comment will be received during an open forum session beginning at 11 a.m. on Monday, January 28, 1991.

February 22, 1991 - 1 p.m. – Open Meeting
February 23, 1991 - 8:30 a.m. – Open Meeting
Holiday Inn on the Ocean, 39th and Atlantic Avenue, Virginia Beach, Virginia. ♿ (Interpreter for deaf provided upon request)

The board will meet in a work-study session to review its operations, organization and responsibilities for the purpose of improving its effectiveness and efficiency in fulfilling the statutory duties assigned to the board.

No public comment will be received.

Examination Committee

February 15, 1991 - noon – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

The Board of Nursing Examination Committee will convene in open session and go into Executive Session for the purpose of reviewing the National Council Licensing Examination for Registered Nurses. The meeting will reconvene in open session prior to adjournment.

No public comment will be received.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909, toll-free 1-800-533-1560 or (804) 662-7197/TDD ☎

BOARD FOR OPTICIANS

† **February 5, 1991 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to (i) approve minutes of the December 7, 1990 meeting; (ii) review applications; (iii) sign certificates, and (iv) discuss other matters which require board action.

Contact: Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

VIRGINIA OUTDOORS FOUNDATION

† **January 30, 1991 - 10 a.m.** – Open Meeting
Virginia Museum, North Lobby Conference Room, 2800 Grove Avenue, Richmond, Virginia. ♿

Planning session.

Contact: Tyson B. Van Auken, Executive Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-5539.

BOARD OF PHARMACY

† **February 6, 1991 - 9:30 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Conference Room 1, Richmond, Virginia.

A meeting to conduct routine board business and discuss public comments received on existing regulations at the informational hearing on September 12, 1990. Public comments will be accepted at the beginning of the meeting or at any appropriate occasion during the meeting.

Contact: Jack B. Carson, Executive Director, Virginia Board of Pharmacy, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9911.

PRIVATE SECURITY SERVICES ADVISORY COMMITTEE

January 30, 1991 - 10 a.m. – Open Meeting
Department of Criminal Justice Services, 805 East Broad Street, 11th Floor Conference Room, Richmond, Virginia. ♿

A business meeting.

Contact: Paula J. Scott, Staff Executive, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

BOARD OF PROFESSIONAL COUNSELORS

January 31, 1991 - 9 a.m. – Open Meeting
February 1, 1991 - 9 a.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ♿

Informal conferences.

Contact: Evelyn B. Brown, Executive Director, or Joyce D. Williams, Administrative Assistant, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9912.

† **February 15, 1991 - 9 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia.

A general board business meeting, including committee reports to correspondence, and regulatory review. Public comments not accepted at this meeting.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 1601 Rolling Hills Dr., Suite 200, Richmond, VA 23229, telephone (804) 662-9912.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

March 18, 1991 – 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 Professional Soil Scientists intends to amend regulations entitled: **VR 627-02-01. Board for Professional Soil Scientists Regulations.** The proposed action will amend fees to assure the board's compliance with § 54.1-113 of the Code of Virginia.

Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until March 18, 1991.

Contact: Nelle P. Hotchkiss, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

REAL ESTATE APPRAISER BOARD

† **January 28, 1991 - 11 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A meeting to consider and approve application forms and reporting experience and educational qualifications.

Applications, Education and Experience Committees

† **January 28, 1991 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

Committee meetings.

Contact: Demetra Y. Kontos, Assistant Director, Appraiser Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2175.

COMMONWEALTH TRANSPORTATION BOARD

† **February 20, 1991 - 2 p.m.** – Open Meeting
Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

A work session of the board and staff.

† **February 21, 1991 - 10 a.m.** – Open Meeting
Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

A monthly meeting to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval.

Public comment will be received at the outset of the meeting, on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions.

Contact: John G. Milliken, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6670.

TREASURY BOARD

† **February 6, 1991 - 10 a.m.** – Open Meeting
† **February 14, 1991 - 2 p.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ♿

A special meeting of the board.

† **February 20, 1991 - 9 a.m.** – Open Meeting
† **March 20, 1991 - 9 a.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ♿

A regularly scheduled meeting of the board.

Contact: Laura Wagner-Lockwood, Senior Debt Manager, Department of Treasury, P.O. Box 6-H, Richmond, VA 23215, telephone (804) 225-4931.

BOARD OF VETERINARY MEDICINE

† **February 13, 1991 - 8:30 a.m.** – Open Meeting
1601 Rolling Hills Drive, Conference Room 1, Richmond, Virginia. ♿ (Interpreter for deaf provided if requested)

A board meeting to consider general board business and informal conferences.

Contact: Terri H. Behr, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9915.

VIRGINIA COUNCIL ON VOCATIONAL EDUCATION

† **February 27, 1991 - 10 a.m.** – Open Meeting
Jefferson Hotel, Richmond, Virginia.

10 a.m. - Committee Meetings

1:30 p.m. - 3 p.m. - Business Session

3:15 p.m. - 5 p.m. - Work Session

† **February 28, 1991 - 10 a.m.** – Open Meeting
Berkeley Hotel (Tentative), Richmond, Virginia.

Tenative meeting with the Virginia Board of Education.

Contact: George S. Orr, Jr.,, Executive Director, Virginia Council on Vocational Education, 7420-A Whitepine Rd., Richmond, VA 23237, telephone (804) 275-6218.

DEPARTMENT OF WASTE MANAGEMENT

February 11, 1991 - 1 p.m. – Open Meeting
Monroe Building, Conference Room C, 101 North 14th Street, Richmond, Virginia. &

This meeting is an informational one, designed to solicit from interested parties suggestions on the development of a regulation for the certification of "recycling" equipment. Such certification would allow the purchaser to apply for any available tax exemption for such equipment from the local governing body.

Contact: G. Stephen Coe, Program Analyst, Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 786-8679, SCATS 371-0044, toll-free 1-800-533-7488 or (804) 371-8737/TDD ☎

STATE WATER CONTROL BOARD

February 20, 1991 - 7 p.m. – Open Meeting
Roanoke County Administration Center, Community Room, 3738 Brambleton Avenue, S.W., Roanoke, Virginia.

The purpose of the meeting is to receive comments on the proposed amendment of the Roanoke River Basin Water Quality Management Plan and the adoption of the Upper Roanoke River Sub-area Water Quality Management Plan. The specifics of the proposals can be found in the General Notices Section.

Contact: Wellford S. Estes, State Water Control Board, West Central Regional Office, P.O. Box 7017, Roanoke, VA 24019, telephone (703) 857-7432

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† **February 7, 1991 - 8:30 a.m.** – Open Meeting
† **February 8, 1991 - 8:30 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. &

An open meeting to conduct regulatory review.

Contact: Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

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February 13, 1991 - 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 Board for Waterworks and Wastewater Works Operators intends to amend regulations entitled: **VR 675-01-02. Board for Waterworks and Wastewater Works Operators Regulations.** The proposed regulation will adjust the fee structure of the board and bring its application in line with these adjustments for waterworks/wastewater works operators in the Commonwealth.

Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until March 4, 1991.

Contact: Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

THE COLLEGE OF WILLIAM AND MARY

Board of Visitors

January 31, 1991 - 3 p.m. – Open Meeting
February 1, 1991 - 7:30 a.m. – Open Meeting
NOTE: CHANGE IN MEETING LOCATION
Blow Memorial Hall, Richmond Road, Williamsburg, Virginia. &

A regularly scheduled meeting to (i) review quarterly operations of the college and Richard Bland College, (ii) recieve reports from several committees of the board, and (iii) to act on those resolutions that are presented by the administrations of William and Mary and Richard Bland College.

An informational release will be available four days prior to the board meeting for those individuals and organizations who request it.

Contact: Mr. William N. Walker, Director, University Relations, Office of University Relations, James Blair Hall, Room 101 C, College of William and Mary, Williamsburg, VA 23185, telephone (804) 221-1004.

BOARD OF YOUTH AND FAMILY SERVICES

† **February 14, 1991 - 9 a.m.** – Open Meeting
† **March 14, 1991 - 9 a.m.** – Open Meeting
700 Centre Building, 4th Floor, 7th and Franklin Streets, Richmond, Virginia.

A general business meeting.

Contact: Paul E. Steiner, Regulatory Coordinator, 700 Centre Building, 4th Floor, 7th and Franklin Streets, Richmond, VA 23219, telephone (804) 371-0700.

LEGISLATIVE

Notice to Subscribers

Legislative meetings held during the Session of the General Assembly are exempt from publication in The Virginia Register of Regulations. You may call Legislative Information for information on standing committee meetings. The number is (804) 786-6530.

CHRONOLOGICAL LIST

OPEN MEETINGS

January 28
Accountancy, Board For
† Barbers, Board for
Health, Board of
Medical Assistance Services, Department of
Nursing, Board of
† Real Estate Appraiser Board

January 29
Accountancy, Board For
† Auctioneers, Board for
Hazardous Materials Training Committee
Health, Board of
Nursing, Board of

January 30
Court Appointed Special Advocate Program Advisory Committee
† Dentistry, Board of
Nursing, Board of
† Outdoors Foundation, Virginia
Private Security Services Advisory Committee

January 31
Professional Counselors, Board of
William and Mary, The College of
- Board of Visitors

February 1
Child Day-Care Council
† Liaison Committee, Joint Board
Long-Term Care Council
Professional Counselors, Board of
William and Mary, The College of
- Board of Visitors

February 4
Alcoholic Beverage Control Board
† Cosmetology, Board for
† Funeral Directors and Embalmers, Board of

February 5
† Funeral Directors and Embalmers, Board of
Hopewell Industrial Safety Council
† Opticians, Board of

February 6
† Higher Education, State Council of
† Pharmacy, Board of
† Treasury Board

February 7
† Labor and Industry, Department of
- Virginia Apprenticeship Council
Local Emergency Planning Committee, Chesterfield County
† Mapping, Surveying and Land Information Systems, Advisory Commission on
Medicine, Board of
† Waterworks and Wastewater Works Operators, Board for

February 8
Child Day-Care Council
† General Services, Department of
- Division of Consolidated Laboratory Services
Longwood College
- Board of Visitors
Medicine, Board of
† Mental Health, Mental Retardation and Substance Abuse Services, Department of
- State Human Rights Committee
† Waterworks and Wastewater Works Operators, Board for

February 9
Medicine, Board of

February 10
Medicine, Board of

February 11
Waste Management, Department of

February 13
Corrections, Board of
† Interagency Coordinating Council on Early Intervention, Virginia
† Veterinary Medicine, Board of

February 14
† Housing and Community Development, Board of
- Amusement Device Technical Advisory Committee
Housing and Community Development, Department of
- Regulatory Effectiveness Advisory Committee
† Professional Engineers, Board for
† Treasury Board
† Youth and Family Services, Board of

February 15
† Interdepartmental Regulation of Residential Facilities for Children
- Coordinating Committee
Nursing, Board of
- Examination Committee

† Professional Counselors, Board of

February 16
Virginia Military Institute
- Board of Visitors

February 18
Local Emergency Planning Committee, County of Prince William, City of Manassas, and City of Manassas Park

February 19
† Auctioneers, Board for

February 20
† Agriculture and Consumer Services, Board of
Alcoholic Beverage Control Board
† Transportation Board, Commonwealth
† Treasury Board
Water Control Board, State

February 21
† Agriculture and Consumer Services, Board of
† Architects, Board for
† Transportation Board, Commonwealth

February 22
Nursing, Board of

February 23
† Dentistry, Board of
Nursing, Board of

February 26
Health Services Cost Review Council, Virginia
† Marine Resources Commission

February 27
Lottery Board, State
† Mental Health, Mental Retardation and Substance Abuse Services, State Board
† Vocational Education, Virginia Council on

February 28
Education, Board of
† Landscape Architects, Board for
† Vocational Education, Virginia Council on

March 1
Education, Board of

March 4
Alcoholic Beverage Control Board

March 5
† Employment Commission, Virginia
- State Advisory Board
Hopewell Industrial Safety Council

March 6
† Employment Commission, Virginia
- State Advisory Board

March 7
Local Emergency Planning Committee, Chesterfield County
Mental Health, Mental Retardation and Substance Abuse Services, Department of
- University of Virginia Institute of Law, Psychiatry and Public Policy, Division of Continuing Education, Office of Continuing Legal Education and Office of Continuing Medical Education

March 8
Mental Health, Mental Retardation and Substance Abuse Services, Department of
- University of Virginia Institute of Law, Psychiatry and Public Policy, Division of Continuing Education, Office of Continuing Legal Education and Office of Continuing Medical Education

March 13
Corrections, Board of
† Funeral Directors and Embalmers, Board of

March 14
Compensation Board
† Youth and Family Services, Board of

March 15
† Interdepartmental Regulation of Residential Facilities for Children
- Coordinating Committee

March 16
† Dentistry, Board of

March 18
Alcoholic Beverage Control Board
Local Emergency Planning Committee, County of Prince William, City of Manassas, and City of Manassas Park

March 20
† Treasury Board

March 25
† Lottery Board, State

March 28
Aging, Department for the
- Long-Term Care Ombudsman Program Advisory Council

April 19
† Interdepartmental Regulation of Residential Facilities for Children
- Coordinating Committee

PUBLIC HEARINGS

January 30
† Air Pollution Control, Department of
- Region VI

February 4
† Air Pollution Control, Department of

February 11
† Air Pollution Control, Department of
Barbers, Board For

February 13
Waterworks and Wastewater Works Operators, Board for

February 20
Historic Resources, Department of

February 27
Lottery Department, State

February 28
† Audiology and Speech Pathology, Board of

March 11
Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for

March 14
Commerce, Department of

March 26
† Mines, Minerals and Energy, Department of

March 27
† Mines, Minerals and Energy, Department of